



S.A. No.248 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A. No.248 of 2015

A. Govindasamy S/o. Late Abbiah Naidu ... Appellant / Respondent /
Plaintiff.
vs.
Janaki W/o. Periyasamy ... Respondent / Appellant /
Defendant

PRAYER: : The Second Appeal has been filed praying to set aside the judgment and decree dated 13.09.2012 on the file of the Principal District Judge, Krishnagiri in A.S. No.45 of 2011 reversing the Judgment and Decree dated 25.08.2011 on the file of the Additional Special Court, Krishnagiri in O.S. No.132 of 2006.

For Appellant : Mr. B. Bharath Kumar
for M/s. V. Nicholas

For Respondents: Mr.. P. Mani



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JUDGMENT

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The Second Appeal has been preferred as against the decree and judgment passed by the First Appellate Court in A.S.No. 45 of 2011 on the file of the Principal District Judge, Krishnagiri dated 13.09.2012, wherein the appellant herein, being the Plaintiff, has filed a Suit for the relief of recovery of money based on the Promissory Note and the same was decreed on 25.08.2011 by the trial Court in O.S. No.132 of 2006. As against the said decree and judgment, the defendant preferred an appeal in A.S. No.45 of 2011 and the same was allowed. Aggrieved by the said decree and judgment passed by the First Appellate Court, the present Second Appeal has been preferred by the appellant / Plaintiff.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

3. The *case of the Plaintiff* before the Trial Court is that the defendant borrowed a sum of Rs.1 lakh from the Plaintiff on 05.12.2003 and he agreed to repay the same with interest @ Rs.2/- per hundred per month and executed



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a Promissory Note. Thereafter, the defendant has not repaid the money.

Therefore, the Plaintiff filed the said Suit for recovery of money to the tune of Rs.1,26,650/- as against the defendant.

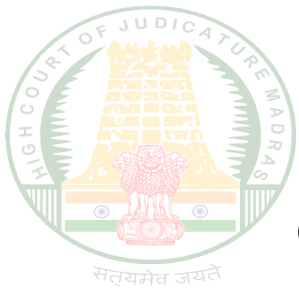
3. The *case of the defendant* before the Trial Court is that the defendant never borrowed money from the Plaintiff on 05.12.2003 and never executed any Promissory Note. Already there is a dispute between the defendant and one Banda Munusamy Naidu in respect of the pathway and there was an enmity between the defendant and the said Banda Munusamy Naidu and now the Banda Munusamy Naidu, by using the Plaintiff, filed the Suit. The Plaintiff is none other than the in-law of the said Banda Munusamy Naidu. Therefore, the Suit is liable to be dismissed.

4. Based on the above said pleadings and upon hearing both sides and perusing the documents, the trial Court had framed the following issues:

(i) Whether the Suit Pronote is a forged one.

(ii) Whether there is no cause of action for the Suit.

(iii) Whether the defendant is entitled to compensation cost as prayed for.



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(iv) Whether the Plaintiff is entitled to Suit amount as prayed for.

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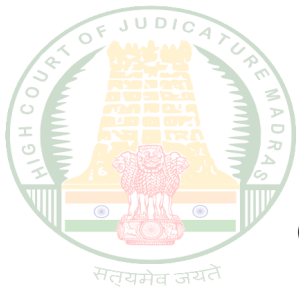
(v) To what reliefs, the Plaintiff is entitled to.

5. In order to prove the case of the Plaintiff, before the trial Court, he examined PW1 to PW3 and marked Ex.A.1 and on the side of defendant, DW1 was examined and Ex.B.1 to Ex.B.4 were marked. After analysing the oral and documentary evidences adduced on either side, the trial Court decreed the Suit. Aggrieved by the said decree and judgment passed by the trial Court dated 25.08.2011, the defendant had preferred an appeal before the First Appellate Court i.e., Principal District Court, Krishnagiri in A.S. No.45 of 2011.

6. The First Appellate Court after hearing both sides and perusing the records, framed the following ***points for determination:***

(i) Is it true that the defendant has not executed Promissory Note dated 05.12.2003.

(ii) Whether the Plaintiff is entitled to recovery of money of Rs.1,26,650/- from the defendant.



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(iii) Whether the appeal is to be allowed or not.

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After analysing the evidences adduced on both sides and perused the records including the judgment of the trial Court, the ***First Appellate Court allowed the appeal and dismissed the Suit. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred by the Plaintiff.***

7. This Court, while admitting the second appeal, has framed the following substantial questions of law:

When the Plaintiff has discharged his initial burden to prove the execution of the Suit Promissory Note by examining the attestors, the defendant failed to discharge the burden in this regard by letting rebuttal evidence, Whether the Lower Appellate Court is correct in accepting the defense of the defendant and dismissing the Suit filed by the Plaintiff.

