IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TENKASI

Present: Thiru. B. Rajavel, B.Sc., B.L.,

Principal District Judge, Tenkasi

Friday the 31st Day of July 2026

A.S. No. 23 of 2024

CNR No.TNTS010016832024

Muppidathi Chettiar ... Appellant / Plaintiff

Versus

M.V. Tex Partnership Firm, Sankarankovil,

represented by its Partners,

1.Muthu Sankaranarayanan

2.Palanichamy

3.M.V. Tex Partnership Firm, Sankarankovil

... Respondents / Defendants

Appeal has preferred against the Judgment and Decree dated 08.12.2023 made in O.S. No.2 of 2016 on the file of the Subordinate Court, Sankarankoil.

Between

Muppidathi Chettiar ... Plaintiff

Versus

M.V. Tex Partnership Firm, Sankarankovil,

represented by its Partners,

1.Muthu Sankaranarayanan

2.Palanichamy ... Defendants

This appeal suit has been coming on 29.07.2026 day for final hearing before me in the presence of Thiru.M.Karuppasamy, Advocate for the Appellant and Thiru. S.Pushparaj, Advocate for the 2nd Respondent and Ist respondent called absent and upon hearing both sides and perusing the documents and stood over till this day for consideration this court doth to pass the following,

JUDGMENT

This Appeal Suit has been filed by the Appellant/plaintiff challenging the Judgment and Decree dated 08.12.2023 passed in O.S. No.2 of 2016 by the learned Subordinate Judge, Sankarankoil whereby the suit filed by the appellant/plaintiff for recoverey of money was dismissed.

2. The averments contained in the plaint filed by the plaintiff are briefly as follows:

The Defendants and their father, late Velayutham, were carrying on textile business under the name and style of M.V. Tex at Sankarankovil. On 08.07.2015, the Defendants and their father borrowed a sum of Rs.2,55,500/- from the Plaintiff as a loan and agreed to repay the same. Towards discharge of the said liability, they issued five cheques drawn on the account of M.V. Tex, bearing Nos. 000306, 000318, 000307, 000308 and 000309 for sums of Rs.60,000/-, Rs.15,500/-, Rs.60,000/-, Rs.60,000/- and Rs.60,000/-, respectively, in favour of the Plaintiff on the very same day.

Thereafter, as instructed by the Defendants, the Plaintiff presented the said cheques for encashment on 30.10.2015. However, all the cheques were dishonoured and returned unpaid with the endorsement "Exceed Arrangement." Consequently, the Plaintiff caused a legal notice dated 03.12.2015 to be issued to the Defendants and their father, Velayutham. The notice addressed to Velayutham was returned unserved with the endorsement "Addressee died." The Defendants 1 and 2, after receiving the legal notice, sent a reply containing false and untenable allegations. According to the Plaintiff, despite repeated demands, the Defendants failed to discharge the debt. Hence, the Plaintiff has been constrained to institute the present suit seeking recovery of Rs.2,55,500/-, together with interest thereon, and for costs of the suit.

3. The written statement filed by the defendants are briefly as follows:

The Defendants contend that the suit is not maintainable either in law or on facts and is liable to be dismissed in limine. They deny all the allegations contained in the plaint except those specifically admitted herein. According to the Defendants, neither they nor their father, late Velayutham, borrowed any amount from the Plaintiff at any point of time. It is further contended that the first Defendant has been running a software company at Coimbatore for the past two years, while the second Defendant is pursuing his studies at Anna University. The Defendants further allege that the Plaintiff used to visit the textile firm of their father, Velayutham, frequently and, taking advantage of such visits, obtained the cheque leaves and filled them up after imitating or affixing the signature of Velayutham, who was well known to him. They further state that they had issued a suitable reply to the legal notice sent by the Plaintiff. The Defendants further contend that the Plaintiff himself has pleaded that M.V. Tex is a partnership firm and that the disputed cheques were issued on behalf of the said firm. Therefore, according to the Defendants, the partnership firm is a necessary party to the suit, and in its absence, the suit is bad for non-joinder of a necessary party.

