



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-02-2026

CORAM

WEB COPY

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**AS No. 18 of 2022
and CMP.Nos.595 and 4813 of 2022 and 23070 of 2023**

D.Ravikumar

Appellant(s)

Vs

1. S.L.Sakthivel Raja

2.S.Sekar

3.Veeraraghavan Ramamurthy

Respondent(s)

PRAYER: Appeal filed under Order XLI Rule 1 of CPC read with Section 96 of CPC to set aside the judgment and decree dated 27.08.2021, passed in OS.No.4144 of 2019 dated, by the learned V Additional. Judge, City Civil Court at Chennai.

For Appellant

Mr.V.Kuberan

for M/s.Rank Associates

For Respondent(s):

Mr.B.Ravi Raja for R1

R2 And R3 - Given Up (vide

Court Order Dated 25/02/2022)

JUDGMENT

(Judgment delivered by N.Sathish Kumar, J.)

Aggrieved over the judgment and decree of the Trial Court decreeing the suit for recovery of sum of Rs.37,99,500/- to the plaintiff with interest @ 12 per annum on Rs.22,35,000/- from the date of plaint till the date of judgment and at



the rate of 6% on Rs.22,350,000/- per annum from the date of judgment till the date of realisation, the present appeal is filed by the defendant.

WEB COPY

2. The parties herein are arrayed to as per their own ranking before the Trial Court.

3. Brief facts in filing this appeal are as follows:-

3.a. The plaintiff is a tenant under the first defendant. The plaintiff is retired from the Indian Air Force. Both of them were well acquainted over years and on account of the acquaintance, there was some financial transaction between the plaintiff and the first defendant. The first defendant approached the plaintiff for lending money and assured good rate of interest. The plaintiff advanced his savings and the earnings of his daughter and his son to the first defendant who in turn financed the defendants 2 and 3 on various dates. The defendants 2 and 3 used to give cheques as security. There is no direct dealing between the plaintiff and the defendants 2 and 3. The defendants 2 and 3 are added for effective adjudication and no relief is sought against them. The first defendant informed that the defendants 2 and 3 were evading to pay the interest or principal and therefore, till such time the amounts are repaid the plaintiff was permitted to stay in the first defendant's house without payment of rent. The plaintiff is not having personal contact with the defendants 2 and 3 even on the date of filing



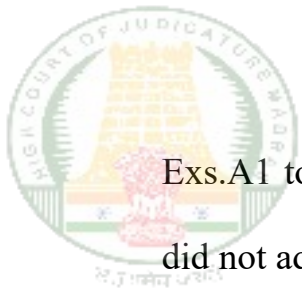
the suit. The plaintiff is in occupation of the premises, the first defendant tried to evict the plaintiff from the premises and he has also given a complaint against the first defendant. According to the plaintiff, the first defendant has a due of Rs.38 lakhs. Hence, the suit for recovery of money.

3.b. It is the contention of the first defendant that the suit is nothing but abuse of process of law, no pre-suit notice was issued by the plaintiff. The defendant is also not aware of the transaction entered into between the plaintiff and the defendants 2 and 3. The first defendant categorically denied having borrowed any money from the plaintiff either for himself or for being passed onto the other defendants. In the police complaint dated 23.08.2016, the plaintiff has categorically stated that the first defendant has not made any payments to the plaintiff for 5 years prior to the complaint. Hence, opposed the suit.

3.c. On the basis of pleadings and evidence, the Trial Court framed the following issues:

1. Whether the suit is bad for mis-joinder of parties?
2. Whether the plaintiff is entitled for suit claim as prayed?
3. To what other relief?

3.d. On the side of the plaintiff, the plaintiff was examined as PW1 and



Exs.A1 to A11 were marked. The first defendant having filed written statement did not adduce evidence. The defendants 2 and 3 remained exparte.

WEB COPY

4. The Trial Court after appreciation of the entire evidence has decreed the suit as stated above vide judgment and decree dated 27.08.2021. Aggrieved over the same, the present appeal has been filed by the first defendant.

