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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-09-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 983 of 2004

N.Chandrasekaran,s/o.Late
K.Narayanan Nair,Kamaraj Road
Uppilipalayam(po),
Coimbatore

..Appellant(s)

Vs

R.Velusamy,chowkidar,
P&t Civil Sub Division(stores)
O/o.The Assistant Engineer(civthadagam Road,
Coimbatore

..Respondent(s)

Prayer: This Second Appeal is filed under section 100 of CPC against the Judgment and decree of the learned II Additional District Judge, Coimbatore in A.S.No.86 of 1995 dated 05.03.1996 confirming the Judgment and Decree of the learned II Additional District Munsif, Coimbatore in O.S.No.687 of 1992 dated 10.01.1995.

For Appellant(s): M/s.V.S.Jagadeesan

For Respondent(s): M/s.P.Mathivanan

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JUDGMENT

This second appeal has been preferred as against the Judgment and decree passed by the II Additional District Judge, Coimbatore in A.S.No.86 of 1995 dated 05.03.1996.

2. The appellant is the plaintiff who filed a suit for recovery of money as against the respondent herein in O.S.No.687 of 1992 on the file of II Additional District Munsif, Coimbatore and the said suit was dismissed on 10.01.1995. Aggrieved by the said decree and Judgment the plaintiff has preferred an appeal before the learned II Additional District Judge, Coimbatore in A.S.No.86 of 1995 and the said appeal was also dismissed on 05.03.1996 by confirming the decree and Judgment passed by the Trial Court. Aggrieved by the same the appellant / Plaintiff has filed this second appeal.

3. The ***case of the plaintiff*** before the Trial Court is that the defendant borrowed a sum of Rs.7,500/- from the plaintiff on 21.03.1989 and agreed to repay the same with 36% interest per annum and executed a promissory note on 21.03.1989. Thereafter, the defendant has not repaid the money and thereby the plaintiff issued a legal notice on 08.06.1991. After receipt of the said notice the defendant neither replied nor repaid the money. Hence the plaintiff sent two notices dated 25.06.1991 and 16.07.1991 and also sent a telegram on 12.07.1991. The defendant after receipt of the notices and telegram has not

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replied and repaid the amount. Therefore, the plaintiff filed a suit for recovery of money.

4. The ***averments of the written statement*** filed by the defendant are that the defendant denied the borrowal of money and also the execution of promissory note on 21.03.1989. The defendant has sent a reply on 14.06.1991 for the notice issued by the plaintiff on 08.06.1991. Since the plaintiff has not sent any rejoinder for the reply dated 14.06.1991, the defendant has not sent any reply for the notice dated 24.06.1991 and the telegram dated 12.07.1991. The notice dated 16.07.1991 was issued not only to the defendant but for his higher authorities and the same was also replied on 24.07.1991. There was a money transaction between one Parameshwaran and this defendant and there was a due of Rs.750/- to the said Parameshwaran, by this defendant thereby there was a dispute between them. Thereafter, the defendant came to know that the plaintiff is none other than the brother of the said Parameshwaran. At the instigation of the Parameshwaran only the suit has been filed by the plaintiff. Therefore, the suit was filed with false allegations and the same is not maintainable either in law or on facts. Therefore, the said suit is liable to be dismissed.

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5.Based on the above said pleadings and after hearing both sides, the Trial Court has made the following ***issues***:

a. Whether the defendant borrowed a sum of Rs.7,500/- on 21.03.1989 as loan from the plaintiff or not?

b. Whether the defendant executed a promissory note in favour of the plaintiff.

c. Whether the plaintiff is entitled to money decree and to what other relief the plaintiff is entitled.

6. Before the Trial Court on the side of the plaintiff they examined P.Ws.1 to 3 and marked documents Exs.A1 to A3. On the side of the defendant D.Ws.1 and 2 were examined and marked documents Exs.B1 to B3.

7. After considering the evidences adduced on both sides, the Trial Court dismissed the suit on the ground that there was a material alteration in the said promissory note and the recitals of the promissory note was filled up with two different inks and the plaintiff failed to produce the account note books and thereby dismissed the suit. Aggrieved by the said decree and Judgment the plaintiff has preferred first appeal in A.S.No.86 of 1995 on the file of II Additional District Judge, Coimbatore on various grounds. The First Appellate Court has framed the following ***points for determination***:

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a. Whether the respondent/defendant borrowed money from the appellant/plaintiff a sum of Rs.7,500/- on 21.03.1989 and executed a promissory note and what other relief the appellant is entitled to.