The Defendants also point out that, according to the plaint averments, the cheques were presented for encashment on 30.10.2015, whereas their father, Velayutham, had passed away on 26.08.2015. Hence, they contend that the cheques had no legal validity and could not have been enforced after his death. They further submit that the alleged cause of action is false and unsustainable. All other allegations in the plaint, except those specifically admitted, are denied. On these grounds, the Defendants pray that the suit be dismissed with costs.

4. In support of the Plaintiff's case, the Plaintiff was examined himself as PW.1 and marked Exs.A1 to A14. Further, one Thanga Mariappan, a third-party witness, was examined as PW2 and Exs.X1 to X4 were marked through him. On the side of the Defendants, the Second Defendant examined himself as DW1 and marked Ex.B1.

Upon consideration of the pleadings, oral and documentary evidence, and the submissions made on either side, the Trial Court held that the Plaintiff had failed to establish his claim for recovery of the suit amount. Consequently, the suit was dismissed with costs.

5.The averments contained in the appeal memorandum are briefly as follows:

According to the Appellant, the Trial Court ought to have accepted Exs.A1 to A5, namely the cheques in question, and ought to have drawn the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act, 1881, in favour of the Plaintiff. The Trial Court erred in disbelieving the said documents without there being any legally acceptable evidence to rebut the statutory presumptions. The Appellant further contends that the Trial Court failed to properly appreciate the evidence of PW1 and PW2, along with Exs.A1 to A14, and also failed to assign due weight to the admissions elicited from DW1 during cross-examination.

On the above grounds, the Appellant prays that this Hon'ble Court may be pleased to set aside the Judgment and Decree dated 08.12.2023 passed by the learned Subordinate Judge, Sankarankovil, in O.S. No. 2 of 2016, and consequently decree the suit as prayed for, with costs throughout, and thus render justice

6. The Points for Consideration in this appeal are as follows:

1. Whether the Trial Court was justified in dismissing the suit for recovery of money?
2. Whether the Plaintiff has proved the loan transaction and the execution of Exs.A1 to A5, and whether the statutory presumption under Section 118 of the Negotiable Instruments Act operates in his favour?
3. Whether the Defendants have successfully rebutted the statutory presumption and established their defence?
4. Whether the Judgment and Decree of the Trial Court call for interference, and to what relief is the Appellant entitled?

7. **Points 1 to 3:** The principal question that arises for consideration in this appeal is whether the Trial Court was justified in dismissing the Plaintiff's suit for recovery of money by holding that the Plaintiff failed to establish the execution of Exs.A1 to A5 and the underlying loan transaction. Upon a careful re-appreciation of the entire oral and documentary evidence, this Court is unable to concur with the findings recorded by the Trial Court.

8. The case of the Plaintiff is that the deceased Velayutham, who was the Managing Partner of M.V. Tex, borrowed a sum of Rs.2,55,500/- on behalf of the partnership firm on 08.07.2015 and, towards discharge of the said liability, issued Exs.A1 to A5 cheques drawn on the account of the partnership firm. The Plaintiff further pleaded and deposed that, at the request of Velayutham, the cheques were not presented immediately but were presented only on 30.10.2015, whereupon they were dishonoured with the endorsement "Exceed Arrangement."

9.The Defendants have not disputed that Exs.A1 to A5 are cheque leaves pertaining to the account of M.V. Tex. Equally, there is no serious dispute regarding the existence of business acquaintance and financial dealings between the Plaintiff and the deceased Velayutham. The principal defence of the Defendants is that Velayutham never borrowed any amount from the Plaintiff, that the disputed cheques were stolen by the Plaintiff from the textile shop of Velayutham, and that the signatures found therein do not belong to Velayutham. The first aspect that requires consideration is the defence of theft. The burden of proving such a plea squarely rests upon the Defendants. Theft is a positive allegation involving unlawful conduct and cannot be accepted merely because it has been pleaded in the written statement. The party setting up such a plea must establish the circumstances under which the alleged theft took place and produce acceptable evidence showing that the Plaintiff had access to the place where the cheque leaves were kept and that he removed them without authority. In the present case, except making a bald allegation that the Plaintiff used to visit the textile shop frequently and had stolen the cheque leaves, the Defendants have not adduced any acceptable evidence in support of the said plea. No complaint was admittedly lodged before the police alleging theft of cheque leaves. No contemporaneous correspondence or other documentary evidence has been produced to show that cheque leaves had gone missing. Even according to the Defendants, no steps were taken immediately after the alleged theft to intimate the banker to stop payment or to block the use of the cheque leaves. Such conduct is wholly inconsistent with the ordinary conduct expected of a prudent businessman whose signed cheque leaves are alleged to have been stolen.

