

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2017

PRONOUNCED ON 24..01..2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.244 of 2011

1. Thirupurasundari
2. Usha
3. B.Latha

.. Plaintiffs

VS.

1. V.Gokulakrishnan
2. V.Geetha
3. Parvathi alias Sheela

.. Defendants

Civil Suit filed under Order VII Rule VII of CPC and Rule IV of Original Side Rules praying for judgment and decree (a) directing the defendants 1 and 2 jointly severally pay a sum of Rs.11,98,000/- (Rs.10,00,000/-principal+ Rs.1,98,000/- interest) with further interest calculated at Rs.6000/- per month from the date of the plaint till the date of the payment (b) for a

permanent injunction restraining the defendants 1 and 2 from alienating or encumbering or otherwise dealing with the property namely, the plot bearing No.AP 450, Thiruvalluvar Kudiyruppu, Arignar Anna Nagar, Chennai -40 which is morefully described in the schedule and (c) for the costs of the suit.

For Plaintiff : Mr.M.Ganesh

For defendant: No Appearance

J U D G M E N T

The suit is filed for recovery of sum of Rs.11,98,000/- together with further interest calculated at Rs.6,000/- per month from the date of the plain till the date of payment.

2.The brief facts of the case of the plaintiffs are as follows:

The first plaintiff is the wife of late K.Balaraman. The plaintiffs 2 and 3 and the third defendant are the daughters of the said K.Balaraman. The defendants 1 and 2 are the daughter of late K.Viswanathan, who is none other than the brother of the

late K. Balaraman. According to the plaintiffs, the late Viswanathan borrowed a sum of Rs.10,00,000/- from their father, namely, Balaraman, for the purpose of putting up construction in the plot bearing No. AP-450 at Thiruvalluvar Kudiyruppu, Arignar Anna Nagar, Chennai -40 and the said Viswanathan died in the year 2007. The defendants 1 and 2 have acknowledged the receipt of Rs.10,00,000/- by their father and also entered into an agreement dated 31.3.2008. Despite the agreement, they failed to pay the amount. Hence, the plaintiff issued a legal notice dated 04.03.2009 which has been replied by the defendants with false contention. Hence, the suit.

3. The defendants remained *ex parte*. On the side of the plaintiffs the first plaintiff herself was examined as P.W.1 and Exs.P1 to P4 were marked. The details of the documents are hereunder:

Exhibits produced on the side of the plaintiffs:

<i>S. No</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	P-1	31.03.2008	Original agreement executed by defendants 1 and 2
2.	P-2	04.03.2009	Copy of the legal notice issued by the plaintiff through counsel to the defendants 1 and 2 along with the two postal receipts
3.	P-3 (series) (2 Nos)	-	Postal acknowledgment cards
4.	P-4	08.04.2009	Original reply notice sent by the defendants' counsel to plaintiff

Witnesses examined on the side of the plaintiffs:

P.W.1. - Thirupurasundari

4. Heard, the learned counsel appearing for the plaintiffs and perused the records.

5. P.W.1, has given evidence to the effect that the father of the defendants 1 and 2, borrowed a sum of Rs.10,00,000/- (Rupees ten lakhs only) from her husband for the purpose of construction of building. The said Viswanathan died in the year 2007. Thereafter, the defendants 1 and 2 agreed to settle the

amount and an agreement dated 31.3.2008 to that effect has also been executed by them. The evidence of P.W.1 remain unchallenged. Exs.P1 to P4 were marked. Ex.P1 is an agreement entered into between the plaintiffs and the defendants, wherein the defendants have acknowledged the receipt of Rs.10,00,000/- (Rupees ten lakhs only) by their father and agreed to settle the above amount after selling the property left by their father. Ex.P2 is the legal notice issued by the plaintiff for which, evasive reply has been sent by the defendants 1 and 2.

6. On a perusal of Ex.P1, it could be easily seen that the 1st and 2nd defendants' father borrowed a sum of Rs.10,00,000/- (Rupees ten lakhs only) from one K.Balaraman, the husband of the 1st plaintiff and the father of the plaintiffs 2 and 3, for which acknowledgment has also been made in the year 2008. Therefore, it is clear that the father of the defendants 1 and 2 have borrowed the aforementioned sum from the said

K.Balaraman and the defendants 1 and 2 have also agreed to settle the amount after selling the property left by their father.

7. In view of the aforesaid circumstances, this Court is of the view that there is no dispute with regard to the borrowal of the amount. The evidence of P.W.1 and the documents marked by the plaintiffs, clearly established their case. Therefore, the defendants 1 and 2, being the legal heirs of the deceased Viswanathan, who borrowed the said sum, are liable to pay the money, out of the property of the deceased, namely, Viswanathan.

8. Accordingly, the decree is passed against the defendants 1 and 2 to pay a sum of Rs.10,00,000/-(Rupees ten lakhs only) with interest at 6% p.a. from the date of suit till the date of realisation from the estate left by their father.

9. Admittedly, there is no evidence with regard to payment of interest. Even in the legal notice issued by the plaintiffs, there is no whisper about the payment of interest. In the absence of any notice in writing, plaintiffs' claim with regard to interest is not sustainable in law. Therefore, as per Section 3 of the Interest Act, 1978, this Court is not inclined to award interest prior to the filing of the suit.

10. Accordingly, the decree is passed against the defendants 1 and 2 to pay a sum of Rs.10,00,000/- with interest at the rate of 6% p.a. from the date of suit till the date of realization. The amount shall be payable out of the property left by the deceased K.Viswanathan.

11. The suit is decreed in the above terms. However, there shall be no order as to costs.

12. Insofar the relief of injunction prayed for by the

plaintiffs is concerned, this Court is not inclined to grant such relief and it is for the plaintiffs to work out their remedy for execution of the decree in the manner known to law.

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Index : Yes/No
Internet : Yes/No

N.SATHISH KUMAR, J

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