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C.S.No.834 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2023

Delivered on : 13.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

C.S.No.834 of 2012

Shanthilal Kothari

...Plaintiffs

Vs

1.M.Subadra,
Proprietrix,
R.M.S. Petroleum Products,
Perambalur Taluk,
Perambalur - 621 212.

2.M.Subdra

3.R.Mohanasundaram
...Defendants

This Civil Suit is preferred under Order XXXVII Rule 1 and 2 of the Original Side Rules read with Order XXXIV Rule 1 of the Code of Civil Procedure praying that:

- (a) directing the defendants to pay a sum of Rs.1,00,27,123/- joint and severally with future interest at 36% per annum as may be accrued between the date of the Plaint and the date of actual payment and also the costs within the stipulated time fixed by this Court, in default, by selling the mortgaged property situate at 45, Elambalur Village,



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Perambalur Taluk, bearing Old S.No.58/1B, New S.No.58/1B1 and 1B2, measuring an extent of 0.13.5 hectares equivalent to 33 cents and bearing Old S.No.58/3, New S.No.58/3A1 and 3A2, measuring an extent of 1.66 acres situate within the Registration Sub-District of Perambalur and Registration District of Perambalur, morefully described in the Plaint schedule and the proceeds after defraying the expenses of the sale applied to meet the costs and the Principal and Interest,

- (b) if such proceeds shall not be sufficient for the payment in full of such amount, the defendants may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of 6% per annum until realization,
- (c) for that purpose all proper directions may be given and accounts taken by the Court,
- (d) grant such further or other reliefs,
- (e) costs of the suit.

For Plaintiffs : M/s.Shah & Shah

For Defendants : Mr.E.D.Sethupathi
for D1 to D3

JUDGMENT

This Civil Suit has been filed for the following reliefs:

- a) directing the defendants to pay a sum of Rs.1,00,27,123/- joint and severally with future interest at 36% per annum as may be accrued between the date of the Plaint and the date of actual payment and also the costs within the stipulated time fixed by this Court, in default, by



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selling the mortgaged property situate at 45, Elambalur Village, Perambalur Taluk, bearing Old S.No.58/1B, New S.No.58/1B1 and 1B2, measuring an extent of 0.13.5 hectares equivalent to 33 cents and bearing Old S.No.58/3, New S.No.58/3A1 and 3A2, measuring an extent of 1.66 acres situate within the Registration Sub District of Perambalur and Registration District of Perambalur, morefully described in the Plaint schedule and the proceeds after defraying the expenses of the sale applied to meet the costs and the Principal and Interest,

b)if such proceeds shall not be sufficient for the payment in full of such amount, the defendants may be ordered to pay to the plaintiff the amount of the deficiency with interest thereon at the rate of 6% per annum until realization,

c)for that purpose all proper directions may be given and accounts taken by the Court,

d)grant such further or other reliefs,

e)costs of the suit.”

2.The averments found in the Plaint, in brief, are as follows:

The plaintiff is a business man and financier. The 2nd defendant is the wife of 3rd defendant. The 2nd defendant who is the sole proprietrix of R.M.S. Petroleum Products (Dealers-Essar Oil Limited) along with the 3rd



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defendant approached the plaintiff for financial assistance to tide over the financial crisis faced by R.M.S.Petroleum Products (hereinafter referred to as the Company). The 2nd and 3rd defendants represented to the plaintiff that they were confronted certain recovery with proceedings under the provisions of the SARFAESI Act before the Debts Recovery Tribunal-III, Chennai. With a view to avoid the Sale of the properties, they wanted to settle the claims of various third party creditors, who had offered their documents as security to enable the 2nd and 3rd defendants to avail financial assistance from the Nationalised Banks, since they have been pestering the 2nd and 3rd defendants to settle their claims and redeem their properties and the documents deposited with the Nationalised Banks.

