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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2021

DELIVERED ON : 25.11.2021

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

A.S.NO.3 OF 2018

1.R.Ravindra Kumar

...Appellant/
Plaintiff

Vs

1.S.B.S.Kumar

2.S.Ganesh

3.S.Prakash

... Set ex-parte in the suit

4.S.B.S.Mohan

S.B.S.Suryanarayan

... Deceased

5.S.B.S.Ravi

... Set ex-parte in the suit

6.Tmt. Mangalam

... Given up in the suit

7.Tmt.Kala

... Given up in the suit

8.Tmt.Bharthi

9.Ms.Usha

.. Set ex-parte in the suit

... Respondents/
Defendants

Prayer:

Appeal filed under Section 96 of the read with Order XLI Rule 1 of CPC against the Judgment and Decree in O.S.No.3553 of 2013 dated 23.06.2017 on the file of the learned XV Additional City Civil Court, Chennai.



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For Appellants : Mr.S.R. Rajagopal
for Mr.T.Niramaleshwar

For Respondent : Mr.K.Krishnasamy
for Mr.V.Manisekaran
for R.1

: R.2, R.4 & R.8 -Served, No
appearance.

: R.3, R.5 to R.7 and R.9-Given up.

JUDGMENT

The unsuccessful plaintiff is the appellant before this Court, challenging the dismissal of his suit filed for recovery of a sum of Rs. 15,20,874/- with interest at 1.70% per annum on Rs.15,00,000/- from the date of suit till the date of realization. The suit has been filed as a mortgage suit on the basis of a mortgage by deposit of title deeds. To appreciate the grievance of the plaintiff it is necessary to briefly narrate the circumstances which has culminated in the filing of the suit. The parties are referred to in the same litigative status as before the Trial Court

Plaintiff's Case:

2. The plaintiff had filed the suit originally before this Court in C.S.No.353 of 1997 and after the framing of the issues by this Court, the pecuniary jurisdiction of the City Civil Court had been enhanced and consequently the suit was transferred to the Civil City Court and re-numbered as O.S.No.3553 of 2013 on the filed of the XV Additional Judge City Civil Court Chennai.

3. It is the case of the plaintiff that on 07.08.1995 the 1st defendant had borrowed a sum of Rs.10,000/- and had executed a simple mortgage in favour of the plaintiff. This amount was also advanced to defendants 2 to 6 and late Rajammal the mother of the defendants who executed the deed as the power agent of Suriyanarayanan, the 5th defendant and S.B.S. Ravi, the 6th defendant. On 08.08.1995 the 1st defendant had executed a financial agreement in and by which the plaintiff had agreed to extend the loan of a sum of Rs.25,00,000/- to the 1st defendant for his business needs. In pursuance of this agreement the 1st defendant had extended a loan of Rs.15,00,000/- to the 1st defendant for which promissory notes had been executed by the 1st defendant. Defendants 2 to 4 and Rajammal had signed the same as guarantors. It is also the case of the plaintiff that Rajammal



for herself and as a power agents of defendants 2 to 4 and defendants 5 and 6 executed guarantee letters. Therefore, defendants 1 to 6 and Rajammal are liable to pay the suit claim. Pending the suit Rajammal died leaving behind the defendants 1 to 6 and her daughters who were subsequently impleaded as parties to the suit.

4. The plaintiff would contend that under the financial agreement dated 08.08.1995, it was agreed that the amounts would be advanced by the plaintiff as well as other 3rd parties financiers. Accordingly, money was given by these 3rd party financiers and the promissory notes had been executed in favour of the 3rd party financiers who have in turn had endorsed the promissory notes in favour of the plaintiff. The plaintiff would contend that despite repeated requests the defendants had not come forward to pay the outstanding. On the contrary they had filed a suit O.S.No.615 of 1997 for redemption of the simple mortgage dated 07.08.1995. In the said suit the defendants 1 and 2 had sought for the return of the original document. The plaintiff would submit that the documents which were handed over at the time of the execution of the simple mortgage was returned to the defendants who once again created a mortgage by deposit of title deeds on 15.08.1991. As the payment was not made the plaintiff has come forward with the present suit.