8. Thereafter, the First Appellate Court after analysing the evidence adduced on both sides dismissed the appeal and confirmed the decree and Judgment passed by the Trial Court on the ground that there is a material alteration in the said promissory note and the promissory note has been filled in two different inks and also in the stamp papers, the letters of "2" and "ஙூ" were hand written and the stamp papers have been affixed on those letters and also in the promissory note. The letters in Tamil "ஙூ" was hand written and the number "2" was also hand written on the revenue stamp and therefore dismissed the appeal and confirmed the decree and Judgment passed by the Trial Court. Aggrieved by the said decree and Judgment the present second appeal has been filed by the appellant/plaintiff.

9. This Court at the time of admitting the second appeal has framed the following ***substantial questions of law***:

a. Whether the Courts below have considered the validity of Ex.A.1. (promissory note)?

b. Whether the Courts below have considered Section 118 of the Negotiable Instruments Act.

c. Whether the Courts below have considered the oral evidence of both the parties?

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

11. The learned counsel for the appellant would submit the defendant borrowed a sum of Rs.7,500/- on 21.0.3.1989 and on the same day executed a promissory note and agreed to pay interest at the rate of 36% interest p.a and thereafter he did not repay the same. Therefore, the plaintiff issued notices two times, inspite of the same, the defendant failed to repay the money. Thereafter, the plaintiff filed a suit and in order to prove the case of the plaintiff i.e the execution of promissory note and passing of consideration through the promissory note he examined P.Ws.1 to 3 and marked documents Exs.A1 to A3**.** However, the Courts below failed to consider the evidences on the side of the plaintiff in proper perspective and dismissed the suit on the ground that there is a material alteration and the promissory note was filled with two different inks and erroneously dismissed the suit. Therefore, he prays to set aside the decree and judgment passed by the Courts below and allow this second appeal.

12. The learned counsel for the respondent would submits that the defendant never borrowed money from the plaintiff and not executed any promissory note in favour of the plaintiff. In fact there was a money transaction between one Parameshwaran and the defendant and there was a money dispute between them. The plaintiff is none other than the brother of the

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Parameshwaran, who instructed the plaintiff to file the suit and thereby there is no passing of consideration and the promissory note was not executed by the defendant. The Courts below have correctly analised the evidences and fairly came to a conclusion that the plaintiff failed to prove his case and filed the suit at the fag end of the limition period and the plaintiff issued 1st notice and thereafter the same was suitably replied. Again he issued notices, hence the defendant has not sent any reply. In the first notice itself the defendant denied the receipt of money. In spite of that the plaintiff again issued notice. Therefore, his conduct shows that only to harass the defendant, the plaintiff has filed a suit through the promissory note. Therefore, the Courts below have correctly dismissed the suit and there is no substantial question of law involved in this case and the suit is liable to be dismissed.

13. This Court heard both sides and perused the records.

14. In this case, the plaintiff has filed the suit as against the defendant. According to the plaintiff, the defendant had borrowed a sum of Rs.7,500/- from the plaintiff on 21.03.1989 and agreed to repay the money with 36% interest p.a and thereafter the defendant failed to repay the money. Therefore, the plaintiff issued notices and the defendant failed to repay the money and thereby the plaintiff has filed a suit.

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15. The defendant denied the receipt of money and execution of promissory note. According to the defendant there was a money transaction between Parameshwaran and this defendant and there was a due of Rs.750/- to the said Parameshwaran, thereby there was a money dispute between them. The plaintiff is none other the brother of the said Parameshwaran and only at the instigation of the Parameshwaran the suit has been filed by the plaintiff with false allegations.