3. Therefore, the 1st defendant along with the defendants 2 and 3 deposited the original Title Deed belonging to the 2nd defendant executing the Promissory Notes and Cheques with the plaintiff at Chennai. The defendants approached the plaintiff for financial assistance as follows:

Sl.No	Date	Details of documents deposited with the plaintiff
1.	03.02.2010	Promissory Note executed by the 2nd defendant on behalf of the 1st defendant for Rs.5,00,000/-
2.	03.02.2010	Cheque No.587759 issued by the 1st defendant in favour of the plaintiff for Rs.5,00,000/-
3.	03.02.2002	Promissory Note executed by the 2nd defendant on behalf of the 1st defendant for Rs.5,00,000/-



Sl.No	Date	Details of documents deposited with the plaintiff
4.	03.02.2010	Cheque No.587760 issued by the 1st defendant in favour of the plaintiff for Rs.5,00,000/-
5.	30.04.2010	Promissory Note executed by the 2nd defendant on behalf of the 1st defendant for Rs.20,00,000/-
6.	30.04.2010	Cheque No.587765 issued by the 1st defendant in favour of the plaintiff for Rs.20,00,000/-`
7.	14.06.2010	Promissory Note executed by the 2nd defendant on behalf of the 1st defendant for Rs.12,00,000/-
8.	14.04.2010	Cheque No.587770 issued by the 1st defendant in favour of the plaintiff for Rs.5,00,000/-
9.	27.07.2010	Promissory Note executed by the 2nd defendant on behalf of the 1st defendant for Rs.20,00,000/-
10.	-	Cheque No.587772 issued by the 1st defendant in favour of the plaintiff for Rs.20,00,000/-
11.	31.01.2005	Sale Deed in favour of the 2nd defendant
12.	20.06.2011	Encumbrance Certificate

4.The 2nd defendant, for the due repayment of the Principal as well as Interest, deposited the original document dated 31.01.2005 and registered as Document No.222/2005 in the office of the Sub Registrar, Perambalur, with an intention to create an equitable mortgage in favour of the plaintiff for the amounts borrowed and to be advanced in future by the plaintiff. Subsequently, it appears that without reference to the plaintiff, the 2nd defendant has created a Settlement Deed in favour of the 3rd defendant on 16.09.2010, when the original title Deeds of the properties are with the



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plaintiff. The purported Settlement Deed executed by the 2nd defendant in favour of her husband, the 3rd defendant, shall not be binding upon the plaintiff or the mortgage created in his favour. As such, the 3rd defendant claims right by virtue of the Settlement Deed in his favour is also bound by the mortgage. If the 3rd defendant or anyone claiming through him creates any security over the property the same shall not bind the plaintiff. Therefore, the defendants are liable to pay the amount borrowed from him, but however, the 2nd defendant has not paid the Principal as well as the Interest. The defendants are liable to pay the following amounts:

Sl.No	Date	Principal Rs.	Rate of interest 24% Rs.	Grand Total Rs.
1.	03.02.2010	5,00,000.00	3,44,548/-	8,44,548/-
2.	03.02.2010	5,00,000.00	3,44,548/-	8,44,548/-
3.	30.04.2010	20,00,000.00	12,65,096/-	32,65,096/-
4.	14.06.2010	12,00,000.00	7,23,561/-	19,23,561/-
5.	27.07.2010	20,00,000.00	11,49,370/-	31,49,370/-
	Total			1,00,27,123/-

5.The 2nd defendant has been requesting the plaintiff not to present the Cheques for encashment and the said Cheques and Promissory Notes are also filed as suit documents along with the Plaint. The plaintiff has cause a search to be made in the Register of Assurances of the Sub-District in which the said



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property is situated and is not aware of any encumbrances on the said property, other than those mentioned, or of any person possession an interest in the said property, other than those who are made parties to the suit. Therefore, the defendants are liable to pay a sum of Rs.62,00,000/- towards Principal and Rs.38,27,123/- towards Interest and in all amounting to Rs.1,00,27,123/-. Hence this suit.