Written Statement:

5(i) Written Statement of Defendants 1 and 2:

These defendants would contend that the plaintiff by profession is a money lender. Since the 1st defendant had urgently required a sum of Rs.10,000/- to meet a pressing financial need, they had approached the plaintiff who insisted on the execution of the simple mortgage in his favour. Accordingly, on 07.08.1995, the 1st defendant had executed a simple mortgage in favour of the plaintiff and at that time, signatures were obtained on several blank papers. On 09.08.1995, once again the defendants had approached the plaintiff for a loan for the purpose of improving the business, at that point the plaintiff had insisted on signatures being affixed in blank printed promissory notes. The defendants who were in need for money had agreed to the same and signed several promissory notes all of which were printed forms with the material particulars being blank with a seal and had also executed a loan agreement. The defendants 1 and 2 would contend that the transaction was purely a money transaction based on promissory notes and there was no question of creating an equitable mortgage. The defendants had filed O.S.No.615 of 1997 for redemption of the simple mortgage dated 07.08.1995. The defendants would submit that they had been made to signed 30



blanks promissory notes, blank papers and 300 blank cheques of Lakshmi Vilas Bank. They were only given a loan of Rs.13,09,750/- and not Rs.15,00,000/- as contended by the plaintiff. These amounts were also received by way of cheques from different persons. Therefore, it is clear that the money had not come from a single person or from the plaintiff and therefore, there was no question of creating an equitable mortgage in favour of the plaintiff. The defendants 1 and 2 would contend that they have repaid a sum of Rs. 9,45,250/- within a year and only a sum of Rs.4,00,000/- remained due. Therefore, the suit based on a non-existent mortgage had to be dismissed.

5(ii) Written Statement of the 5th defendant

The 5th defendant had filed a written statement inter alia contending that there was no privity of contract between him and the plaintiff and document number 11 filed along with the plaint which is a power of attorney was a rank forgery and that the signature of the 5th defendant in the said document is not his signature. It is also his contention that his mother had no authority to create any guarantee, therefore, he would seek to have the suit dismissed.

5(iii) Written Statement of the 4th defendant

The 4th defendant had filed a written statement more or less adopting the contents of the written statement of defendants 1 and 2.

5(iv) Written Statement of the 9th defendant

The 9th defendant who had been impleaded as a defendant pursuant to the death of late Rajammal as legal heir would contend that the suit property belonged to her father B.S.Sethurama Iyer. On 27.07.1979, B.S.Sethurama Iyer had executed a settlement deed in respect of an extent of 625 Sq.ft., of the suit property in her favour. Though a Will had been executed by her deceased father, since the Will had not been probated after his death of her father on 07.04.1986, no right would devolve on the legatees. On the contrary, the property would devolve equally on all the legal representatives. She would submit that on 30.11.2006 the 5th defendant had also passed away. She would further submit that the suit O.S.No.615 of 2007 filed to redeem the mortgage dated 07.08.1995 though dismissed by the Trial Court was ultimately partly allowed by this Court in the Second Appeal. She would deny all the other averments put forward by the plaintiff in his plaint.



Trial Court:-

6. The learned XV Additional Judge on perusing the pleadings of either sides had framed the following issues:

- "1. Whether the defendants are not liable to pay the suit claim?
2. Whether the defendants have not created equitable mortgage amounts?
3. Whether the plaintiff is not entitled to sell the suit property by public auction?
4. To what relief the parties are entitled to?"

7. The parties had gone to trial on the basis of these issues and the plaintiff to substantiate his case had entered the box as P.W.1 and marked Ex.A.1 to Ex.A.9. On the side of the defendants had deposed as D.W.1 had deposed however no documents have been filed on the side of the defendants.

8. The learned Judge on perusing the evidence returned a finding that the signatures of the defendants had been obtained on blank papers and the same has been filled up according to the convenience of the plaintiff and as the plaintiff has not come to Court with clean hands he was not entitled to the relief as prayed for.

9. However, the learned Judge taking into account the admission of the 1st defendant that only a sum of Rs.4,00,000/- was due and payable by them directed the 1st defendant to pay the above sum. The learned Judge had also returned a finding that the defendants had not created any equitable mortgage of the suit property in favour of the plaintiff for the loan amount of Rs.15,00,000/-. Ultimately, the suit was partly decreed with a direction to the 1st defendant to pay Rs.4,00,000/- together with interest at the 12% per annum from 07.08.1995 to 18.03.1997 and thereafter at 6% on Rs.4,00,000/- till the date of payment. It is challenging the above Judgment and Decree that the plaintiffs are now before this Court.

