

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THENI

Present: Thiru.Swarnam J. Natarajan, M.L.,
Principal District Judge, Theni

Friday, this the 24th day of April, 2026

Appeal Suit No.49/2025

C.N.R. No.TNTH01-001725-2025

and

Appeal Suit No.50/2025

C.N.R. No.TNTH01-001727-2025

Appeal Suit No.49/2025:-

R. Eswaran ... Appellant/Plaintiff

/Versus/

V. Prakash ... Respondent/Defendant

Appeal against the Judgment and Decree dated 28.04.2025 in O.S. No.320 of
2024 on the file of Subordinate Court, Bodinayakkanur.

Between:-

R. Eswaran ...Plaintiff

/Versus/

V. Prakash ...Defendant

Appeal Suit No.50/2025:-

R. Eswaran ... Appellant/Plaintiff

/Versus/

V. Prakash ... Respondent/Defendant

Appeal against the Judgment and Decree dated 28.04.2025 in O.S. No.307 of
2024 on the file of Subordinate Court, Bodinayakkanur.

Between:-

R. Eswaran

...Plaintiff

/Versus/

V. Prakash

...Defendant

Both the Appeal suits were coming up for final hearing on 08.04.2026 in the presence of Thiru. A. Easuthiruselvan, Advocate for the Appellant in both the appeals and of Thiru. S. Ravichandran, Advocate for the Respondent in both the appeals and upon hearing both sides' arguments, after perusing the documents, the case having stood over for consideration till this date, this Court delivered the following :

C O M M O N J U D G M E N T

The unsuccessful plaintiff in both the suits had suffered a judgment and decree wherein the suit in O.S. Nos.307 of 2024 and 320 of 2024 were instituted by the plaintiff before the learned Subordinate Judge, Bodinayakanur were dismissed after a full-fledged trial on 20.04.2025. As against the said judgment of dismissal, the present appeal is filed.

2. Since both the appeals are arising out of common judgment, both the appeals were taken together for disposal.

3. O.S. No.307 of 2024 was filed directing the defendant to pay a sum of Rs.6,75,667/- to the plaintiff on the basis of the promissory note executed by the defendant on 07.11.2020 with subsequent interest thereon with cost of the suit.

4. O.S. No.320 of 2024 was filed directing the defendant to pay a sum of Rs.6,75,667/- to the plaintiff on the basis of the promissory note executed by the defendant on 07.11.2020 with subsequent interest thereon with cost of the suit.

5. Both the suits were originally instituted before the Subordinate Court, Uthamapalayam as O.S. Nos.518 of 2023 and 519 of 2023. Subsequent to the constitution of the learned Subordinate Judge, Bodinayakanur, the cases were transferred on the point of territorial jurisdiction and reassigned with O.S. Nos.307 of 2024 and 320 of 2024.

6. The facts of the plaintiff stated in the plaint in both the suits are as follows:

i. The plaintiff is an agriculturalist and the defendant is doing cardamom and coriander leaf business, who used to purchase coriander leaves from the plaintiff which is grown in the field of the plaintiff. Thereby, they were acquainted with each other. One Pinnathevar PW2 is a known person common to both the plaintiff and the defendant.

ii. On 05.11.2020 the defendant and the above said Pinnathevar met the plaintiff at the plaintiff's village and informed the plaintiff that the defendant intends to purchase a cardamom estate for which he is in shortage of certain money and requested the plaintiff to lend a sum of Rs.10 lakh to the defendant. Though the plaintiff hesitated to lend the amount, on the assurance given by the said Pinnathevar he agreed to lend the money to the defendant. The plaintiff agreed to come and

collect the amount from the house of the plaintiff. However, the defendant and Pinnathevar insisted the plaintiff to come to the farmhouse of the defendant with the money.

iii. On 07.11.2020 the plaintiff went to the farmhouse of the defendant with Rs.10 lakhs as requested by the defendant and Pinnathevar. Having received the said amount the defendant had executed two promissory notes each for a sum of Rs.5 lakhs agreeing to repay the said loan amount with the interest on demand with subsequent interest and executed two promissory notes in favor of the plaintiff in the presence of witnesses and handed over the promissory notes to the plaintiff. Only for the convenience of the defendant, two promissory notes were executed as it would be easy for the defendant to discharge and take back the promissory notes one after the other.

iv. On the same day, the defendant had executed another loan document, engrossed in Rs.20/- stamp paper. This was also written by the defendant himself in his own handwriting. In the said loan document, the debt amount of Rs.10 lakh is correctly mentioned in words. Whereas in numbers, it is mentioned as Rs.10,000 inadvertently. The name of the defendant's village is also inadvertently omitted to be mentioned in the promissory note, which had been subsequently added on due endorsement. The defendant had not returned the principal amount despite several demands made by the plaintiff. Hence the present suit is filed. The interest for the period from 07.11.2020 to 10.10.2023 is also included in the suit claim.