6.The 2nd defendant filed her Written Statement which was adopted by the defendants 1 and 3 are as follows:

The defendants are carrying business in the name and style of "R.M.S. Petroleum Products" which is a dealer of Essar Oil Limited and engaged in the business of retail sales of petroleum products. The plaintiff is doing money lending business and known to the defendants through a family friend. The schedule mentioned property was owned and possessed by the defendants. In the year 2005, the 2nd defendant had settled an extent of 90 cents to her husband, the 3rd defendant, by way of Settlement Deed in Document No.7870/2010 dated 16/09/2010 and she had also raised loan against the above property with the Union Bank of India and due to default in the payment of monthly dues, the said bank initiated SARFAESI Act proceedings against the property. Therefore, the defendants were forced to swipe all her



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jewels, savings and business investments to the tune of Rs.59,00,000/- to release the property from the Bank on 26.04.2010. Since the 2nd defendant had swiped all her saving and business investments she was wedged in a tight financial position. Therefore, she decided to receive money for interest from a private financier for business.

7. Thereafter, the defendants requested the plaintiff to assist financially with a sum of Rs.5,00,000/- for their business rotation. The plaintiff agreed to lend money with interest at the rate of 36% per annum. After obtaining signatures in unfilled five cheques from the defendants, the plaintiff paid Rs.5,00,000/- by way of cash and also obtained a xerox copy of the Sale Deed of the schedule mentioned property from the defendants. When the defendants questioned the plaintiff with regard to the Cheques and Promissory Notes, he replied that he received the same for security purpose which is usual with all the private financier.

8. The defendants stated that they were very regular in paying the interest amount of Rs.15,000/- per month by cash to the plaintiff and he never issued any receipt for the said sum. If the defendants happens to delay the



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interest for a month, the plaintiff will frequently visit their house and collect the interest of that month.

9.In the meantime, the defendants approached the Indian Bank, Ferambalur Branch, for project loan to the tune of Rs.80,00,000/-, they informed the plaintiff about their project loan and assured to pay the entire Principal amount as soon as the loan was granted. The plaintiff informed them that he has good experience in arranging for project loan and he has vide contact with all the Managers of the Bank. The plaintiff came forward to help them in getting the project loan and also persuaded them to give the project reports and all other original documents regarding the project including the original Sale Deed in Document No 222/2005. Believing the words of the plaintiff, the defendant handed over the original Sale Deed and other related papers regarding the project to the plaintiff for processing the project loan.

10.The defendants further stated that in the month of September 2012, the defendants approached the plaintiff with a sum of Rs.2,00,000/- to pay to the plaintiff as part payment along with a sum of Rs.9,000/- towards Interest for the balance sum of Rs.3,00,000/-. To their shock and surprise, the plaintiff refused to receive the part payment and demanded to pay a sum of Rs.1 crore



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as full and final settlement. The defendants were put to shock and surprise on hearing the words of the plaintiff and courteously requested the plaintiff not to demand unlawfully and illegally. The plaintiff drove them from his place with a warning to pay a sum of Rs.1crore or otherwise, the defendants have to face the serious consequences. When the facts are like this, all of a sudden, the defendants received summons from this Court that the plaintiff had filed the suit for recovery of a sum of Rs.1,00,27,123/- and an application for interim injunction. They have not received a sum of Rs.62,00,000/- from the plaintiff but received only a sum of Rs.5,00,000/- from the plaintiff. The defendant have not deposited any original title Deed to the plaintiff for creating equitable mortgage but they have only given the original Sale Deed along with other project papers for processing the project loan with the Bank.

11.The defendants stated that when the facts are like that, the plaintiff had come to this Court with unclean hands and dishonest intention with a forged documents for a fraudulent claim. The plaintiff had filed the blank Promissory Notes signed by the defendant to his wish and will and come to this Court with an illegal claim to enrich him with a story narrated by him and therefore, this suit itself is not maintainable, as the defendants have not executed any Mortgage Deed in favour of the plaintiff or deposited the title



deed of the suit schedule property. The defendants are not liable to pay a sum of Rs.1,00,27,123/- to the plaintiff as claimed but the defendants are liable to pay only a sum of Rs.5,00,000/- being the amount received by the defendants for interest. Hence, this Suit is liable to be dismissed.

12. Based on the above said pleadings, the following issues were framed:

"(1) Whether the suit is maintainable under Law?