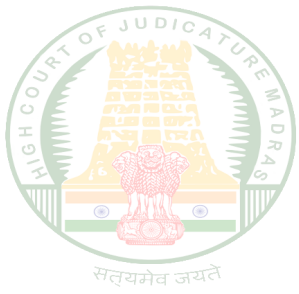
8. The learned counsel appearing for the appellant / Plaintiff would submit that the Plaintiff filed the Suit for the relief of recovery of money based on the Promissory Note and also examined attesting witnesses and



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thereby, he discharged his initial burden and the defendant totally denied the execution of Promissory Note and passing of consideration and she set up plea that the Suit pronote is a forged one due to the enmity between the Plaintiff's in-law and the defendant in respect of the Civil suit. Therefore, the defendant has to prove the above said enmity.

9. The evidence of PW1 to PW3 are natural and cogent and they proved the borrowal of money by the defendant and the passing of consideration. Therefore, the trial Court has correctly appreciated the evidences and decreed the Suit. However, the First Appellate Court, on conjecture and surmises, allowed the appeal and dismissed the Suit by holding that there is a Civil Suit pending between the parties, while so, how the amount could be paid by the Plaintiff. The Plaintiff discharged his initial burden and the defendant failed to rebut the evidence adduced on the side of Plaintiff by adducing contra evidence and therefore, the decree and judgment passed by the First Appellate Court is liable to be set aside and the judgment and decree passed by the trial Court is to be restored by allowing this second appeal.



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10. The learned counsel appearing for the respondent / defendant

would submit that the Plaintiff filed the Suit for recovery of money as against the defendant. The Plaintiff has not even issued any demand notice prior to the Suit. There was an enmity between the Plaintiff's in-law and the defendant, even prior to the date of filing of the Suit in respect of the pathway and now the Suit is filed at the instigation of the in-law of the Plaintiff by creating a forged Promissory Note. The Plaintiff examined PW1 to PW3 and the evidences of PW1 to PW3 are contradict to each other and they are not trustworthy. Per contra, the defendant side witness DW1 has categorically deposed about the enmity between the parties and pending Suits and the defendant had no necessity to borrow such huge amount from the Plaintiff and she had sufficient funds in her joint account along with her son and therefore, she discharged her burden and the Plaintiff failed to prove his case. Further, the trial Court, without appreciating the evidence in a proper perspective manner, has erroneously decreed the Suit. Therefore, the defendant preferred an appeal and the First Appellate Court correctly applied the law, appreciated the evidence, allowed the appeal and dismissed the Suit filed by the Plaintiff. Particularly, the First Appellate Court has recorded that Ex.A.1, Promissory Note, was created later and there are differences between the two signatures

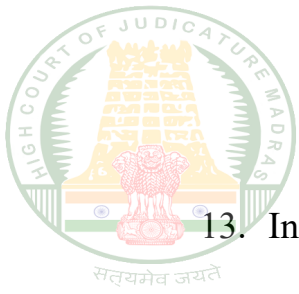


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found in the Ex.P.1, Promissory Note and the Plaintiff himself admitted the dispute pending between the parties from the year 2005 and therefore, correctly came to a conclusion and the Suit also filed at the fag end of limitation period. Therefore, the First Appellate Court correctly allowed the appeal and dismissed the Suit and the second appeal is liable to be dismissed.

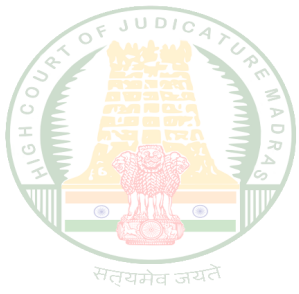
11. This Court heard both sides and perused the entire materials available on record.

12. In this case, the Plaintiff filed the Suit as against the defendant, based on a Promissory Note. According to the Plaintiff, the defendant borrowed money on 05.12.2003 to the tune of Rs.1 lakh agreeing to repay the same with interest at the rate of Rs.2/- per hundred per month and also executed a Promissory Note and thereafter, she did not repay the amount. Therefore, the Plaintiff filed the Suit. The defendant denied the execution of the Promissory Note and passing of consideration and also the alleged borrowal of money. Therefore, it is the duty of the Plaintiff to prove his case by examining sufficient witnesses.



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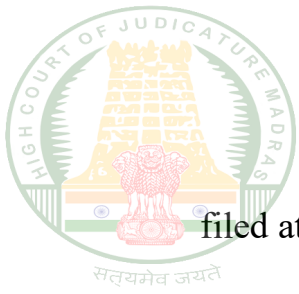
13. In order to prove the case of the Plaintiff, he examined PW1 to PW3 and marked Ex.A.1, Promissory Note. PW1 is the Plaintiff and PW2 and PW3 are the attesting witnesses. The attesting witnesses have deposed before the trial Court that they stood as sureties to the money borrowed by the defendant. The trial Court decreed the Suit holding that merely the witnesses referred that they stood as sureties, it cannot affect the case of the Plaintiff and the Plaintiff proved the execution of Promissory Note. The defendant pleaded about the enmity between the parties due to a Civil case, but the trial Court failed to appreciate the evidence of the defendant and not even discussed about the evidence adduced by the defendant. But the First Appellate Court after seeing the Promissory Note, found that there are differences between the two signatures found on the Stamp and under the Stamp and PW1 admitted that there are criminal cases pending between the defendant and one Dhanamma before the Judicial Magistrate Court, Krishnagiri from the year 2005 and the said Dhanamma is a close relative of the Plaintiff and there is a dispute between the in-law of the Plaintiff and the defendant from the year 2001 and the same was also admitted by PW1. While so, how the Plaintiff paid money to the defendant has to be explained by the Plaintiff.



