



A.S.No.47 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2026

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CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

A.S.No.47 of 2019

and

C.M.P.No.1826 of 2019

1.G.Thenmozhi

2.Minor G.Dharanivendhan

3.Minor G.Kalaiarasan

*[Appellants 2 and 3 are represented by
their mother and next friend G.Thenmozhi]*

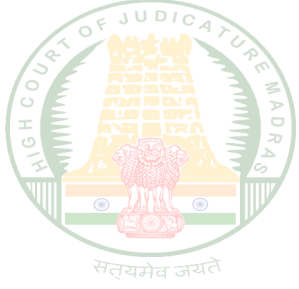
... Appellants

Vs.

T.Kalidoss

... Respondent

Prayer : Appeal filed under Section 96 and Order XLI Rule 1 of the Code of Civil Procedure r/w. Order 4 Rule 14 of Appellate Side Rules and Clause 12 of the Letters Patent Act against the judgment and decree dated 31.07.2018 passed in O.S.No.21 of 2016 on the file of the Court of Principal District Judge, Kancheepuram District at Chengalpattu.



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For Appellants : Mr.K.P.Gopalakrishnan

For Respondent : M/s.V.S.Poosha Datta

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J U D G M E N T(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the decree and judgment of the learned Principal District Judge, Kancheepuram District at Chengalpattu, in O.S.No.21 of 2016, dated 31.07.2018, decreeing the suit for recovery of money on the basis of a promissory note dated 10.09.2013, the defendants in the suit have filed the above Appeal.

2.For the sake of convenience, the parties shall be referred to as per their rank before the trial Court.

3.Following are the facts of the case which are necessary for the disposal of this Appeal :

The plaintiff and one Govindasamy, husband of the 1st defendant, are known to each other. The plaintiff is engaged in the manufacture and supply of sculpture works for various projects. The said Govindasamy was having



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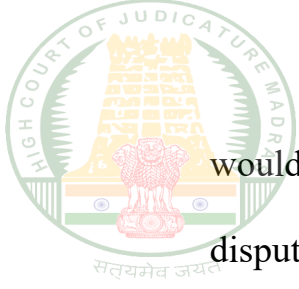
sole proprietary concern dealing with the project of constructing Temples.

In the course of business, the plaintiff had various engagements with the said Govindasamy, since he was his relative. He was awarded a project at Varadharaja Perumal, Muthu Mari Amman Thirukoil at Kalingamalai, Vazhuthavoor, in the year 2011. For completing the said project, the said Govindasamy approached the plaintiff for financial aid. Accordingly, the plaintiff has advanced a sum of Rs.55,00,000/- to the said Govindasamy on 10.09.2013. Govindasamy has executed a promissory note on the same day, viz., 10.09.2013, agreeing to repay the said amount with interest at the rate of 24% p.a. It is the case of the plaintiff that, at the time of borrowal, the title deeds were also handed over to the plaintiff by the said Govindasamy. The plaintiff was under the impression that, after the project is complete, the entire money will be repaid. Unfortunately, before the amount was repaid, the said Govindasamy met with an accident on 08.06.2015 and he succumbed to injuries. Later, the plaintiff has requested the defendants, who are the legal heirs of the said Govindasamy, for return of money. As they failed to repay the amount, the present suit came to be filed by the plaintiff for recovery of money.



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4.It is the stand of the defendants in the written statement that Govindasamy has never executed any promissory note, nor has handed over the title deeds of his properties to the plaintiff. The alleged promissory note itself has been fabricated by the plaintiff. According to the defendants, the photocopy of the blank promissory note, dated 10.09.2013, was given to them by the counsel for the plaintiff. On comparison of the same, they found that the suit promissory note is fully filled up and hence, according to them, the same has been concocted. According to them, Govindasamy borrowed a sum of Rs.2,00,000/- from one Magesh, who is the son-in-law of the plaintiff, for which, he executed a blank promissory note. Even after discharge of the said loan, the promissory note had not been handed over. Hence, according to them, taking advantage of the death of Govindasamy, the plaintiff, in collusion with the said Magesh, has used the blank promissory note and has filled up the same. Further, it is their contention that the title deeds were in possession of the husband of the 1st defendant at the time of accident. Only the plaintiff has admitted the husband of the 1st defendant in the hospital at the time of accident and has lodged the Police complaint with regard to the accident. According to them, the title deeds



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would have been taken by the plaintiff at the time of accident. Hence, they disputed the suit promissory note and the claim of the plaintiff.

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5. Based on the pleadings of the parties, the trial Court has framed the following issues :

- i. *Whether the suit promissory note is true and valid ?*
- ii. *Whether the plaintiff has no capacity to lend Rs.55,00,000/- ?*
- iii. *Whether the 1st defendant's husband borrowed Rs.55,00,000/- as alleged by the plaintiff ?*
- iv. *Whether the plaintiff came into possession of the title deeds as alleged by the defendant ?*
- v. *To what other relief the parties are entitled ?*

6. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A12 marked. On the side of the defendants, D.W.1 (1st defendant) was examined and Exs.B1 to B7 marked.