(2) Whether the Hon'ble Court has got pecuniary jurisdiction to try this suit?

(3) Whether the equitable mortgage created by the parties is true and valid under Law?

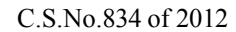
(4) Whether the third defendant was entrusted all documents with plaintiff for obtaining the loan, is it true?

(5) Whether the plaintiff is entitled to the claim as prayed for? If not, for what relief the plaintiff is entitled?

(6) Whether the plaintiff had given a sum of Rs.62,00,000/- as loan to the defendant?

(7) Whether the defendant executed 5 promissory notes in favour of the plaintiff?

(8) To what such other reliefs the plaintiff is entitled to?



14. Heard both sides and perused the material available on records.

15. The learned counsel for the plaintiff would submit that the defendants 2 and 3 approached the plaintiff for financial assistance to tide over the financial crisis faced by RMS Petroleum Products as they were confronted with Recovery Proceedings under the provisions of the SARFAESI Act, 2002 before the DRT-III. To avoid sale of the suit property arising out of such recovery proceedings, the said defendants deposited the original title deeds belonging to the defendants 2 and 3 along with promissory notes, Cheques, Letters of undertaking to repay the loan borrowed from the plaintiff from time to time which are marked as Exhibits on the side of the plaintiff.

16. It has been further submitted by the learned counsel for the



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plaintiff that Ex.P-1, Ex.P3, Ex.P-5, Ex.P7, Ex.P.9 are the promissory notes for Rs.5,00,000/-, Rs.5,00,000/- Rs.20,00,000/- Rs.12,00,000/- Rs. 20,00,000/- respectively. Similarly Ex.P2, Ex.P 4, Ex.P 6, Ex.P 8 and Ex.P.10 are the cheques for Rs.5,00,000/- Rs.5,00,000/-, Rs.20,00,000/- 12,00,000/- and Rs. 20,00,000/-, respectively with signature. Further, Ex.P11-the original sale deed dated 31.1.2005 has been deposited as security to repay the loan.

17.The learned counsel for the plaintiff would further submit that the custody of the document with the plaintiff is not in dispute so also the letter of deposit is not in dispute and the execution of the promissory notes and the cheques issued for due repayment are also not in dispute. Hence, he seeks this Court to grant relief as prayed for.

18. The learned counsel for the defendants would submit that the 2nd defendant borrowed a sum of Rs.5,00,000/- only from the plaintiff to meet out their business rotation and never borrowed a sum of Rs.62,00,000/-as falsely alleged by the plaintiff. The plaintiff, had agreed to lend the money on condition that five signed blank promissory notes and signed five blank cheques shall be given prior to the payment of the said amount of Rs.5,00,000/- and the Xerox copy of the suit property. Those documents as



requested by the plaintiff, have been submitted to him due to financial need.

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19. The learned counsel for the defendants would further submit that the plaintiff had taken a advantage of signed five blank promissory notes and five signed blank cheques and filed above frivolous suit with interest for a sum of Rs.1,00,27,123/- as if this defendant borrowed a sum of Rs.62,00,000/- from the plaintiff without proving that documents are executed in respect of each and every specific transaction, purported to have been taken place on the specific date as mentioned in the plaint. Further, the defendants did not create any mortgage much less the equitable mortgage by deposit of title deeds with the plaintiff as alleged by the plaintiff, nor the plaintiff had filed any letter being executed by the defendant to that effect, prior to the alleged creation of the equitable mortgage. Further, the plaintiff could have sought for an hand writing experts opinion to disprove the defendants evidence that the signature is not of her. Hence, the suit is liable to be dismissed.

20. A perusal of the records, it is seen that the plaintiff has contended that the 2nd defendant has borrowed a sum of Rs.62,00,000/- from him in the year 2010. According to the plaint, the plaintiff seeks relief along



with interest at 24% p.a totalling to Rs.1,00,27,123/-. Hence, this Court has got pecuniary jurisdiction to try this suit thereby the suit is maintainable under law. Accordingly, Issue Nos.1 and 2 are answered in favour of the plaintiff.

