Case Citation: (2026) ibclaw.in 5203 HC

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 996 of 2015 &
M.P.No.1 of 2015

T.P.Kumaravel
S/o.T.A.Palanisamy
Sanankadu, Thiruvengadapalayam,
Karumandichellipalayam Villge, Perundurai
Taluk, Erode District.

..Appellant(s)

Vs

T.K.Rangasamy
S/o.Krishnasamy Gounder,
3-A, Jeeva Street, Thiruvengadapalayam,
Karumandichellipalayam Village,
Perundurai Taluk, Erode District.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure to set aside the Judgment and Decree dated 22.07.2015 made in A.S.No.70 of 2014 on the file of I Additional District Court, Erode reversing the Judgment and decree dated 03.04.2014 made in O.S.No.149 of 2010 on the file of Subordinate Court at Perundurai

For Appellant(s): Mr.Venkatasubban for
M/s.Sarvabhauman Associates

For Respondent(s): Mr.C.Ramaraj for
Mr.M.Guruprasad

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed by the Additional District Court, Erode in A.S.No.70 of 2014 dated 22.07.2015

2. The appellant is the defendant in the main suit. The respondent herein has filed the suit in O.S.No.149 of 2010 as against the appellant herein on the file of Sub Judge, Perundurai, Erode for the relief of recovery of money and the same was dismissed on 03.04.2014. Aggrieved by the said Decree and Judgment, the plaintiff has preferred the above said Appeal Suit and the same was allowed by setting aside the Decree and Judgment passed by the trial court and the Original Suit has been decreed. Aggrieved by the said Decree and Judgment passed by the First Appellate Court, the present Second Appeal has been filed by the appellant / defendant.

3. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendant, as referred before the trial court.

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

4. The case of the plaintiff before the trial court is that on 31.12.2006, the defendant, borrowed a sum of Rs.4,50,000/- from the plaintiff and executed promissory note to repay the same with the interest of Rs.1/- per Rs.100/- per month, inspite of repeated requests and demands made by the plaintiff, the defendant failed to repay the money, therefore, filed the suit.

5. The case of the defendant before the trial court is that the defendant never borrowed a sum of Rs.4,50,000/- on 31.12.2006, as alleged in the plaint and there is no necessity to borrow such a huge amount with the plaintiff and the plaintiff has created the promissory note, the signature found in the promissory note is not that of the defendant. There are disputes between the defendant and one Ramasamy and the suit is filed through the said Ramasamy by using the plaintiff as tool, therefore the plaintiff has not approached the Court with clean hands. Already there is a suit in O.S.No.10 of 2010 is pending between the plaintiff and the said Ramasamy, therefore, the suit is liable to be dismissed.

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

6. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial:-

"1. Whether the plaintiff executed promissory note dated 31.12.2006, after receipt of consideration?

2. Whether the plaintiff is entitled to the relief as prayed for in the plaint?

3. To what other reliefs the plaintiff is entitled to?"

Before the trial court, on the side of the plaintiff, P.Ws.1 to 4 were examined and marked exhibits Ex.A.1. On the side of the defendant, D.W.1 was examined and marked Exs.B.1 and B.2 and court documents Ex.C.1 and C.2 also were marked. After analysing evidences adduced on both sides, the trial court dismissed the suit.

7. Aggrieved by the said decree and judgment, the plaintiff has preferred an Appeal in A.S.No.10 of 2014 on the file of the First Additional District Judge, Erode on various grounds. The First Appellate Court has framed the following point for determination:-

"*Whether situation is warranted to interfere with the findings of the trial Court."*

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

Thereafter, the First Appellate Court allowed the appeal suit by setting aside the Judgment and Decree passed by the trial court and decreed the suit.

8. As against the Decree and Judgment passed by the First Appellate Court, the defendant has preferred this Second Appeal. This Court at the time of admitting the Second Appeal, on 30.10.2015 framed the following Substantial Question of Law:-

"*Whether the Lower Appellate Court is right in overlooking Section 118(a) of the Negotiable Instruments Act especially when the appellant had discharged his onus by proving that no consideration has passed under Ex.A-1 – Pronote?*"

9. The learned counsel appearing for the appellant would submit that the respondent / plaintiff has filed the suit for recovery of money, based on the promissory note as against the appellant / defendant. The appellant / defendant denied the execution, passing of consideration through the suit promissory note. The appellant has marked the promissory note as Ex.A.1 and examined P.Ws.1 to 4. P.W.1 is the

