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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2026

Pronounced on : 20.11.2026

CORAM

THE HON'BLE MR.JUSTICE E.MANOHARAN

Case QR

SA No. 846 of 2016

CNR: {HCMA010884082016}

T.R.Duraiselvam
S/o Late Ramamoorthy Gounder,
Thogarapalli Village,
Krishnagiri Taluk and District.

..Appellant(s)

Vs.

K.N.Natarajan
S/o Late Narasima Gounder,
Kundharapalli Village,
Krishnagiri Taluk and District.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, 1908 against the judgment and decree dated 11.12.2015 made in A.S.No.23 of 2014 on the file of the learned Additional District Judge, Krishnagiri, reversing the judgment and decree dated 26.05.2014 made in O.S.No.78 of 2005 on the file of the learned Principal Sub-ordinate Judge, Krishnagiri.

For Appellant(s): Mr.C.Prabakaran
For Respondent(s): Mr.S.Sudharshan

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JUDGMENT

FACTUAL BACKGROUND:

The plaintiff in O.S.No.78 of 2005 on the file of the learned Subordinate Judge, Krishnagiri, is the appellant in this Second Appeal. The said suit was instituted for a judgment and decree directing the defendant/Respondent to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) together with costs. The plaintiff and the defendant are co-brothers.

2. The case of the plaintiff, in brief, is as follows:

2.1. The plaintiff averred that the defendant had borrowed a sum of Rs.3,00,000/- from him and, in discharge of the said liability, had issued a cheque bearing No.03151 dated 14.01.1999 in his favour. According to the plaintiff, when the cheque was presented for encashment, it was dishonoured and returned by the Dharmapuri Executive Central Bank Ltd., Krishnagiri Branch, with the endorsement “insufficient funds”. Consequently, the plaintiff initiated action against the defendant in C.C.No.45 of 1999 on the file of the Judicial Magistrate, Krishnagiri, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2.2. It is the further case of the plaintiff that, during the pendency of the said complaint, one Mr.R.Srikantan, a Senior Advocate practising at Krishnagiri, who claims to be a close family friend of both parties, along with

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one Mr.Jayapal, counselled the parties to resolve the dispute amicably. The plaintiff avers that the defendant thereupon gave an assurance that he would repay the sum of Rs.3,00,000/- within a period of one year and that, acting upon the said assurance and promise, the plaintiff did not press the complaint. Accordingly, by Order dated 21.02.2002, the Judicial Magistrate dismissed C.C.No.45 of 1999 as not pressed.

2.3. The plaintiff avers that despite the plaintiff withdrawing the complaint the defendant failed to honour the assurance. The defendant is said to have sent one of his close relatives with a proposal to sell the defendant's property and adjust the proceeds towards the amount due to the plaintiff, which proposal was not accepted by the plaintiff. The plaintiff contends that the defendant continued to protract the matter on one pretext or the other and, ultimately, refused to pay the amount, leaving him with no alternative but to institute the suit for recovery. It is canvassed on behalf of the plaintiff that the right to sue accrued on 21.03.2002 upon the withdrawal of the complaint, acted upon on the basis of the assurance of the defendant and that the institution of the suit on 18.03.2005 falls well within the prescribed period of limitation, thereby rendering the suit legally maintainable

2.4. Resisting the suit, the defendant filed a written statement denying the plaint averments and contending that the suit was false, frivolous and

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vexatious. The defendant contended that the plaintiff, who was managing the defendant's petrol bunk, had fraudulently fabricated the cheque in his own favour and had initiated the proceedings with the object of extorting money from the defendant. It was further contended that the fraud so perpetrated by the plaintiff was clearly established in the cross-examination of the plaintiff, who was examined as P.W.1 in C.C.No.45 of 1999, and that it was only to avoid exposure that the plaintiff did not press the complaint.

2.5. The defendant denied that Mr.R.Srikantan and Mr.Jayapal were his close friends and asserted that, on the contrary, both were close to the plaintiff. It was specifically contended that Mr.Jayapal had deposed as a witness against the defendant in the said complaint and was inimically disposed towards him. The defendant categorically denied having given any assurance to repay the amount and denied the averments of the plaint in that regard. He also raised the plea that the suit was barred by limitation and was liable to be rejected at the threshold.

