

IN THE COURT OF SUBORDINATE JUDGE, PERAMBALUR.

Present : Mr. S.ANNAMALAI, B.A., B.L.,
Subordinate Judge, Perambalur.

Friday, the 28th day of March, 2025

ORIGINAL SUIT No.571/2023
(CNR.No.TNPB030011352023)

Senthil

Plaintiff

Vs

Saravanan

Defendant

This suit coming on for final hearing on 17th day of March, 2025, in the presence of Mr. A. Tamilarasan, Advocate, appearing for the plaintiff and Mr. Durai. Periyasamy, Advocate, appearing for the defendant and having stood over for consideration to this day and after hearing both side arguments, this court delivered the following:

JUDGMENT

- 1) The plaintiff has filed this suit under Order VII Rule 1 of Civil Procedure Code seeking a decree of recovery of money on the basis of the two promissory notes dated 11.06.2020 directing the defendant to pay a sum of Rs.2,44,171/- with interest at the rate of 9% from the date of plaint till the date of judgment and thereafter at 6% till the date of realization with costs.

2) The brief averments made in the plaint are as follows;

The defendant borrowed a sum of Rs.1,50,000/- from the plaintiff on 11.06.2020 and executed a promissory note agreeing to repay the same with interest at the rate of of 1% per month for Rs.100/-. On the very same date on 11.06.2020, the defendant borrowed a sum of Rs.50,000/- from the plaintiff and executed another promissory note agreeing to repay the same with with interest at the rate of of 1% per month for Rs.100/-. On 02.01.2021, the defendant paid the interest of Rs.9,000/- for six months in respect of the 1st promissory note. The defendant also paid Rs.3,000/- towards interest on the very same date on 02.01.2021 in respect of 2nd promissory note. The defendant failed to repay the loan amount in spite of repeated adjournments. The plaintiff issued a legal notice on 10.07.2023. The defendant received the legal notice. The defendant gave a reply on 22.07.2023 with false averments. Hence, the plaintiff has filed this suit seeking a decree of recovery of money against the defendant for the total sum of Rs.2,44,171/- with interest at the rate of 9% from the date of filing of the suit till the date of decree and thereafter at 6% per annum till the date of realization.

3) The brief averments made in the written statement filed by the defendant are as follows;

It is false to state that the defendant executed the two promissory notes for a

sum of Rs.1,50,000/ and Rs.50,000/- agreeing to repay the same with interest at the rate of 1% per month for Rs.100/-. This defendant has not executed any promissory note on 11.06.2020 as alleged by the plaintiff. It is false to state that this defendant repaid Rs.9,000/- in respect of 1st promissory note and Rs.3,000/- in respect of 2nd promissory note on 02.01.2021 towards interest as alleged in the plaint. This defendant never borrowed money from the plaintiff. The plaintiff created the suit promissory notes forging the signature of this defendant. This defendant has given a suitable reply on 22.07.2023 to the legal notice issued by the plaintiff dated 10.07.2023. This suit is barred by limitation. This defendant has not executed the suit promissory notes. The suit promissory notes are fraudulent documents. This suit shall be dismissed.

4) On the basis of the pleadings, this court has framing the following issues on 14.06.2023;

- 1) Whether the suit promissory notes are true and valid?
- 2) Whether the plaintiff is entitled to get the decree of recovery of money as prayed for in the suit?
- 3) To what other relief, the plaintiff is entitled?

5) The witnesses examined and documents marked during trial:

The plaintiff has examined himself as PW1 and also examined Mr.Venkatachalamand (one of the attestor of the suit promissory notes) and Mr. Suresh (scribe of the suit promissory notes) as PW2 and PW3. The

plaintiff has marked four documents as Ex. A1 to Ex. A4 on his side. The defendant has examined himself as DW1 and he has not marked any exhibit on his side.