5. The learned counsel for the appellant/first defendant submitted that the suit is nothing but abuse of process of law. Admittedly, the plaintiff was a tenant under the first defendant. The contention that the plaintiff has advanced such huge amount without any document is highly improbable. The very suit itself shows that to avoid eviction proceedings, the suit has been filed using the document of some other party, if really, cheques were issued by the defendants 2 and 3 as security for the amount said to have been given by the plaintiff, there was no reason as to why the plaintiff has not sought any relief against the defendants 2 and 3. This factum clearly shows that the plaintiff case is absolutely false. In the entire pleadings, there is no whisper made as to the nature of the payment, date of payment of etc., therefore, without details as to to the payment, merely because first defendant has not entered into witness box, the suit cannot be decreed. The Trial Court has drawn adverse inference on the ground that the first defendant has not chosen to examine himself.



6. According to the learned counsel for the appellant, the plaintiff himself has not established the case, thus, the question of examining the defendant does not arise at all. Therefore, when the defendant realising the fact that the plaintiff has not proved his case and endorsed no evidence, such situation cannot lead to adverse inference against the first defendant. It is the further contention of learned counsel that the very document filed by the plaintiff indicate that his case is not true and the plaintiff has relied upon Ex.A4, the so-called statement of account is a self serving document which has not even proved by any supporting document. Ex.A3 is the police complaint given by the plaintiff on 23.08.2016, wherein, the plaintiff has stated that he has advanced money from the year 2003 and from the last 5 years, no amount whatsoever has been repaid. In such case, even assuming that there were transactions, the suit is barred by limitation. At any event, absolutely there is no materials to show that the plaintiff has advanced such amount without any document. It is highly improbable to contend that the persons advancing such huge amount without any document from the persons rather relying on the document said to have been given by the third party, therefore, the entire suit is nothing but clear attempt to squat on the property to avoid the eviction proceedings.

7. Whereas, the learned counsel for the first respondent/plaintiff submitted that the first defendant being the landlord used to borrow the amounts



at the lesser interest and used to advance such amount to third parties and accordingly, he has advanced the money to the defendants 2 and 3 and as a security he has got cheques from the defendants 2 and 3, the same has been handed over to the plaintiff. The defendants 2 and 3 remained exparte, therefore, the same has probalised the plaintiff's case. Though no relief is sought against the defendants 2 and 3, cheques under Exs.A2,A5,A7 and A8 clearly shows that they were issued by the defendants 2 and 3, thus, probabalised the case of the plaintiff and these cheques were issued only as a security for the amount lent to the first defendant. The first defendant having appeared before the Court regularly for the hearing, conveniently chose not to examine himself in the Trial Court to avoid cross examination, therefore, when a person consciously avoids the Court to cross examination, adverse inference has to be drawn against him. In support of his submission, he placed reliance on the following judgments:-

- a. Darsana Bai (died) and others vs. C.Saroja and 16 others reported in 2014 SCC OnLine Mad 162
- b. Iswar Bhai C. Patel and Bachu Bhai Patel vs. Harihar Behera and another reported in AIR 1999 SC 1341
- c. Chowdamma (D) by LR and another vs. Venkatappa (D) by Lrs and another made in Civil Appeal No.11330 of 2011 dated 25.08.2025

8. In light of the above, now the following point arise for consideration:-



(i) Was there any privity of contract between the plaintiff and the defendant in respect of the money transaction?

(ii) Whether the plaintiff has established the lending of money to the defendant?

(iii) Whether the suit is barred by limitation?

Points (i) to (iii)

9. It is the specific case of the plaintiff that he being the tenant under the first defendant became acquainted with the first defendant, on the account of such acquaintance, the first defendant used to borrow amounts for lower interest from the plaintiff, since, the plaintiff retired from Indian Air Force. The first defendant has also lent monies to the defendants 2 and 3 at higher interest and collected cheques under Exs.A2,A5,A7 and A8. Those cheques when presented were also dishonoured. The first defendant has informed the plaintiff that the defendants 2 and 3 are not repaying the amount, therefore, till the amount is repaid, the plaintiff can continue in the first defendant's premises. Hence, in the nutshell, it is the case of the plaintiff that entire suit amount has been paid to the first defendant. It is relevant to note that in the entire suit, it is nowhere stated that when such amount has been advanced, though, it is generally stated that the amount has been paid from the inception, in the entire pleadings, it not even pleaded when the plaintiff has become a tenant, when he was acquainted with the defendant, whereas, only for the first time in his evidence has has stated that the plaintiff was a tenant for more than 14 years, however, in the entire