Issue Nos.6 & 7:

21.The learned counsel for the plaintiff, in support of his arguments, he relied upon the Promissory Notes vide Ex.P1, Ex.P3, Ex.P5, Ex.P7 and Ex.P9, and Cheques vide Ex.P2, Ex.P4, Ex.P6, Ex.P8 and Ex.P10. Per contra, the defendant has contended that she has borrowed only a sum of Rs.5,00,000/- and not Rs.62,00,000/- and further contended that the Promissory Notes and Cheques were given to the plaintiff for security purpose only which are to be returned to her after settling the loan amount of Rs.5,00,000/-. However, the defendants have admitted their signatures in the promissory notes. Further, the 2nd defendant has not disputed either her signature or her husband signature endorsed in the said Promissory notes in the cross examination. Further, the defendants have not proved that they have not borrowed a sum of Rs.62,00,000/- from the plaintiff by way of oral and documentary evidence. Once the signatures put by the 2nd defendant and 3rd defendant in each promissory notes are not disputed, the content of the each promissory notes shows that the 2nd defendant has borrowed a sum of Rs.62,00,000/- from the plaintiff. Hence, the plaintiff has proved that the defendants have borrowed a



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sum of Rs.62,00,000/- from the plaintiff as loan. Accordingly, Issue No.6 and 7 are answered in favour of the plaintiff.

Issue Nos.3 & 4:

22. Even though the promissory notes executed by the defendants have been proved by the plaintiff, the plaintiff has not proved the equitable Mortgage said to have been created by the parties by virtue of oral and documentary evidence. Hence, the Issue No.3 is answered against the plaintiff. Further, on a perusal of the records, it is seen that the Sale deed was entrusted with the plaintiff. Accordingly, Issue No.4 is answered.

Issue No.5 & 8:

23. Since the Issue No.6 and 7 are answered in favour of the plaintiff, the plaintiff is entitled to the claim amount along with interest @ 24% per annum. Accordingly, issue Nos. 5 & 8 are answered in favour of the plaintiff.

24. Having considered the facts and circumstances of the case and the Promissory Notes have been proved by the plaintiff, the plaintiff is entitled for the interest from the date of plaint till the date of decree @24% and thereafter 6% till the date of realisation. The Defendants shall pay the amount within a period of three months from the date of receipt of copy of this



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Judgment.

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25. In the result, the suit is partly decreed with costs.

13.03.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

mps/Lbm

List of witnesses examined on the side of the plaintiff:

PW1 - Mr.Shantilal Kothari

List of documents marked on the side of the plaintiff:

Ex.P1	03.02.2010	Promissory Note for Rs.5,00,000/- in original
Ex.P2	03.02.2010	Cheque No.587759 for Rs.5,00,000/- in original
Ex.P3	03.02.2010	Promissory Note for Rs.5,00,000/- in original
Ex.P4	03.02.2010	Cheque No.587760 for Rs.5,00,000/- in original
Ex.P5	30.04.2010	Promissory Note for Rs.20,00,000/- in original
Ex.P6	30.04.2010	Cheque No.587765 for Rs.20,00,000/- in original
Ex.P7	14.06.2010	Promissory Note for Rs.12,00,000/- in original



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Ex.P8	14.06.2010	Cheque No.587770 for Rs.12,00,000/- in original
Ex.P9	27.07.2010	Promissory Note for Rs.20,00,000/- in original
Ex.P10	27.07.2010	Cheque No.567772 for Rs.20,00,000/- in original
Ex.P11	31.01.2005	Certified copy of Sale Deed in favour of the 2nd defendant
Ex.P12	20.06.2011	Encumbrance Certificate

List of witnesses examined on the side of the defendants:

DW1 - Mrs.M.Subadra

List of documents marked on the side of the defendants:

Ex.D1 15.11.2006 Certified copy of the Lease Deed from the 2nd defendant to Essar Oil Company

Ex.D2 16.09.2010 Certified copy of the Settlement Deed from the 2nd defendant to the 3rd defendant.

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A.A. NAKKIRAN, J,

mps/Lbm

Pre-Delivery Judgment in
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