10.The evidence on record also does not establish that the Plaintiff had any special opportunity or access enabling him to remove the cheque leaves.

Mere frequent visits to the textile shop in connection with business transactions do not by themselves establish theft. Suspicion, however strong, cannot substitute legal proof. Therefore, the plea that the Plaintiff had stolen the cheque leaves remains a mere allegation unsupported by reliable evidence.

11.On the contrary, the undisputed fact remains that the disputed cheques originated from the account maintained by M.V. Tex and ultimately came into the possession of the Plaintiff. In the absence of acceptable evidence explaining such possession on any lawful basis other than delivery by the drawer, the natural inference is that the cheques reached the Plaintiff during the course of the business transaction between the parties.

12.Once the Plaintiff established the origin of the cheques and proved the circumstances under which they came into his possession, the statutory presumptions embodied under Section 118(a) of the Negotiable Instruments Act, 1881 assume significance. The said provision raises a presumption that every negotiable instrument was made or drawn for consideration unless the contrary is proved. The presumption is undoubtedly rebuttable. However, the burden of rebuttal lies upon the party disputing the transaction. Such rebuttal cannot rest upon mere suggestions made during cross-examination or upon unsupported pleadings. The Defendants are required to place before the Court such evidence as would render the Plaintiff's version improbable on the touchstone of preponderance of probabilities.

13.In the instant case, except raising a plea of theft and denying the signatures found in the cheques, the Defendants have failed to produce any convincing evidence to rebut the statutory presumption. The defence set up by them remains unsupported by independent evidence and does not probabilise their version. Consequently, the statutory presumption under Section 118(a) continues to operate in favour of the Plaintiff.

14.The Trial Court, however, appears to have overlooked the true scope of the statutory presumption. Instead of examining whether the Defendants had successfully rebutted the presumption by leading acceptable evidence, the Trial Court virtually placed the entire burden upon the Plaintiff and insisted upon proof beyond what is required in a civil proceeding. Such an approach is contrary to the settled principles governing civil suits based upon negotiable instruments.

15. It is equally relevant to note that the present suit is not a prosecution under Section 138 of the Negotiable Instruments Act but a civil suit for recovery of money founded upon the underlying loan transaction. The cause of action is not the dishonour of the cheques alone but the subsisting liability arising out of the loan advanced by the Plaintiff. The cheques constitute important documentary evidence acknowledging the liability, but the Plaintiff's right to recover the debt flows from the loan transaction itself.

16.Therefore, while considering the evidence, the Court is required to examine the transaction as a whole and not merely the validity of the cheques in isolation. The Trial Court, instead of appreciating the evidence in that perspective, concentrated predominantly upon the disputed signatures without first evaluating the probabilities arising from the admitted circumstances and the statutory presumptions available under law.

17. This Court is therefore of the considered opinion that the Trial Court committed a fundamental error in rejecting the Plaintiff's claim without first determining whether the Defendants had discharged the burden cast upon them to rebut the statutory presumption and establish the defence of theft. The findings recorded on this aspect are contrary to the evidence available on record and cannot be sustained.

18.The principal reason assigned by the Trial Court for dismissing the suit is that the Plaintiff failed to establish that the signatures found in Exs.A1 to A5 are those of the deceased Velayutham. The Trial Court, by invoking Section 73 of the Indian Evidence Act, 1872, independently compared the disputed signatures appearing in the cheques and came to the conclusion that the signatures differed from one another and, therefore, could not have been executed by the same person. This Court is unable to subscribe to the said approach adopted by the Trial Court.