2.6. On the side of the plaintiff, the plaintiff was examined as P.W.1 and one Mr. Jayapal as P.W.2, and Ex. A1 to A6 were marked. The defendant examined himself as D.W.1; no documentary evidence was adduced on his behalf.

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2.7. Based on the materials paced before it, the trial Court framed the following issues for consideration:

1. Whether the suit is barred by law of limitation?

2. Whether there is no cause of action for the suit?

3. Whether the plaintiff is entitled a suit amount as prayed for?

4. To what relief the plaintiff is entitled?

2.8. After considering the oral and documentary evidence, the trial Court, by judgment and decree dated 26.06.2014, decreed the suit as prayed for, with costs. The trial Court accepted the evidence of P.W.2 and Exs.A5 and A6, being letters purportedly addressed by Mr.Srikantan to the defendant, and concluded that the defendant had acknowledged his liability and was now seeking to evade it. The trial Court reckoned the period of limitation from 21.03.2002, the date on which the plaintiff did not press the complaint, and held that the suit was filed within the period of limitation.

2.9 Aggrieved by the Judgment and Decree of the trial Court, the defendant preferred A.S.No.23 of 2014 before the learned Additional District Judge, Krishnagiri (the First Appellate Court), which framed the following points for determination:

1. Whether the Decree and Judgment passed by the trial Court is correct?

2. Whether the appeal is to be allowed?

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2.10. The First Appellate Court, on re-appreciation of the evidence, found that the plaintiff had not produced the cheque, which was the very foundation of the dispute and the source of the alleged liability of the defendant. It noted that the defendant had denied all the allegations made against him, including the execution of the signature on the cheque. Placing reliance on Section 18 of the Limitation Act, 1963, the First Appellate Court held that an acknowledgment, to be effective for the purpose of computing limitation, must be in writing and signed, and that an oral acknowledgment is not recognised in law. It therefore rejected the plaintiff's plea that the defendant had orally promised to pay the amount and that the complaint was not pressed on that footing.

2.11.The First Appellate Court further drew an adverse inference against the plaintiff for not having preferred an appeal or revision against the order of the Judicial Magistrate, even after, as according to the plaintiff, the defendant did not pay the amount within the period of one year allegedly assured. It also held that liability cannot be fastened on the defendant on the strength of an acknowledgment or a statement made by a third party, and that Exs.A1, A5 and A6 were insufficient to establish the existence of the alleged debt. On the above findings, the First Appellate Court allowed A.S.No.23 of 2014 and set aside the Judgment and Decree of the trial Court in O.S.No.78 of 2005.

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SUBSTANTIAL QUESTIONS OF LAW:

2.12. Challenging the Judgment and Decree of the First Appellate Court, the plaintiff has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. This Court admitted the Second Appeal and framed the following substantial questions of law:

I) Whether the Lower Appellate Court is right in dismissing the suit as barred by limitation when acknowledgments of liabilities of the debts are evidenced in Ex. A1, Ex. A5 and Ex. A6?

II) Whether, the Lower Appellate Court erred in dismissing the suit by holding that the non-filing of revision or appeal against the order made in the criminal proceedings initiated under Section 138 of Negotiable Instruments Act is fatal to the relief sought for in the present suit for recovery of money?

3. Heard the Counsels appearing for both sides and perused the materials and findings of the Courts below.

DISCUSSION:

4. The facts of the case have been set out in the preceding paragraphs of this Judgment and are not repeated here, save to the extent necessary for the discussion that follows.

5. The first and most conspicuous infirmity in the Plaintiff's case is the non-production of the cheque on the basis of which he claims that the Respondent attempted to discharge the debt. No satisfactory explanation has

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been offered by the Plaintiff for withholding the cheque from the Court. The plaintiff relies upon Ex. A1, being the copy of the complaint preferred by him under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.45 of 1999, and upon Ex. A5 and A6, being copies of letters purportedly written by the Advocate, Mr. R. Srikanthan to establish that the amount was advanced to the Respondent and that there was an oral assurance between the parties regarding repayment of the amount due.

6. In this regard, the learned counsel for the Respondent places reliance on the judgment of the Hon'ble Supreme Court in ***Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Others [1968 SCC OnLine SC 63]***, the relevant portion of which is extracted below:

"*It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Manickavasaka Pandara1 Lord Shaw observed as follows:*

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough — they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from

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the Court the written evidence in their possession which would throw light upon the proposition."