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14. Further the Plaintiff stated that initially he had only Rs.70,000/-

and thereafter, he sold his sheep and through that amount, he paid loan to the Plaintiff. But he was unable to say about the quantum of money through sale of sheep. The Plaintiff failed to take steps for sending the Pronote for expert opinion and both the witnesses stated that they signed as sureties. Once the defendant denied the signatures found in the Pronote, it is for the Plaintiff to prove the same. Though the Plaintiff examined witnesses, the evidences are not cogent. PW2 in his cross examination stated that as requested by the defendant, he signed as surety for the loan and PW3 also stated that he signed as surety. Both the attesting witnesses have categorically stated that they signed as sureties for the loan. Were the PW2 and PW3 present during the alleged money transactions, if so, they would have stated that they signed as witnesses. Therefore, on a careful perusal of evidences of PW1 to PW3, and the surrounding circumstances, it is clear that there is no chance to lend money by the Plaintiff to the defendant. When the disputes are pending between the parties from the year 2001, there is no chance to pay money by the Plaintiff to the defendant. Further the Plaintiff has not even issued notice to the defendant, prior to the Suit and no pleadings about any demand made by the Plaintiff to repay the money. It is pertinent to note that the Suit was

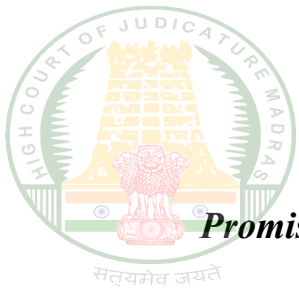


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filed at the fag end of the limitation period. Therefore, the above said conduct of the Plaintiff would create doubt over the genuineness of the Plaintiff's claim.

15. Normally, if any money transaction between the parties, they use to demand the borrower to repay the money and they use to issue Pre-Suit notice, but in this case, no notice was issued and no evidence that the Plaintiff demanded the defendant to repay the Suit money. It is true that Pre-Suit notice is not mandatory, but where there is a usual practice to send notice, deviating from the usual practice creates doubt over the genuineness of the claim. Moreover, from the evidence of DW1 and Ex.B3, it is revealed that the defendant had sufficient money in her joint account along with her son. Therefore, the defendant has probabilized her case through sufficient evidence, but the Plaintiff has failed to prove the alleged borrowal of money and execution of Promissory Note by the defendant in accordance with law. Therefore, the First Appellate Court has correctly allowed the appeal.

16. As far as the substantial question of law that *When the Plaintiff has discharged his initial burden to prove the execution of the Suit*



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Promissory Note by examining the attestors, the defendant failed to

discharge the burden in this regard by letting rebuttal evidence, Whether the Lower Appellate Court is correct in accepting the defense of the defendant and dismissing the Suit filed by the Plaintiff is concerned, the Plaintiff has examined the attesting witnesses as PW2 and PW3 and they have deposed that they stood as sureties for the money borrowed by the defendant. There is vast difference between 'sureties' and 'attesting witnesses'. When the defendant categorically denied the examination of Promissory Note, it is the duty of the Plaintiff to prove the execution of Promissory Note and passing of consideration. The evidence of PW2 and PW3 are not cogent and not sufficient to prove the alleged execution of the Promissory Note. While so, it is the duty of the Plaintiff to take steps to prove the Promissory Note through an expert by comparing the signatures. But no steps were taken by the Plaintiff. Therefore, the First Appellate Court is right in holding that the Plaintiff has not discharged his initial burden to prove the execution of the Suit Promissory Note and mere examination of attestors, is not sufficient, when their evidences are not cogent and creates doubt. Per contra, the defendant has discharged her burden by letting rebuttal evidence and the First Appellate Court has correctly accepted the defendant's side evidences and



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dismissed the Suit.

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17. In view of the above discussions and answer to the Substantial Question of law, this Court is of the opinion that the *second appeal has no merits and deserves to be dismissed.*

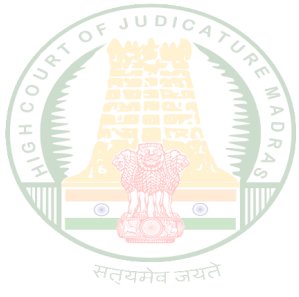
18. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

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Index : Yes/No
Speaking Order : Yes/No
mjs

To

1. The Principal District Judge, Krishnagiri.
2. The Additional Special Judge, Krishnagiri.



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