19.It is no doubt true that Section 73 of the Indian Evidence Act empowers the Court to compare a disputed signature with an admitted or proved signature. However, such power is required to be exercised with great caution. The settled principle of law is that comparison of handwriting or signatures by the Court should ordinarily be undertaken only when there are admitted or proved signatures available on record furnishing a safe standard for comparison. A finding involving valuable civil rights ought not to rest solely upon the personal comparison made by the Court, particularly when no contemporaneous admitted signatures or expert opinion are available to support such conclusion.

20.In the present case, the Defendants disputed the signatures appearing in Exs.A1 to A5. However, except making such denial, they did not produce any admitted or contemporaneous documents admittedly bearing the signatures of the deceased Velayutham to enable the Court to undertake a meaningful comparison. On the contrary, DW1, in his evidence, categorically admitted that he did not possess any documents bearing the admitted signatures of his deceased father. He further deposed that he had never seen the disputed cheques prior to the institution of the suit and had not seen any documents executed by his father during the relevant period in the year 2015, when the disputed cheques are alleged to have been issued.

21.The evidence of DW1 further discloses that during the relevant period neither of the Defendants was residing with the deceased Velayutham. According to their own evidence, one Defendant was pursuing higher studies, while the other was carrying on business at Coimbatore. Therefore, neither of them had direct personal knowledge regarding the execution of the disputed cheques. Their denial of the signatures is not founded upon personal knowledge but only upon assumption. Such evidence cannot outweigh the documentary evidence produced by the Plaintiff, particularly when the Defendants themselves failed to place before the Court any admitted signatures of Velayutham for comparison.

22.In spite of the absence of any admitted standard of comparison, the Trial Court proceeded to compare the disputed signatures found in Exs.A1 to A5 inter se and concluded that the signatures were dissimilar. In the considered opinion of this Court, such an exercise is legally unsafe. Comparison between disputed signatures themselves cannot furnish a legally acceptable foundation for holding that the signatures were not made by the same person. The exercise contemplated under Section 73 is comparison between a disputed signature and an admitted or proved signature. In the absence of such foundational material, the Trial Court ought not to have based its conclusion solely upon its own comparison of the disputed signatures.

23.Another important circumstance which the Trial Court failed to appreciate is the reason assigned by the banker while returning the cheques. Exs.A6 to A10, namely the cheque return memos, disclose that the cheques were dishonoured with the endorsement "Exceed Arrangement." Significantly, the banker did not return the cheques with the endorsement "Signature Differs," "Drawer's Signature Incomplete," or any similar endorsement questioning the genuineness of the signatures.

24.During the cross-examination of PW2, who was examined in connection with the banking transaction, it was elicited that whenever the banker finds, at the threshold, that there are insufficient funds or that the account has exceeded the sanctioned arrangement, the banker may dishonour the cheque on that ground itself without examining or mentioning every other possible reason for dishonour. Therefore, the absence of an endorsement relating to the signature does not conclusively establish that the signatures were genuine. At the same time, it equally cannot support the conclusion that the signatures were forged. The bank, being the custodian of the specimen signatures of the account holder, returned the cheques only on the ground of "Exceed Arrangement." This circumstance considerably weakens the defence set up by the Defendants that the signatures were not those of Velayutham.

25.The Trial Court has also attached undue importance to what it perceived as a contradiction in the evidence of the Plaintiff regarding the place where the loan amount was advanced. In one portion of his evidence, the Plaintiff stated that the amount was paid in the textile shop. In another portion, he deposed that Velayutham was conducting the textile business from his residence and that the amount was paid at the house.

26.A careful reading of the evidence, however, shows that the Plaintiff consistently maintained that the textile business was being carried on from the residence of Velayutham. Thus, the expressions "house" and "shop" were used interchangeably with reference to the same premises. The Trial Court isolated certain answers from the deposition without appreciating the evidence as a whole and erroneously treated them as constituting material contradictions. Such a hyper-technical approach is impermissible in appreciating oral evidence.