7. Based on the evidence and materials on record, the trial Court, by judgment and decree dated 31.07.2018, has granted a personal decree as against the defendants to pay the suit amount along with interest at the rate of 9% p.a. on the principal from the date of plaint till the date of decree and



thereafter, 6% p.a. on the principal till the date of realisation.

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8.Challenging the judgment and decree of the trial Court, the present Appeal has been filed by the defendants.

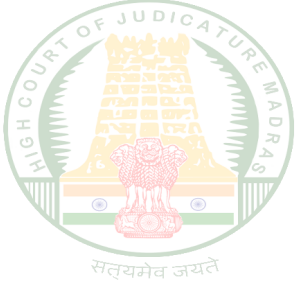
9.Learned counsel for the appellants/defendants would submit that the suit promissory note is not supported by any consideration and no accounts, whatsoever, filed by the plaintiff to show that such huge amount has been paid. Further, Ex.B1 is the photocopy of the blank promissory note, which itself clearly shows that the suit promissory note has been fabricated later. It is his further contention that, as far as the title deeds are concerned, a Police complaint has already been lodged by the 1st defendant after the death of her husband with regard to missing of documents. Originally, the FIR with regard to the accident came to be registered on the complaint of the plaintiff himself. Therefore, there is every possibility of the plaintiff removing all the documents from the possession of the husband of the 1st defendant at the time of the accident. Hence, the learned counsel submitted that the trial Court has not appreciated this aspect of the matter. Further, it is his submission that the trial Court is wrong in granting a personal decree against



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the defendants. It is his contention that, without establishing the nature of the estate left by the deceased Govindasamy, a personal decree cannot be granted as against his legal representatives. Hence, he prayed for setting aside the judgment and decree of the trial Court.

10. Whereas, learned counsel appearing for the respondent/plaintiff would submit that the defendants have been improving their defence stage by stage. The signature of the husband of the 1st defendant is not disputed. The evidence of D.W.1 also clearly indicates that her husband was in the habit of receiving money from the plaintiff for his business purposes. Hence, he would submit that, on mere bare denial without any evidence to discharge the legal burden, as a matter of right, the promissory note cannot be disbelieved. It is his contention that Ex.B1 is totally a different photocopy and is no way connected to the present suit and it is filed only to show as if there is no original promissory note executed by the husband of the 1st defendant. He would further submit that D.W.1 (1st defendant) herself has signed as one of the witnesses to the suit promissory note. Hence, he would submit that the trial Court is right in decreeing the suit.



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11.In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

- i. *Whether the promissory note, dated 10.09.2013, is proved in the manner known to law ?*
- ii. *Whether the defendants have rebutted the legal presumption by direct or circumstantial evidence ?*
- iii. *To what reliefs, the parties are entitled to ?*

Point Nos.(i) and (ii) :

12.The plaintiff and the husband of the 1st defendant are known to each other. This fact is not in dispute.

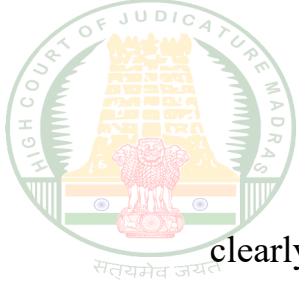
13.It is the contention of the plaintiff that, in the course of his business of sculpture manufacturing, the 1st defendant's husband Govindasamy was engaged and allotted a project in respect of a Temple. To complete the said work, the 1st defendant's husband Govindasamy sought financial assistance from the plaintiff and he received a sum of Rs.55,00,000/- on 10.09.2013 and accordingly, he has executed a promissory note on the same day, besides handing over the title deeds, viz., Exs.A2 and A3, as security. Unfortunately,



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Govindasamy met with an accident and succumbed to the injuries on 08.06.2015. Later, as the defendants, being the legal heirs of the deceased Govindasamy, failed to repay the amount, the plaintiff has filed the present suit.

14.It is relevant to note that, as far as promissory note is concerned, the initial burden is always on the plaintiff to prove its execution. Once the execution is proved, the statutory presumption available under Section 118 of the Negotiable Instruments Act gets attracted, automatically. P.W.1 (plaintiff) has spoken about the signing of the promissory note by the deceased Govindasamy. P.W.2, who is the author and witness to the document, has clearly narrated the nature of the transaction between Govindasamy and the plaintiff and the money transacted. His (P.W.2) evidence clearly indicates that, on the date of execution of the promissory note, a sum of Rs.5 Lakhs was paid. His evidence also clearly indicates that, prior to that, there were other transactions. The same is also narrated by P.W.1.