Issue No.1:

- 6) The counsel for the plaintiff submitted that the defendant executed the two promissory notes (Ex. A1 and Ex. A2) on 11.06.2020; he received Rs.1,50,000/- and Rs.50,000/- from the plaintiff agreeing to repay the same with interest at the rate of 1% per month for Rs.100/-; he failed to repaid the loan amount in spite of the legal notice dated 10.07.2023 (Ex. A3) and therefore, the plaintiff is entitled to get the decree of recovery of money as prayed for in the suit.
- 7) The counsel for defendant contended that the plaintiff has created the two suit promissory notes (Ex. A1 and Ex. A2) fraudulently and the defendant never executed the suit promissory notes; the defendant has already given a suitable reply notice on 22.07.2023 to the plaintiff and this suit is liable to be dismissed with costs.
- 8) In the case of Bharat Barrel & Drum Manufacturing Co. V. Amin Chand Pyarelal reported in 1999 (3) SCC 35, it was held by the Honorable Supreme Court that the plaintiff, who comes to the Court seeking recovery of money on the foot of a Negotiable Instrument viz., the Promissory Note must prove due execution of the Promissory Note. Therefore, the plaintiff in this case

shall prove the execution of suit promissory notes.

- 9) The plaintiff, who was examined as PW1, has deposed in his cross examination that the suit promissory notes were executed in front of Mariyamman temple in Velluvadi village. He further has deposed that he did not know the exact time in which the suit promissory notes (Ex. A1 and Ex. A2) were executed. In his evidence, he has testified that the suit promissory notes were executed between 9.00 am to 11 am. He has deposed that the defendant has not made any endorsement for the payment of interest on 02.01.2021 and he could not recollect that he himself made endorsement in the suit promissory notes as if he received money from the defendant on 02.01.2021.
- 10) PW2-Vengatachalam is the is one of the attesting witness. He has deposed that the suit promissory note was executed in the house at 9.00 o'clock and he did not know about the 2nd promissory note.
- 11) PW3-Suresh is the scribe of the suit promissory notes. He has deposed that the suit promissory notes were executed in Mariyamman temple. The suit promissory note were executed in the evening hours between 06.00 p.m to 07.00 p.m. He has also admitted that the defendant's signature did not find place in the suit promissory note below the endorsement for the repayment of money.
- 12) PW1-Senthil (plaintiff) has deposed that the suit promissory notes were

executed in front of the Mariyamman temple in Velluvadi village. PW2 - Venkatachalam (attestor) has deposed that the suit promissory note was executed in the house. It is a material contradictions in the evidence of PW1-Senthil (plaintiff) and PW2-Vengatachalam (attestor) regarding the place of execution of suit promissory notes.

- 13) PW1- Senthil (plaintiff) has deposed in his evidence that the suit promissory notes were executed between 9 a.m to 11'o clock. PW3-Suresh (scribe) has deposed that the suit promissory notes were executed in the evening hours between at 6 pm to 7 pm. It is a material contradiction regarding the time of execution of the suit promissory note in the evidence of PW1-Senthil (plaintiff) and PW3-Suresh (scribe).
- 14) PW1- Senthil (plaintiff) and PW3- Suresh (scribe) have deposed that the defendant executed the two promissory notes on the date of execution of the suit promissory notes. Contrarily, PW2- Venkatachalam (attestor) has deposed that he knew only one promissory note and he had no knowledge about the second promissory note. It is a material contradiction in the evidence of the witnesses PW1- Senthil (plaintiff) and PW2- Venkatachalam (attestor) as to the number of promissory notes alleged to have been executed by the defendant.
- 15) Overlooking the above said material contradictions in the evidence of PW1- Senthil (plaintiff), PW2-Vengatachalam (attestor) and PW3-Suresh (scribe)

regarding the time, place and numbers of promissory notes, this court is unable to come to the conclusion that the plaintiff has proved that the defendant executed the suit promissory notes on 11.06.2020 after receiving a sum of Rs.1,50,000/- and Rs.50,000/- separately.

- 16) It is the case of the plaintiff that the defendant received Rs.1,50,000/- and Rs.50,000/- separately and executed two promissory notes on 11.06.2020. The plaintiff has not explained as to why he obtained two promissory notes when he paid total Rs.2,00,000/- on the very same date and time on 11.06.2020. It casts a doubt regarding the execution of the suit promissory notes.
- 17) Therefore, Issue No.1 is answered that the plaintiff has failed to prove that the defendant executed the suit promissory notes marked as Ex. A1 and Ex. A2 on 11.06.2020.