Minor discrepancies relating to the description of the place do not affect the substratum of the Plaintiff's case, particularly when the existence of prior business dealings between the parties is not seriously disputed.

27.The Trial Court has further held that since the cheques dated 08.07.2015 were presented only on 30.10.2015, they had ceased to be valid instruments and consequently could not form the basis of the Plaintiff's claim. This finding also proceeds on an erroneous understanding of law.

28.The evidence of the Plaintiff is that the deceased Velayutham specifically requested him not to present the cheques immediately and instructed him to present them only after 30.10.2015. Acting upon such request, the Plaintiff presented the cheques on the said date. The cheques were thereafter dishonoured on account of "Exceed Arrangement," whereupon the Plaintiff issued the statutory notice and thereafter instituted the present suit.

29.It must be borne in mind that the present proceedings are not founded upon the dishonour of the cheques alone, but upon the underlying loan transaction. A cheque issued towards repayment of a loan is merely a negotiable instrument acknowledging the subsisting liability. It does not by itself create or extinguish the debt. The enforceability of the Plaintiff's claim in a civil suit depends upon the subsistence of the debt and the law of limitation governing recovery of money and not merely upon the period during which the cheque remained valid for banking purposes.

30.The period prescribed for presentation of a cheque governs only its negotiability through the banking channel. Failure to present the cheque within such banking validity may disentitle the holder from obtaining payment through the bank, but it does not automatically extinguish the underlying civil liability arising from the loan transaction. The borrower's obligation to repay the debt continues unless it is discharged in accordance with law.

31. The Trial Court, however, conflated the validity of the cheque for banking purposes with the enforceability of the underlying civil debt. Such an approach is legally unsustainable. Even assuming that the cheques had ceased to be enforceable through the banking channel, that circumstance by itself would not extinguish the Plaintiff's right to institute a civil suit for recovery of the money within the period prescribed under the Limitation Act, 1963.

32.Accordingly, this Court is of the considered opinion that the findings recorded by the Trial Court regarding the genuineness of the signatures, the appreciation of the Plaintiff's oral evidence, and the effect of the delayed presentation of the cheques are contrary to the evidence on record and the settled principles governing civil suits based upon negotiable instruments. Those findings are therefore liable to be set aside.

33.The next contention urged on behalf of the Defendants is that the suit is bad for non-joinder of necessary parties. According to the Defendants, since the disputed cheques pertain to M.V. Tex, the partnership firm ought to have been impleaded as a separate party. It is further contended that upon the death of Velayutham, all his legal heirs, including his daughters, ought to have been impleaded, and the failure to do so renders the suit not maintainable.

This Court is unable to accept the said contention.

34.The evidence of DW1 clearly establishes that M.V. Tex is a partnership firm and that the deceased Velayutham and the present Defendants were its partners. The Defendants have not produced any material to show that the daughters of Velayutham were also partners of the firm. On the contrary, the evidence on record discloses that they were merely legal heirs of the deceased partner and had no role in the constitution or management of the partnership.

35.It is well settled that a partnership firm is not a separate juristic or legal entity distinct from its partners. A partnership firm is merely a collective or compendious name describing all the partners constituting the firm. Order XXX of the Code of Civil Procedure permits suits by or against a partnership firm in its firm name only as a matter of procedural convenience. The said provision does not confer an independent legal personality upon the partnership firm. The rights and liabilities of the firm are, in law, the rights and liabilities of its partners.

36.The Honourable Apepx Court has consistently held that a partnership firm is merely a compendious expression denoting the partners who constitute it and does not possess a separate juridical existence. Consequently, where the partners themselves are before the Court, the absence of the firm's name or any omission in describing the firm does not ordinarily affect the maintainability of the proceedings. In the present case, the evidence of DW1 further shows that Velayutham was functioning as the Managing Partner of M.V. Tex and was authorised to transact business and execute documents on behalf of the partnership. Therefore, any negotiable instrument executed by him in the ordinary course of the partnership business would bind not only himself but also the partnership firm and the remaining partners, subject to the provisions of the Indian Partnership Act, 1932.