pleadings, it is nowhere pleaded when such amounts have been paid, what are the amounts paid on different dates. Absolutely, there is no details whatsoever except general pleadings that he has paid the amount to the first defendant on interest and the first defendant has also lent money to the defendants 2 and 3 on higher interest. The entire pleadings is totally silent about the nature of the installments, whether the amount has been paid in lumpsum or in various dates or on various installments. Therefore, in the absence of any evidence to show that the plaintiff has in fact advanced certain amount to the first defendant, this Court is of the view that to believe his story, a general statement will not help the plaintiff in any manner. Though the defendants 2 and 3 appears to have set exparte, the fact remains that the suit has been originally filed before this Court and later transferred to the City Civil Court on pecuniary jurisdiction, whereas, the City Civil Court has not sent further notice, only, notice under Dis.No has been sent without any acknowledgement.

10. Though defendant No.2 was not served, he was set exparte. Be that as it may, admittedly, it is the case of the plaintiff that he had Negotiable Instruments of third parties namely the defendants 2 and 3 though he claims that he has not advanced any amount to the defendants 2 and 3 directly, the fact remains that the plaintiff was admittedly aware of the alleged fact that the first defendant is lending money for extra interest to the defendants 2 and 3 and the



defendants 2 and 3 also failed to pay that amount, therefore, the plaintiff was allowed to remain in the premises owned by the first defendant until the amounts are paid by the defendants 2 and 3. In such case, normal prudence of the plaintiff demands atleast to take action against the person who issued cheques under Negotiable Instruments Act. The plaintiff so become acquainted with the first defendant and he is also aware that the defendants 2 and 3 also not repaid the amount to the first defendant, at-least, at that occasion also, he could have used the negotiable instruments issued by the defendants 2 and 3. Not taking any action and not even seeking any relief against the defendants 2 and 3 in our view also creates very serious doubt about passing of consideration as alleged by the plaintiff. In the entire pleading as well as the oral and documentary evidences relied upon by the plaintiff, there is no convincing evidence to show that such huge amount of Rs.22,35,000/- was advanced to the first defendant at any point of time either at one time or at different intervals. Further, the very statement of the plaintiff under Ex.A3 in complaint to the police station dated 23.08.2016 shows that he came as tenant in the year 2003 and the first defendant has borrowed certain amounts on instalments. The recitals in Ex.A3 indicate that he has advanced certain amounts from the year 2003, thereafter, from the last 5 years of the complaint dated 23.08.2016, the amount has not been paid. Even assuming that there were some transactions and there was some understanding of borrowal of the amount from the first



defendant, the very Ex.A3/complaint clearly shows that the amount has been advanced in the year 2003 upto 2011. The very statement under Ex.A3 show that for the last five years, i.e., before 23.08.2016, the defendant has never paid any amount, in such case, even if the plaintiff's case is accepted to be true, the suit itself is barred by limitation. His entire statement in Ex.A3 clearly shows that from 2003-2011, there appears to be some transactions, in such case, the suit ought to have been filed within a period of three years from the date of payment, whereas, the suit has been filed only on 30.08.2017 for the first time. Accordingly, the suit itself is barred by limitation. Admittedly, in Ex.A3, it is clearly stated that first defendant has not paid any amount for the last 5 years, before 23.08.2016. This aspect has not been noted by the Trial Court.