The above pronouncement, read with Section 114(g) of the Indian Evidence Act, 1872, makes it clear that the non-production of evidence tells against the party withholding it, and that nothing precludes this Court from drawing an adverse inference against that party, who in the present case is the Appellant.

7. At no stage has the defendant admitted any liability. The plaintiff relies principally on the deposition of PW2 and Ex. A1, A5 and A6 to contend that an oral agreement and compromise for payment of the disputed sum of Rs. 3,00,000/- was arrived between the parties and that the defendant had given an assurance to pay the disputed amount. At this juncture it is pertinent to note that a perusal of the Plaint shows that it speaks only of an oral assurance allegedly given by the defendant, on the strength of which C.C.No.45 of 1999 was withdrawn. It nowhere pleads an oral agreement. The two expressions are not synonymous in law. Nevertheless, even going by the assertion of the plaintiff that an oral agreement existed between the parties, the same will have fulfill the requirements under the Indian Contract Act 1872, in order to be held binding and enforceable in law.

8. For an oral agreement to be binding and enforceable, it must satisfy the essentials of a valid contract under Sections 2(h) and 10 of the Indian Contract Act, 1872. There must be a lawful offer and its acceptance. Its terms must be

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certain or capable of being made certain and the parties must have intended to create legal relations. Though the Indian Contract Act, 1872 does not, as a general rule, require a contract to be in writing, the person asserting an oral agreement bears the burden of pleading and proving each of its essential ingredients, including its precise terms, by cogent and reliable evidence. In this regard, the plaintiff has relied on copies of the letters addressed by Thiru. R. Srikantan (Ex. A5 and A6), and on the order of the Judicial Magistrate recording the withdrawal of the complaint. The said order does not disclose why the plaintiff chose not to prosecute the complaint further, nor does it record any reasons for the withdrawal. There is no material, such as written communication from the defendant, to show that the withdrawal was made at the behest or request of the defendant, or in consideration of any promise given by him. The defendant has, from the very outset, consistently denied the issuance of the cheque as well as the giving of any assurance or agreement, and that stand has remained unshaken. There is no document executed or signed by the defendant, nor any direct communication emanating from him, acknowledging the alleged oral agreement. The letters of a third party, who is not shown to have been authorised by the defendant to make any such representation on his behalf, are not binding on the defendant and cannot, by themselves, constitute proof of the agreement or of its terms. It is settled law that the burden of proof lies on the party who asserts the affirmative of a fact in issue, as laid down in Sections 101 to 103 of the Indian Evidence Act, 1872. The burden of proving that an

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agreement was entered into, lay upon the plaintiff, and that burden has not been conclusively discharged.

9. The plaintiff has relied on Ex. A5 and A6, which originate from Thiru. R. Srikantan, a person who is a stranger to the *lis* and is not shown to have been authorised by the defendant to act or make any representation on his behalf, in an attempt to fasten liability on the defendant. The learned counsel for the defendant submits that no liability can be attached on the defendant on the basis of letters written by third parties, the contents of which have neither been proved in accordance with law nor admitted by the defendant. In support, he relies on the decision of this Court in ***Pandiyan Graphites India Ltd. and Another v. T.V.S. Finance and Services Ltd. and Another*** **[2008 SCC OnLine Mad 249]**, wherein it was held as follows:

> *"24. The petitioner also placed reliance on the decision in Kalpana Trading Co., Vs. Executive Officer, Town Panchayat Tiruchirapalli (supra). This decision is also on the same line of reasoning. The said decision was considered and approved by the Division Bench of this Court in Bharat Heavy Electricals Ltd., Vs. Dowel Erectors, (2005) 1 MLJ 532, wherein this Court held that:"a letter sent by the Collector's office to the defendants asking them to settle the dues, under intimation to the office, does not constitute acknowledgement of liability and sending*

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letter by the higher authorities to settle the accounts, does not constitute acknowledgement of liability."