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

plaintiff and P.Ws.2 and 3 are attesting witnesses and all the attesting witnesses and the scribe are relatives to the plaintiff and thereby they supported the case of the plaintiff and the defendant himself examined D.W.1 and also marked Ex.B.1 and B.2. The trial court after elaborate discussion, dismissed the suit by holding that no consideration has been passed through Ex.A.1 and the plaintiff failed to prove the consideration and thereby dismissed the suit. However, the First Appellate Court without considering the evidences in a proper perspective, merely based on the expert opinion, came to a conclusion that the promissory note was executed by the defendant and decreed the suit by placing the burden on the respondent. The First Appellate Court failed to consider the evidences adduced by the defendant and promissory note and wrongly placed burden on the defendant, when the plaintiff himself failed to discharge initial burden, the findings of the First Appellate Court are perverse and same are liable to be set aside.

10. The learned counsel appearing for the respondent / plaintiff submitted that the respondent / plaintiff filed the suit for recovery of money as against the appellant / defendant based on the promissory

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

note. The plaintiff has examined witnesses, P.Ws.1 to 4 and marked exhibits Ex.A.1 and finger print expert report has been marked as Exs.C.1 and C.2 and as per finger print expert, the defendant put his thumb impression in the suit promissory note, thereby the plaintiff has proved his initial burden and presumption under Section 118 of Negotiable Instruments Act is available to the respondent/ plaintiff. The appellant / defendant totally denied the execution and passing of consideration, however, the finger print opinion categorically proved the execution of the promissory note and thereby the defendant has to rebut the evidence and there is no proper evidence adduced by the plaintiff, therefore, the appellant / defendant has failed to discharge his burden under Section 118 of Evidence Act, however, the trial court after accepting the signature found in the execution of promissory note, placing the burden on the plaintiff that the plaintiff failed to prove the passing of consideration, dismissed the suit.

10.1. However, the First Appellate Court after analysing the evidences, correctly set aside the judgment and decree passed by the trial court and decreed the suit, as the plaintiff proved his case through

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

proper evidence, therefore, the first appellate court has correctly appreciated the facts, law and the evidences adduced on both sides and decreed the suit by setting aside the Decree and Judgment passed by the trial court. Once the plaintiff established the execution of promissory note and also proved the passing of consideration through sufficient evidence, he discharged his initial burden and presumption under Section 118 is available to the plaintiff, whereas the defendant failed to rebut the evidences on the plaintiff's side, the First Appellate Court has rightly decreed the suit, therefore, the Second Appeal is liable to be dismissed.

11. Heard the submissions of the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the entire documents placed on record.

12. In this case, the plaintiff filed the suit for recovery of money as against the defendant. According to the plaintiff, the defendant borrowed money of Rs.4,50,000/- [Rupees Four Lakhs and fifty thousand only] on 31.12.2006 and executed promissory note agreeing to repay the same

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

with interest at the rate of Rs.1 per Rs.100 per month and thereafter, the defendant failed to repay the money. The defendant totally denied the receipt payable of money and execution of promissory note, therefore, the plaintiff has to prove the case. In order to prove the case of the plaintiff, witnesses, P.Ws.1 to 4 were examined.

12.1. P.Ws 1 to 3 categorically deposed about the execution of promissory note and passing of consideration and P.W.4 is the expert, who compared the thumb impression of the defendant found in the Ex.A.1 and to that effect also produced Exs.C.1 and C.2 and as per evidence of P.W.4 and documents, Exs.C1 and C2, the thumb impression found in the promissory note belongs to the defendant, therefore, the plaintiff has proved his case through sufficient evidence and discharged his initial burden and presumption under Section 118 of Negotiable Instruments Act, is in favour of the plaintiff, whereas the defendant was examined as D.W.1 and marked Exhibits B.1 and B.2. The oral evidence and documents marked on the defendant's side are not sufficient to rebut the evidence of the plaintiff's side and the defendant failed to discharge his burden under Section 118 of

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

Negotiable Instruments Act and mere marking of plaint and written statement of the previous suit between the defendant and one Ramasamy, are not sufficient, to rebut the plaintiff side evidences.