16. Since the defendant denied the execution of promissory note, the plaintiff has to prove his case. In order to prove the case three witnesses PW1 to PW3 were examined on the side of the plaintiff and 3 documents, Ex.A.1 to Ex.A.3 were marked. This Court has also perused the entire records. The promissory note was marked as Ex.A1, which reveals that the signature found in the stamp papers and the numerical letters have been written in dark blue ink and all other contents of the promissory note have been written in light blue ink. The numerical letters in the bottom of the promissory note initially was written as 1,500 and the same has been altered as 7,500 in the light blue ink and the same can be seen thorough the naked eye. There is no explanation for the above said alteration. Since the letters 1,500 was written as 7,500 it is a material alteration and the plaintiff has to explain about the same but no proper explanation has been explained by the plaintiff. Further two revenue stamps have been affixed in the promissory note. In the first stamp affixed in the

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promissory note the letters have been written as Tamil letter while writing as (ரூபாய் ஏழாயிரத்து ஐநூறு மட்டும்), the letter 'ம்' has been affixed in the stamp. Therefore, it is clear that the above said words in tamil (ரூபாய் ஏழாயிரத்து ஐநூறு மட்டும்) was written after affixing revenue stamp in the promissory note. The said factum shows that in the Promissory Note, signatures and the quantum of money Rs.1,500/- was written earlier in dark blue ink and other contents were written later in light blue ink. Thereafter, the letters 1500/- which was written in dark blue ink, was altered with light blue ink as 7,500/-. Therefore, the said alteration is a material alteration.

17. The theory of the defendant is that he has not executed promissory note and the plaintiff has created the promissory note for the purpose of the suit through the Parameshwaran. The plaintiff is not in the position to explain about the material alteration and the above said discrepancies on the suit promissory note. Hence the defence of the defendant is probabilized and the plaintiff failed to prove the due execution of promissory note and passing of consideration through the said promissory note. In this context the Courts below have appreciated the evidences and based on the evidences, rendered concurrent findings that the plaintiff failed to prove his case and dismissed the suit.

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18. The learned counsel for the respondent produced the Judgment of this Court in ***A. Thirumoorthy & another Vs. S.Bastin*** reported in 2***014 (5) law weekly 887.***

On a careful perusal of the above judgment it is clear that the burden of proof lies upon the holder of instrument to establish that there is no alteration has been made therein. If the holder fails to discharge the said burden, the effect of an alteration made in a negotiable instrument, particularly where such alteration changes the legal character of the instrument the same is governed under section 87 of the Negotiable Instruments Act. In the case on hand also the numbers 1,500 was altered to 7,500 and thereby the alteration would change the legal character of the instrument. Therefore, there is a material alteration and thereby the Ex.A.1 is void.

19. Therefore, the Courts below have correctly considered the validity of Ex.A1/Promissory note based on the available evidence and the plaintiff failed to prove due execution of the promissory note and thereby the presumption under section 118 of the Negotiable Instruments is not available to the plaintiff. Though the plaintiff side witness and evidences have deposed about the execution and passing of consideration, there are material alterations in the promissory note and there is no explanation on the side of the plaintiff as about the material alterations. P.W.2 is the scribe of the promissory note and he

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deposed that he only written the contents of the documents and after completion of the writing in the document, the revenue stamp was affixed and they used a single pen for entire promissory note. P.W.3 in his evidence stated that the promissory note was executed by one Paramashewaran and the said Paramashewaran and the witness and the defendants have signed in the same pen and he also stated that in the promissory note the money was mentioned as Rs.1,500/- and he has seen that only Rs/-1,500 and after the receipt of money only, he signed in the promissory note and he himself stated that it is not correct to state that on 21.03.1989 a sum of Rs.7,500/- was paid to the defendant by the plaintiff. Therefore, the evidences of the plaintiff side have been considered by the Courts below and rendered concurrent findings. Therefore, the said concurrent findings need not be interfered without any perversity or illegality in the judgment passed by the Courts below. Therefore, the substantial question of law are answered as against the appellants and in favour of the respondents.

20. In view of the above said discussions, this Court is of the opinion that this second appeal has no merits and liable to be dismissed. Accordingly this second appeal is dismissed and the Judgment and decree of the learned II Additional District Judge, Coimbatore in A.S.No.86 of 1995 dated 05.03.1996 is confirmed. No order as to costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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P.DHANABAL, J.

SMN

To.

1. The II Additional District Judge, Coimbatore

2. The II Additional District Munsif, Coimbatore

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