7. After taking both the suits on file, the court had ordered summons to the defendant returnable by 04.11.2023. The defendant had failed to appear before the trial court and remained exparte on 12.12.2024 and had not filed his written statement nor let in oral evidence. The plaintiff had adduced evidence by examining himself as PW1. Ex.A1 is the promissory notes - original, executed by the defendant and Ex.A2 is the debt deeds. One Pinnathevar, who introduced the defendant to the plaintiff, who was present during the time of execution of the document and also attested the promissory note, was examined as PW2 on the side of the plaintiff. One Vijayaram, who is the son of the plaintiff, who scribed the promissory note was examined as PW3.

8. The findings of the trial court:-

a. The trial court, after hearing the arguments of the plaintiff, framed the point for consideration in the suit as whether the suit can be decreed or not. During the pendency of the suit, the plaintiff had filed I.A. No.01 of 2023 under Order 38 Rule 5 CPC seeking for attachment of the defendant's property before judgment. In the said application, the defendant filed his counter. In the counter, it is stated by the defendant that he had borrowed a sum of Rs.5 lakhs as debt on the basis of the registered mortgage deed and at that time the plaintiff had obtained four empty signed promissory notes. The defendant had repaid the mortgage debt and registered receipt is also obtained from the plaintiff. However, the plaintiff had failed to return the blank promissory note. Thereby it is highly improbable that the plaintiff would go to

the house of the defendant with the money and hand over the debt amount to the plaintiff, to the defendant, as alleged is false. Therefore, the application filed for attachment before judgment was closed.

b. The trial court was pleased to give a finding that the evidence of PW1 to PW3 in both the cases are verbatim. PW3 is the scribe of the document, who is none but the son of the plaintiff. He had stated that on 07.11.2020 he went to the farmhouse of the defendant and the suit promissory notes were executed as alleged by the plaintiff.

c. However, the date when the promissory note was executed was not spelled out by PW3. Thereby it is not possible for PW3 to scribe the promissory note in the presence of debtor and creditor and the very execution of the promissory note is doubtful. Merely because the defendant remained exparte, it would not give an automatic decree to the plaintiff. At what time the plaintiff and the other two witnesses assembled in the house of the defendant was not explained by the plaintiff's witnesses. The evidence of PW1 to PW3 were not found to be cogent and convincing and PW1 had never stated about the presence of PW3 in the defendant's house. No pre-suit notice was issued and the suit was filed at the fag end of the limitation period. When the plaintiff has given his hard-earned money to the tune of Rs.10 lakhs as debt to the defendant, which the defendant had not paid, no prudent man will wait till the end of the limitation period to file the suit. Hence the trial court, on not being

satisfied with the plaintiff's claim, was pleased to dismiss the suit. Being aggrieved by the same, the present appeal is preferred for the following among other grounds.

9. Points raised in the grounds of appeal:-

Even though the defendant had not taken the plea in the suit by appearing himself and remained *ex parte*, the plea available to the defendant had been taken by the court and dismissed the suit. The passing of consideration and the execution of the promissory note had been proved by the plaintiff through examination of plaintiff and the other two witnesses and the evidence of the plaintiff has not been controverted by the defendant by way of letting in evidence. Thereby, the trial court erred in dismissing the suit. The appellant prays for allowing the appeal.

10. The points for determination is-

- 1) Whether the trial court erred in dismissing the suit even though no attempt was made by the defendant to controvert the plaintiff's case ?
- 2) Whether the trial court decree is to be set aside in the appeal ?

11. The learned counsel for the appellant contended that the defendant had not contested the matter by filing written statement nor chosen to cross-examine the plaintiff witnesses and remained *ex parte* before the trial court. Only in the appeal, the respondent appeared to challenge the appeal filed by the appellant and no attempt was made by the defendant to disprove the plaintiff's case before the trial court. Hence, the appellant counsel contended that the trial court had suo-moto taken up the plea

available to the defendant and dismissed the suit by disbelieving the plaintiff's case. Hence the appellant counsel prays for allowing the appeal.

12. On the other hand, the learned counsel for the respondent contended that the trial court had rightly appreciated the evidence and was pleased to dismiss the suit and no interference is required in the present appeal.

13. I have given my anxious consideration to the submissions made by both the parties. In the I.A. No.01 of 2023 in O.S. No.518 of 2023, there is a counter filed by the respondent/defendant, the defendant in the affidavit of undertaking had stated that he owns 20 items of properties in the said village and he has not encumbered the property at any point of time and till disposal of the suit he undertakes not to encumber the property. There is no necessity for attachment of the property.