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15.Further, the 1st defendant (D.W.1), in her cross-examination, has clearly admitted that her husband Govindasamy was in the habit of receiving money, however, she is not in a position to remember how much amount was received by him. Though much emphasis is placed on Ex.B1, the blank promissory note given to the defendants by the counsel for the plaintiff, to buttress the submission that the suit promissory note has been later filled up, on careful perusal of Exs.A1 and B1, we are not satisfied with such contention for the simple reason that Ex.A1 is not only signed by the husband of 1st defendant, but the 1st defendant has also signed as one of the attestors; whereas, in Ex.B1, her signature is nowhere found. This fact itself defies their stand. No prudent person will sign in a document as attesting witness, after a dispute is raised. Therefore, the contention of the defendants that the promissory note has been fabricated later, has no legs to stand.

16.D.W.1, in her cross-examination, has clearly admitted the signature of her husband. Once signature is clearly established, besides execution also being spoken by P.W.1 and P.W.2, the burden shifts on the defendants to rebut the legal presumption attached to the promissory note. No doubt, such rebuttal need not always be by way of direct evidence, but can also be by



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way of circumstantial evidence also. To rebut such presumption, there must be some acceptable reason brought on record. Once the evidence on record clearly indicates that, not only the signature but also the execution is established, and when the different contentions of the defendants taken at different stages as to the forgery and fabrication of the suit promissory note have not been established, we are of the view that the plaintiff has clearly proved the suit promissory note in the manner known to law and the defendants have failed to bring in any material to dislodge the legal presumption attached to the promissory note.

17. Yet another submission of the learned counsel for the defendants is that, though the title deeds were filed by the plaintiff, according to them, the deceased was carrying the title deeds while he met with the accident and the Police complaint with regard to the accident has been given by the plaintiff and therefore, there is every possibility of the plaintiff removing the original title deeds, viz., Exs.A2 and A3, from the possession of the deceased at the time of accident. Such a contention cannot be countenanced for the simple reason that, in the earlier complaint given by the 1st defendant with regard to missing of documents, there is no reference, whatsoever, as against the



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plaintiff. Only after the plaintiff sent a legal notice, a complaint has been given to the Police making an allegation that the plaintiff would have taken Exs.A2 and A3 documents. In our view, this is also one of the defence strategies adopted by the defendants. Therefore, such contention also has no legs to stand.

18.Further, it is the stand of the defendants that the husband of the 1st defendant had executed a blank promissory note after borrowal of a sum of Rs.2,00,000/- from Magesh. It is their further contention that, though the said amount was repaid to Magesh, he has not handed over the promissory note. However, except raising such defence, no evidence, whatsoever, adduced on the side of the defendants to substantiate the same or to establish the alleged discharge. Therefore, the said stand of the defendants also has no legs to stand.

19.Considering the overall aspects, when P.W.1 and P.W.2 have clearly spoken about the execution of the suit promissory note and when D.W.1 herself has admitted the signature of her husband and has also signed as one of the witnesses to the document, and when the defendants have



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failed to rebut the legal presumption attached to the promissory note, it is very hard to believe the defence. Hence, we are of the view that the plaintiff has clearly established the suit promissory note dated 10.09.2013 and the defendants have failed to dislodge the legal presumption attached to the promissory note. ***Accordingly, Point Nos.(i) and (ii) are answered as against the appellants/defendants.***

20.In view of the above, the decree of the trial Court for recovery of money based on the suit promissory note, does not require any interference.

Point No.(iii) :

21.However, the trial Court, while decreeing the suit, has granted a personal decree as against the defendants, which is not correct as per law. Once the executor of the promissory note has died, there cannot be a personal decree as against his legal heirs. The decree can be directed against the legal representatives directing the amount to be paid from the estate of the deceased which has come to their hands and has not been duly disposed of. Only from the estate left by the deceased, if any, which are in possession of the legal representatives, such money payable to the plaintiff could be



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recovered. Therefore, the trial Court's decree granting a personal decree as against the defendants, is liable to be set aside. Further, though the trial Court has originally awarded an interest @ 9% p.a., we are inclined to reduce the same to 7.5% p.a. ***Point No.(iii) is answered accordingly.***

22.Accordingly, the decree and judgment of the trial Court is modified to the effect that the defendants are directed to pay the suit amount from the estate, if any, left by the deceased, which are in their possession, along with interest at the rate of 7.5% p.a. from the date of plaint till the date of decree and thereafter, 6% p.a. interest till the date of realisation. It is for the plaintiff to work out his remedy to recover the amount from the estate, if any, left by the deceased, which have come into the possession of the legal representatives of the deceased, viz., the defendants herein.

23.In fine, this Appeal is partly allowed with the above modifications.

No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K., J.) (M.J.R., J.)
29.06.2026

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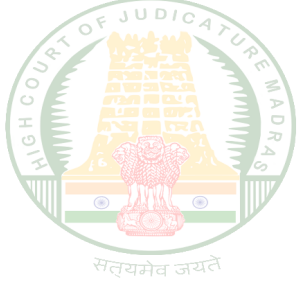
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Internet : Yes
Index : Yes / No
Speaking Order
Neutral Citation : Yes

To

- 1.The Principal District Judge,
Kancheepuram District
at Chengalpattu.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

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