Issue No.2:

- 18) The plaintiff has not stated that the defendant has paid interest of Rs.9,000/- for the loan availed on the basis of 1st promissory note and Rs.3,000/- for the loan availed for the 2nd promissory note in his legal notice dated 10.07.2023 (Ex. A3). Only in the plaint, he has introduced a new case that the defendant paid interest on 02.01.2021. According to PW1-Senthil (plaintiff), the interest was paid by the defendant in the presence of Suresh (scribe). PW1-Senthil (plaintiff) was suggested in the cross examination that he himself has

made endorsement as if the defendant paid interest on 02.01.2021. The plaintiff /PW1-Senthil has replied as follows;

பிரதிவாதி நான் அனுப்பிய வழக்கறிஞர் அறிவிப்பிற்கு பதில் அறிவிப்பு
கொடுத்தபின்னர் நானாகவே 02.01.2021 ம் தேதி பணம் கொடுத்ததாக
எழுதிக்கொண்டேன் என்றால் ஞாபகம் இல்லை.

PW3-Suresh, who is the witness for the payment of interest on 02.01.2021, has deposed that the defendant has not at all signed the promissory note for payment of interest on 02.01.2021. His evidence in this regard is extracted as hereunder;

கடன் பெற்றவர்தான் கடனுறுதி சீட்டில் பணம் வரவு வைக்கும்போது
கையெழுத்து போடவேண்டும் என்பது எனக்கு தெரியுமா என்று
கேட்டால் தெரியும். தாவா கடனுறுதி சீட்டுகளில் வரவு
வைக்கப்பட்டதில் நான் எழுதி வாதி கையெழுத்து போட்டுள்ளார்
என்றால் சரி. பிரதிவாதி அதில் கையெழுத்துபோடவில்லை என்றால்
சரி.

From the evidence of PW1-Senthil and PW3-Suresh, it is very clear that the defendant has not made any endorsement in the suit promissory notes for the payment of interest on 02.01.2021. The plaintiff has not given any explanation for the failure to get the signatures of the defendant while receiving money for payment of interest on 02.01.2021. The plaintiff has

also not cross examined DW1-Saravanan (defendant) as to the specific case of the defendant that he has not paid any interest on 02.01.2021 as alleged by the plaintiff.

- 19) The suit promissory note were executed on 11.06.2020 as averred in the plaint. The plaintiff should have filed the suit within three years on or before 10.06.2023 under Article 29 of the schedule under the Limitation Act, 1963. The plaintiff has filed this suit on 02.08.2023 after the expiry of period of limitation stating that defendant paid Rs.9,000/- and Rs.3,000/- separately towards interest on 02.01.2021. The plaintiff alone has made endorsements in the back side of the suit promissory notes to the effect that the defendant paid Rs.9,000/- and Rs.3,000/- separately towards interest on 02.01.2021. Admittedly, the plaintiff has not obtained the signature from the defendant. If the defendant paid the amount, the plaintiff being a prudent man should have obtained the signatures of the defendant on the back side of the suit promissory notes. There is no explanation on the side of the plaintiff for his failure to get the signatures of the defendant below the endorsement for payment of interest on 02.01.2021. Therefore, this court is not in a position to believe the case of the plaintiff that the defendant paid Rs.9,000/- and Rs.3,000/- towards interest on 02.01.2021 and filed this suit within the period of limitation. In such circumstances, Issue No.2 is answered that the plaintiff is not entitled to get the decree of recovery of money on the basis of

the suit promissory notes marked as Ex. A1 and Ex. A2.

Issue No.3:

- 20) In view of the answers given to Issue No.1 and 2, the plaintiff is not entitled to any relief in this suit and this suit is liable to be dismissed with costs.

Issue No.3 is answered accordingly.

- 21) Decision:

In the result, the suit is dismissed with costs.

Dictated to the steno-typist, transcribed and typed by her and corrected and pronounced by me in the open court on this the 28th day of March, 2025.

Subordinate Judge,
Perambalur.

Witnesses examined by the plaintiffs:

PW1 - Senthil (plaintiff)
PW2- Venkatachalam (Attestor)
PW3- Suresh (Scribe)

Exhibits marked by the plaintiff:

Ex. A1- 11.06.2020 Promissory note executed in favour of the plaintiff.
Ex. A2 11.06.2020 Promissory note executed in favour of the plaintiff.
Ex. A3- 10.07.2023 Copy of the legal notice issued by the plaintiff to the defendant.
Ex. A4- 22.07.2023 Reply notice given by the defendant to the plaintiff.

Defendants side witness :-

DW1-Saravanan

Defendants side documents:-

Nil

Subordinate Judge,
Perambalur.

Fair/Draft Judgment

O.S.No.571/2023

Dated:28.03.2025