



CRP(MD).Nos.1316 & 1317 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP(MD).Nos.1316 & 1317 of 2015

J.P.Samraj

...Petitioner in both CRPs'

Vs.

G.Jothish Kumar

...Respondent in both CRPs'

PRAYER in CRP(MD).No.1316 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgement and decree dated 06.11.2013 passed in O.S.No.64 of 2012 on the file of the III Additional District and Sessions Judge, Tirunelveli.

PRAYER in CRP(MD).No.1317 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.11.2013 passed in Memo in O.S.No.64 of 2012 on the file of III Additional District and Sessions Judge, Tirunelveli.

(In both cases)

For Petitioners : Mr.Ananth C.Rajesh

For Respondent : Mr.H.Arumugam

COMMON ORDER

Heard Mr.Ananth C.Rajesh, for petitioner and Mr.H.Arumugam,
for respondent.



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2. These Civil Revision Petitions are inextricably intertwined and hence they have taken up for disposal together.

3. The plaintiff is the Petitioner. He presented O.S.No.64 of 2012, on the file of the III Additional District and Sessions Judge, Tirunelveli seeking recovery of sum of Rs.14,08,000/- together with interest at the rate of 24% per annum.

4. According to the plaintiff, the Defendant had borrowed several sums of money from him and had executed promissory note for a sum of Rs.12,00,000/- on 01.02.2012, acknowledging to repay the earlier debts with the interest at the rate of 24% per annum, within 90 days. As the amounts were not paid, the plaintiff issued a notice calling upon him to make good his acknowledgement. As the same was not honoured, he presented a suit for the aforesaid relief.

5. Summons were served on the defendant.

6. The defendant took the usual defence, taken by any defendant, who is called upon to pay money. He denied the previous transactions and took a plea that the document which the plaintiff titled as a promissory note was an act of fabrication.



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7. After the pleading was completed, the plaintiff filed a memo on 01.10.2013 stating that, in case, the promissory note is found to have suffered lesser stamp duty than it ought to have, he was prepared to pay the said amount.

8. The learned III Additional District and Sessions Judge, Tirunelveli ordered notice in the said memo. This served as a wake up call to the defendant to take a plea that the promissory note falling under Article 49(b) of Schedule-I was insufficiently stamped. Therefore, by virtue of Sections 35 of the Indian Stamp Act, it is inadmissible for any purpose.

9. The learned III Additional District and Sessions Judge, Tirunelveli took up the memo for disposal. She passed an order holding that the document produced is a promissory note otherwise than by demand and hence, it is inadmissible in evidence as it is hit by proviso to Section 35. She rejected the memo. Consequent to the rejection of the memo, the learned District Judge also dismissed the suit. Aggrieved by the same, the aforesaid revisions have come up before this Court.



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10. The learned Counsel on either side reiterated the contentions placed in the Court below. I have carefully considered the submissions. I have gone through the records.

11. Admittedly, the parties have not yet proceeded to trial. All that was available before the trial Court was a memo filed by the plaintiff stating that in case, the Court finds that the promissory note suffers from deficit stamp duty, he was willing to pay the deficit. It was not pleaded by the defendant that, it is in fact a promissory note and that it suffers from deficit stamp duty. If that be the situation, then the order passed by the learned Judge on the memo is perfectly understandable.

12. The learned Judge either had an option to treat the document which the plaintiff presented as an evidence, as a promissory note otherwise than or demand or as an acknowledgement of debt. This option would arise when the document is presented in evidence. The learned Judge could have passed appropriate orders at that stage. Instead, the learned Judge concluded, even at the stage of considering the memo that the document is a promissory note. The date of execution of the document is not in dispute. Even if the original document cannot be admitted in evidence, law is flexible enough to permit the plaintiff to fall back on the original cause of action, namely treating the document



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as an acknowledgement and putforth his claim before the Court. [See,

Perumal Chettiar vs Kamakshi Ammal, AIR 1938 MAD 785 (FB)]

13. Even before that stage of the proceeding had arrived, the learned Judge had concluded, since the document is a promissory note, and as it is being rejected, the suit should also be dismissed.

14. Mr.H.Arumugam states that, as the judgement had been passed in the suit on the same day as the rejection of the memo, thus appropriate remedy for the plaintiff is only to prefer a regular appeal and not a revision.

15. I am not agreeable with the said submission for the following reason. The judgement in the suit was passed on 06.11.2013, was dependent on the order that was passed by the Court, on the memo that was presented. Once the main order is set aside, an order which is dependent or consequent to the original order would also have to go. [See, ***Varadarajan vs Muthu, AIR 1953 MAD 587***]. If an example is necessary for this proposition, I can readily, refer to the dismissal of an application for leave to defend filed by the defendant in a summary suit. On the dismissal of an application for leave to defend, the suit is automatically decreed. When this court, sitting in revision, sets aside



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the order refusing leave, the decree stands vacated, suit revives and the defendant is entitled to contest the suit on merits. The case on hand is on a similar analogy. The suit, had been dismissed solely on the ground that the document namely promissory note/acknowledgement, stood rejected. Such an approach by the learned III Additional District Judge, Tirunelveli cannot be held to be legally valid, when this court has already found fault with the manner in which the suit has been disposed of.

16. Hence both the revisions are allowed. The order passed by the learned III Additional District and Sessions Judge, Tirunelveli dated 06.11.2013 is set aside. In case, the defendant opposes the production of the document in evidence, the learned Judge shall frame issues as to whether the document is an acknowledgement of the previous debt or a promissory note otherwise by demand, and answer the same.

17. With the above observation, these Civil Revision Petitions are allowed. No costs.

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To:

The III Additional District and Sessions Judge,
Tirunelveli.



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V.LAKSHMINARAYANAN, J.

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