11. Admittedly, the plaintiff is squatting over the property belonging to the first defendant, there was eviction proceedings initiated against the plaintiff. Further, no pre-suit notice whatsoever issued even prior to filing of the suit. As already stated, absolutely, there is no materials whatsoever available on record to show that the plaintiff has parted with such huge amount. Though, Ex.A4/statement of account dated 23.08.2016, when carefully seen, it is nothing but one-line statement/self serving statement of the plaintiff and it is not supported by any previous entry and accounts etc., Therefore, Ex.A4 cannot be given any credence. It is relevant to note that despite the plaintiff having known



that the defendants 2 and 3 failed to pay the amounts to the first defendant, the plaintiff getting cheques and keeping silent without taking any legal action under Negotiable Instruments Act, the contention of the plaintiff that he advanced money only to the first defendant is highly improbable, particularly, in the absence of any evidence proving such transaction. That apart, as already stated even assuming that there was some transaction between the plaintiff and the first defendant, plaintiff's own statement under Ex.A3 shows that such transaction existed from 2003 and continued till 2011, only thereafter, there was a complete failure on the part of the first defendant and there was no acknowledgement in writing extending the time thereafter. If the transaction even assumed to be true, the claim of the plaintiff is barred by law.

12. The learned counsel for the first respondent relied on the judgments (stated supra) for the proposition that when a person consciously avoids the Court for cross examination, adverse inference has to be drawn against him is concerned, absolutely, there is no doubt about the proposition laid down by the Hon'ble Supreme Court. When a person has purposefully avoided the cross examination, adverse inference will be drawn, but such proposition cannot be applied to in all the situation. Adverse inference can be drawn in a particular case taking note of the facts of the particular cases. In a money suit, the initial onus lies on the plaintiff not only to prove transaction but also the passing of



consideration. When the evidence adduced by the plaintiff does not prove the transaction as well as the passing of consideration, it cannot be insisted that in such case also defendant should get into box, otherwise, adverse inference could be drawn against him, therefore, the contention of the learned counsel for the respondent that adverse inference has to be drawn against the appellant has no legs to stand. The Trial Court has drawn such adverse inference against the first defendant and the same is not proper. When the plaintiff has not discharged the initial burden in proving the case, it cannot be said that in such case, the defendant has to get into box, otherwise, adverse inference will be drawn, therefore, the Trial Court decreeing the suit on the ground that the defendant has not examined in our view is not correct. The Trial Court has not even gone into the issue of the limitation, particularly, when deciding the civil suit.

13. The plaintiff was admittedly a tenant, according to him, he was in enjoyment of the property in lieu of the money said to have been given by him. In the absence of any evidence to prove the so-called lending of huge money to the first defendant, the Trial Court ought to have gone into the issue of limitation and also the conduct of parties. If a person advances such huge amount, the prudence of person will demand atleast some document from the person who received such amount. Whereas, taking some third party cheques as security and even after that third party has committed the default being mute



spectator without initiating any action under the Negotiable Instruments Act against the person who issued cheques, we are of the view that the very conduct of the plaintiff is against the normal human conduct, therefore, his contention that he had paid such huge amount to the first defendant and remained in the property is highly improbable.

14. Though the relief is sought for recovery of money, the pleading in the plaint itself shows that the suit has been filed mainly to protect his possession in the property of the first defendant. With regard to the cause of action alleged in the plaint also clearly show that he is preventing the landlord from taking action. Further, it is alleged in the plaint that in between 2010 and 2014, the amounts have been given to the first defendant, whereas, under Ex.A3 in his very own statement, he has stated that from the year 2003-2011 he has paid money and from the last 5 years, i.e., before 23.08.2016/date of complaint, the amount has not been repaid by the first defendant which in view of this Court is contradicting with the very pleading in the plaint and the statement under Ex.A3. Thus, with regard to the cause of action also, creates serious doubt about the case of the plaintiff. In such view of the matter, we are of the view that all these infirmities clearly dis-entitle the plaintiff to claim such huge amount. Accordingly, these points are answered against the plaintiff .



15. Accordingly, the judgment and decree dated 27.08.2021 passed in O.S.No.4144/2019 on the file of learned V Additional Judge, City Civil Court, Chennai is set aside and the appeal stands allowed and suit in O.S.No.4144 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.

(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)
05-02-2026

dhk

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



AS No. 18 of 2022



To

1. The V Additional Judge
V Additional City Civil Court, Chennai

2. The Section Officer
VR Section,
Madras High Court



WEB COPY

AS No. 18 of 2022



**N.SATHISH KUMAR J.
AND
R.SAKTHIVEL J.**

dhk

AS No. 18 of 2022

05-02-2026