12.2. Further, the defendant has not examined any other witness to prove his defence, whereas the plaintiff has established and proved his case that the defendant borrowed money and executed promissory note, therefore, the First Appellate Court has correctly analysed the evidences and decreed the suit, whereas the trial court failed to consider the plaintiff's side evidences and erroneously dismissed the suit even after rendering findings that the promissory note has been executed and wrongly placed the burden on the plaintiff to prove the consideration. The plaintiff side evidences clearly proved the consideration and execution of promissory note, inspite of that, the trial court erroneously dismissed the suit, as consideration has not been proved. The first appellate court correctly allowed the appeal suit by setting aside the Judgment and Decree passed by the trial court.

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

13. The learned counsel for the appellant relied on the following judgments of this Court:-

1. V.K.Siddha Padayachi Vs. Indian Bank Branch at Shevapet, Salem by its District Manager, Coimbatore and another reported in 2000 (I) CTC 654

2. Ranganaki Vs. Kasinatha Padayachi and another reported in 2011 (3) MWN (Civil) 611

13.1. On a careful perusal of the above said judgments, it is clear that rebuttable of the presumption arising under Section 118(1) of Negotiable Instruments Act can be by presumption of law or fact and not necessarily by direct evidence and once the defendant completely denied the execution of promissory note and liability shifting burden of proof upon the defendant is illegally impermissible and the plaintiff has to prove the execution of promissory note.

13.2. In the case on hand, the plaintiff examined witnesses P.Ws.1 to 4 and through the said evidences clearly proved the borrowal of money by the defendant and the execution of promissory note and thereby the plaintiff discharged his initial burden under Section 118(a) of Negotiable Instruments Act and therefore, the defendant has to rebut the

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

presumption and there is no proper evidence adduced to rebut the presumption under Section 118(a) of Negotiable Instruments Act. Therefore, the above said case laws are no way helpful to decide the case in favour of the appellant.

14. Further, the learned counsel appearing for appellant also relied on the Judgment of the **Hon'ble Supreme Court reported in (2011) 4 Supreme Court Cases 726 [Tatipamula Naga Raju Vs. Pattem Padmavathi]**

14.1. On a careful perusal of the above judgment it is clear that the same will not be applicable to the facts and circumstances of the present case, as the facts of the case are distinguished.

15. On the other hand, the learned counsel appearing for the respondent relied on the following Judgments of this Court:-

1. 2026 Supreme [Mad] 628 [K.Sundararaj Vs. K.Periyasamy]

2. 2025 Supreme [Mad] 3533 [M.C.Ravikumar Vs. V.Sukuna Venkatesh]

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

3. 2015 (2) MWN (Civil) 264 [R.Pandyan and Another Vs. M.Palgani]

4. SA 854 of 2004 dated 13.04.2022 [Perumal Vs. Seniappan]

15.1. On a careful perusal of the above said judgments, it is clear that execution of the promissory note establishes legal presumption of consideration shifting burden of proof to the defendant, to disprove it, the presumption under Section 118 is rebuttable the burden of proving due execution is fixed permanently on the plaintiff, once due execution is proved, disproving the same also is permanently fixed on the defendant and if the defendant fails to disprove, the presumption under Section 118 arises.

15.2. In the case on hand also, the plaintiff proved the execution of promissory note and also passing of consideration, therefore, the presumption is available to the plaintiff and the defendant failed to rebut the presumption.

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

16. As far as Substantial Question of Law is concerned, by examining the attesting witnesses, and as per report of the finger print expert, the plaintiff proved the execution of Ex.A.1, Promissory Note and passing of consideration, thereby the presumption under Section 118 of Negotiable Instruments Act is in favour of the plaintiff, however, in order to rebut the above said presumption, no sufficient evidence has been adduced by the defendant and therefore, the lower appellate court is right in decreeing the suit and not over looking the Section 118(a) of Negotiable Instruments Act and the defendant failed to rebut the presumption under Section 118 of Negotiable Instruments Act.

17. In the result, the present Second Appeal has no merits and deserves to be dismissed. Accordingly, the Second Appeal is dismissed. The Judgment and Decree passed by the First Appellate Court in A.S.No.70 of 2014 dated 22.07.2015 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

18-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssd

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

To

1. The I Additional District Judge, Erode

2. The Subordinate Judge, Perundurai

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in

WEB COPY

P.DHANABAL, J.

ssd

SA No. 996 of 2015

18-08-2026

https://www.mhc.tn.gov.in/judis

IBC Laws | www.ibclaw.in