10. Upon a perusal of the foregoing decision, this Court finds that the factual matrix of the present case bears close similarity. An acknowledgment made by a third party, particularly one with whom the defendant has, from the very outset, vehemently denied any relationship or friendship, cannot be relied upon to fasten liability on the defendant. There is no material on record to show any acknowledgment made directly by the defendant/respondent that he gave any assurance or entered into any oral agreement to repay, on the strength of which the criminal complaint was withdrawn.

11. The plaintiff relies on Exs.A5 and A6, which are letters purportedly written by Mr. Srikantan, who died during the pendency of the suit. These letters were not produced at the time of the filing of the suit, and Mr. Srikanthan was neither marked as a witness nor deposed. Exs.A5 and A6 are mere carbon copies of letters said to have been addressed by the late Mr. Srikantan to the defendant regarding repayment of the debt, and were produced before the trial Court only in the year 2011, although the suit had been instituted as early as 2005, that is, after a lapse of about six years from its institution. Also, there is not even a reference to the said letters in the plaint filed in support of the suit in O.S.No.78 of 2005.

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12. In this regard, the learned counsel for the Respondent places reliance on the decision of the Hon'ble Supreme Court in ***C. Haridasan v. Anappath Parakkattu Vasudeva Kurup and Others [2023 SCC OnLine SC 36]***, wherein it was observed as follows:

> *"68. ... It is a settled principle of law that no evidence can be permitted to be let in in the absence of averments in the plaint / pleadings vide Bachhaj Nahar v. Nilima Mandal and Ors., (2008) 17 SCC 491. In the said case, a Bench of this Court speaking through Raveendran J. laid down as follows:*
>
> *(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did not arise from the pleadings and which was not the subject matter of an issue, cannot be decided by the Court.*
>
> *(ii) A Court cannot make out a case not pleaded. The Court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint."*

13. In light of the settled legal position laid down by the Hon'ble Supreme Court, it is impermissible for the plaintiff to travel beyond the four corners of their pleadings. Since no amount of evidence or submission can be looked into upon a plea never put forward in the pleadings, any attempt to advance fresh factual arguments without a corresponding pleading is liable to be rejected as doing so would prejudice the opposing party.

14. The letters (Exs. A5 and A6) were not mentioned nor produced along with the plaint, despite the Plaintiff's own admission that he was aware of their

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existence. Further, Thiru. R. Srikantan, who, even on the plaintiff's own averments, is a material witness to the alleged assurance, was never examined, while he was still alive. No plausible/acceptable explanation has been offered for either omission. It is manifestly evident that the impugned correspondence has been brought on record merely as an afterthought to reinforce an unverified claim. Furthermore, only carbon copies of the said letters have been tendered in evidence and their purported author having since passed away and is unavailable to step into the witness box to prove their execution or vouch for their veracity and authenticity. Consequently, no evidentiary value can be attached to these uncorroborated documents.

15. The learned counsel for the Appellant relies on Section 32 of the Indian Evidence Act, 1872 to contend that statements made by a person who is dead or cannot be found are relevant. On a perusal of Section 32, this Court finds that the Plaintiff's case does not fall within any of the categories prescribed therein. The closest category is that of statements made in the course of business under Section 32(2) and even that cannot apply here, as the letters of the late Mr. Srikanthan were not written in his professional capacity, in discharge of a duty, or in the ordinary course of business, but were allegedly addressed as a common well-wisher of the Plaintiff and the Defendant. It cannot be lost sight of that the Defendant has categorically denied any relationship with

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the late Mr. Srikanthan, and has denied regarding him as a well-wisher or friend. Further, Exs.A5 and A6 find no mention in the plaint. At the time of institution of the suit there was no averment whatsoever in the pleadings regarding these two documents, which were introduced only in the year 2011.

16. The attention of this Court has also been drawn to the plea raised by the plaintiff that, in view of Exs. A1, A5 and A6, in which liability is said to have been acknowledged, the suit is not barred by limitation. Ex. A1 is the complaint preferred by the plaintiff himself under Section 138 of the Negotiable Instruments Act, 1881, and, being a document emanating from the plaintiff, cannot amount to an acknowledgment by the defendant. The order of withdrawal (Ex. A2) records no compromise, assurance or admission of liability by the respondent. Exs. A5 and A6 are letters written by Thiru. R. Srikantan, who is not shown to have been an agent duly authorised by the defendant in that behalf. None of these documents contains an acknowledgment of liability in writing signed by the defendant. In this context, it is necessary to extract Section 18 of the Limitation Act, 1963, which reads as follows:

> *"18. Effect of acknowledgment in writing. —*
>
> *(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation*

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shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation. —For the purposes of this section, —

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

17. A reading of the provision makes it clear that where a valid acknowledgment of liability is made in writing, signed by the party against whom the right is claimed, within the prescribed period of limitation, a fresh period of limitation is computed from the date of such acknowledgment. Under Section 18, a fresh period of limitation runs from the date on which the acknowledgment was signed, and the Explanation provides that signature must be either personal or by a duly authorised agent. That requirement is wholly absent in the present case, and consequently no fresh period of limitation can be said to have commenced from 21.03.2002.

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18. The learned counsel for the plaintiff has further contended that, by virtue of the oral agreement, a new contract came into force between the parties under Section 62 of the Indian Contract Act, 1872. The burden of proving novation, rescission or alteration lies on the party who alleges it. Section 62, however, presupposes the existence of an earlier contract which is to be novated, altered or rescinded and replaced by the new contract. The plaintiff has not pleaded any original contract or any substitution or alteration of it. A complaint under Section 138 of the Negotiable Instruments Act, 1881 is a criminal proceeding and not a contract capable of being novated, and its withdrawal at the instance of the complainant, without any proved consent or consideration from the defendant, does not amount to a substituted agreement. Section 62 is therefore not attracted to the facts of the present case.

19. Insofar as the objection regarding the non-filing of an appeal or revision against the order rendered in the complaint under Section 138 of the Negotiable Instruments Act, 1881, is concerned: A complaint under Section 138 is a criminal proceeding governed by the standard of proof beyond reasonable doubt, whereas a suit for recovery enforces a substantive civil right decided on a preponderance of probabilities. The Hon'ble Supreme Court in ***Kishan Singh v. Gurpal Singh, (2010) 8 SCC 775***, reaffirms that:

> *"Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by*

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the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration."

20. The criminal case came to a conclusion by the plaintiff's own withdrawal (Ex. A2). A party cannot appeal against an order made at his own instance, and an order of withdrawal records no adjudication that could bind the civil court. Consequently, the plaintiff's omission to prefer an appeal or revision against Ex. A2 neither gives rise to any statutory bar, estoppel, or acquiescence in law, nor does it preclude him from instituting and maintaining the present civil suit. To that extent the observation of the Lower Appellate Court is unsustainable.

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21. Nonetheless, the above finding does not enure to the benefit of the Appellant/plaintiff. The decree of the Lower Appellate Court rests on independent findings that the plaintiff has failed to prove the oral assurance or agreement and any acknowledgment that would save the suit from limitation. Those are findings of fact based on proper appreciation of evidence and in the absence of any infirmity or jurisdictional error, it therefore requires no interference.

CONCLUSION:

22. In light of the foregoing findings, this Court holds that Substantial Question of Law No.1 is to be answered against the Appellant/Plaintiff. There being no written acknowledgment of liability by the Respondent/Defendant, and Exs.A1, A5 and A6 being insufficient, the suit is clearly barred by limitation and is liable to be dismissed on that ground alone.

22. As regards the second Substantial Question of Law, although this Court holds that the observation of the First Appellate Court on that score is unsustainable in law, the same does not come to the aid of the Appellant/Plaintiff. The said finding is wholly inconsequential to the ultimate outcome, inasmuch as the suit is barred by limitation. The independent findings recorded by the First Appellate Court on the substantive issues pertaining to the

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fastening of civil liability and the absence of a valid written acknowledgment within the contemplation of Section 18 of the Limitation Act, 1963 withstand judicial scrutiny and warrant no interference under Section 100 of the Code of Civil Procedure, 1908.

23. For the foregoing reasons, this Court holds that the Judgment and Decree dated 11.12.2005 passed by the First Appellate Court in A.S.No.23 of 2014 warrant no interference, and the plaintiff is not entitled to the relief sought in O.S.No.78 of 2005.

24. In the result, the Second Appeal is dismissed.

20.11.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1.The Additional District Court,
Krishnagiri.

2.The Principal Sub Court,
Krishnagiri.

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E.MANOHARAN, J.

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Judgment made in

SA No. 846 of 2016

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