14. It is stated by the defendant that he never borrowed loan from the plaintiff nor executed the suit promissory note. However, the defendant failed to file written statement nor let in evidence, the Hon'ble Supreme Court and Hon'ble High Court of Madras had delivered judgment in various cases, particularly in ***AIR 1999 SCW 1129 Vidhyadhar vs. Manikrao and Another*** – with regard to that when a party to a suit does not appear in the witness box and state its own case on oath, and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. ***1978 AIR (Patna) Page No.48 Ramji Jankiji and Another vs. Mauni Baba Kale Kambalwala Jai Siyaram Dasji and Others*** – with

regard to failure on the part of the party to enter the witness box. The facts deposed by the defendant shall be disbelieved.

15. 2007 3 CTC 456 T. Tamilarasan vs. Arokkiasamy, Thomas and Devasagayam Paragraph Nos.18 and 19 - the effect of party not appearing in the witness box, offering himself to be cross examined but only filing a statement of oath has been held to be case of adverse inference to be drawn against him as per Section 114 of the Evidence Act. **2015 6 CTC 593 R. Aravindhan vs. K.R.S. Janakiraman (A.K.A.) and Other** - on the same point and also on the point that legal notice shows that the plaintiff was all along ready in billing to perform as part of contract.

16. 2004 4 CTC 596 Kanagambaram Ammal vs. Kakammal and Others - by relying upon Section 114 of the Indian Evidence Act, the Hon'ble Division Bench of High Court, Madras was pleased to held that where a party who failed to produce such principle witness or who failed himself to be examined as a witness when he is a party. He did not state the facts stated in the written statement on oath in the trial court and avoided the witness box so that he may not be cross examined. This by itself is enough to reject the claim that the transaction of sale between 2nd defendant and the plaintiff was a bogus transaction.

17. 2005 3 CTC 344 Kandavel and 2 Others vs. Chidambara Padayachi (Died) and Others - It is held that in view of provision 114 of the Evidence Act and the principle inaugurated by the Supreme Court in decision **Vidhyadhar versus Manikrao and Another** necessarily an adverse inference has to

be drawn that failure on the part of the defendant to appear before the court to depose his case and cross-examine the witness, the court shall draw adverse inference against the defendant.

15. In the present case, the defendant, for the reasons best known, had not appeared before the trial court to contest the matter and remained *exparte*. He had not chosen to cross-examine plaintiff witness also. His stand is that earlier mortgage deed was executed and subsequently it was discharged and document was cancelled. To that effect no documents were produced on the side of the defendant. If really the loan amount is discharged as alleged, the defendant ought to have sought for return of the document from the plaintiff as expected of from an ordinary prudent man. In this regard no attempt has been made by the defendant to seek for return of the document.

16. Under such circumstances, the non-execution of the document cannot be presumed and the plaintiff and the other two witnesses examined on the side of the plaintiff namely the scribe and the attester of the document had amply proved the execution of the promissory note. The defendant had not controverted the case of the plaintiff by raising sufficient satisfactory evidence to rebut the presumption of execution of the document nor let in evidence to disprove the case of the plaintiff with regard to lack of consideration in the promissory note. Under such circumstances, the trial court erred in disbelieving the case of the plaintiff and erred in dismissing the suit. Thereby this court finds that the plaintiff had proved the

execution of the document and the suit ought to be decreed. Hence the points are answered accordingly in favor of appellant and the suits are decreed.

A.S. No.49/2025:-

In the result, the Appeal Suit in A.S. No.49/2025 is allowed with cost throughout the proceedings and the judgment and decree passed by the learned Subordinate Judge, Bodinayakkanur in O.S. No.320/2024 dated 28.04.2025 is hereby set aside in the appeal.

The suit in O.S. No.320/2024 on the file of the Subordinate Judge, Bodinayakkanur is decreed as prayed for. The defendant is directed to pay to the plaintiff a sum of Rs.6,75,667/- with subsequent interest on the principal amount of Rs.5,00,000/- at the rate of 12% p.a., from the date of suit till the date of realization.

A.S. No.50/2025:-

In the result, the Appeal Suit in A.S. No.50/2025 is allowed with cost throughout the proceedings and the judgment and decree passed by the learned Subordinate Judge, Bodinayakkanur in O.S. No.307/2024 dated 28.04.2025 is hereby set aside in the appeal.

The suit in O.S. No.307/2024 on the file of the Subordinate Judge, Bodinayakkanur is decreed as prayed for. The defendant is directed to pay to the

plaintiff a sum of Rs.6,75,667/- with subsequent interest on the principal amount of Rs.5,00,000/- at the rate of 12% p.a., from the date of suit till the date of realization.

Dictated to the Steno-Typist, taken by him in shorthand, transcribed and typed by him with the help of voice recorder, and Microsoft 365, corrected and pronounced by me, in the open court, this the 24th day of April - 2026.

**Principal District Judge,
Theni.**

Appellant side witness and documents :-

-Nil-

Respondent side witness and documents:-

-Nil-

**Principal District Judge,
Theni.**

The Principal District Court,
Theni.

Copy of Common Judgment in
**A.S. No.49/2025 and
A.S. No.50/2025**

Dated: 24.04.2026