37.The loan transaction pleaded by the Plaintiff was admittedly connected with the business of the partnership firm. Consequently, the liability arising therefrom is the liability of the partnership and its partners. The legal heirs of a deceased partner, who were never partners of the firm, do not become necessary parties merely because they succeed to the estate of the deceased. Therefore, the contention that the daughters of Velayutham ought to have been impleaded is legally untenable.

38.It is also pertinent to note that during the pendency of the suit, an application was filed seeking impleadment of M.V. Tex as a party to the proceedings. The said application was allowed, and Thiru. Pushparaj, Advocate, entered appearance and filed vakalat on behalf of the partnership firm. Therefore, even assuming that the impleadment of the firm was necessary, the said defect stood cured during the pendency of the proceedings.

39.The Trial Court, while pronouncing the judgment, omitted to refer to the impleadment of the partnership firm and its representation through counsel. Such omission, however, is only an irregularity in the narration of the proceedings. It neither affects the jurisdiction of the Court nor causes prejudice to either party. The validity of a judgment cannot be tested on the basis of such an omission when the parties had in fact participated in the proceedings and the controversy had been adjudicated on merits.

40.The duty of a First Appellate Court under Section 96 read with Order XLI Rule 31 of the Code of Civil Procedure is to independently re-appreciate the entire evidence and determine whether the conclusions reached by the Trial Court are sustainable. Having undertaken such an exercise, this Court finds that the Trial Court has misdirected itself both on facts and on law.

41.The Trial Court failed to appreciate the effect of the statutory presumption available under Section 118(a) of the Negotiable Instruments Act. It accepted the defence of theft without any acceptable evidence. It undertook an unsafe comparison of the disputed signatures under Section 73 of the Indian Evidence Act in the absence of admitted signatures for comparison. It ignored the significance of the bank returning the cheques with the endorsement "Exceed Arrangement" instead of "Signature Differs." It erroneously treated insignificant discrepancies in the Plaintiff's oral evidence as material contradictions. It further conflated the period of banking validity of the cheques with the period of limitation governing the institution of a civil suit for recovery of money. Finally, it incorrectly appreciated the legal principles governing partnership firms and the question of non-joinder of parties.

42.When the oral and documentary evidence is considered in its proper perspective, the Plaintiff has succeeded in establishing the loan transaction and the issuance of Exs.A1 to A5 towards discharge of the liability. The Defendants have failed to probabilise their defence or rebut the statutory presumption by leading acceptable evidence. The findings recorded by the Trial Court are therefore contrary to the evidence on record and the settled principles of law. Points are answered accordingly.

43.**Point No.4:** In the light of the findings recorded on Point Nos. 1 to 3, this Court is of the considered view that the Judgment and Decree of the Trial Court cannot be sustained either on facts or in law. Consequently, the said Judgment and Decree are liable to be set aside, and the appeal deserves to be allowed.

44. In the result, the appeal deserves to be allowed, the Judgment and Decree in O.S.No.2/2016 of the learned Subordinate Judge, Sankarankoil dated 8.12.2023 is set aside and the suit filed by the appellant/plaitiff is decreed as prayed for, with costs throughout. The Respondents/Defendants shall jointly and severally pay the Plaintiff the suit claim together with interest as claimed and costs. Time for payment 3 months.

Dictated to the steno-typist directly and typed by him in his computer and corrected and pronounced by me in the open court this the 31st day of July 2026.

BALUCHAMY RAJAVEL

Digitally signed by BALUCHAMY RAJAVEL
Date: 2026.08.04 17:55:25 +0530

PRINCIPAL DISTRICT JUDGE,

TENKASI.

Copy to

The Sub Judge, Sankarankoil.

PDC. Tenkasi
Appeal Suit No.23/2024
Draft/Fair- Judgment
Dated.31.07.2026