Submissions:-

10. Mr.S.R.Rajgopal appearing on behalf of the counsel for the plaintiff would submit that the defendants have clearly and categorically admitted the fact that a sum of Rs.15,00,000/- had been borrowed by them. They have only pleaded discharge and claimed that a sum of Rs.4,00,000/- alone was due, this statement according to the learned counsel has not been



substantiated by evidence. Further the payments that have been received has been appropriated towards interest alone. He would submit that the defendants have admitted the registered mortgage as well as the deposit of title deeds. On 15.08.1995 the documents were taken back and re-deposited on the very same day. Although, the 1st defendant would plead that he has paid a sum of Rs.9,45,250/-, the defendant has not let in any evidence to prove the same. That apart, the defendant has admitted signing all the 26 promissory notes.

11. He would draw the attention of the Court to the chief examination of D.W.1 who has deposed that at the time of the execution of the simple mortgage dated 07.08.1995, the plaintiff had obtained signatures in several blank papers and promissory notes with seal in name of different persons and that based on the blank papers the plaintiff had filled up and handed over the promissory notes in favour of the various persons would have extended the money. The defendant had filed a suit for redemption of the mortgage and paid a sum of Rs.13,675/- to the plaintiff and thereafter the mortgage was redeemed by way of a Second Appeal. He would argue that though the witness on the side of the defendants had contended that the additional loan was also borrowed on the basis of the blank papers and blank promissory notes which was handed over at the time of the execution of the simple mortgage deed and that it is the plaintiff who has filled up the promissory notes and issued it to the different persons, however, they have admitted that the promissory notes were signed and handed over when the loan of Rs.15,00,000/- was borrowed.

12. Further, in the cross-examination, the witness (D.W.1) would submit that they had signed and handed over 300 blank cheques, however there is no reference about such blank cheques in the chief examination. The learned counsel would submit that the defendant has pleaded discharge hence the onus is on him to prove the discharge which in the instant case, has not been complied with and the learned Trial Judge has proceeded to partly allow the suit merely on presumptions. He would submit that the entire cause of action for the above suit arose on the basis of the assignment of the promissory notes in the favour of the plaintiff by the various promissory note holders. He would submit that the assignment has been made in favour of the plaintiff on account of the fact that it was the plaintiff who had facilitated the borrowing. In this regard, he would rely upon Clause 2 of the Ex.A.2, loan agreement, which reads as follows:

"2. The party of the first part shall
pay the party of the second part, 1%



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commission for the loan arranged and advanced either by himself or through third parties which shall be exclusively the interest payable on the loan advances:"

13. He would rely on the judgment reported in 2003 (8) SCC 745 - Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another., with specific reference to paragraphs 4, 11, 12, 16, 17 and 18. The above judgment is relied upon in support of the argument that a mere production and marking of a document as an Exhibit by a party Court cannot be held to proof of its contents.

14. He would further submit that no doubt the endorsement in the promissory note was for collection and did not make a reference to the amounts had been advanced by the plaintiff, however, if the above argument is read with reference to clause 6 of the loan agreement, it becomes clear that the plaintiff has been assigned the promissory notes, Ex.A.3 series for the purpose of collection. Reliance is placed on the judgment reported in AIR 1967 AP 275 - Guntupalli Basavaiah Vs. Nalamothu Venkamma. He would further argue that the defendant had submitted that they had paid the amounts to the collection agent of the plaintiffs who had made endorsements. However, the said note book has not been produced by the plaintiff and therefore the plaintiff had not proved the discharge. In support of the argument he had relied on the judgment reported in 1971 (84) LW 455 (1) - Chelliah Thevar (died) and others V. Muthirulappa Kudumban,

15. The learned counsel would further submit that the borrowal has been admitted by the defendant and therefore there was no necessity to prove it and would rely on the judgment reported in 2003 8 SCC 673- Sushil Kumar Vs. Rakesh Kumar. The defendant who has pleaded discharge is bound to prove the same as held in the judgment reported in 2010 (6) CTC 225 - Bajaj Auto Ltd., Rep. by S.Ravikumar Vs. TVS Motor Company Ltd., having failed to prove the discharge the defendant was bound to make the payment. He would rely on clause nos. 4, 5 and 6 of the Ex.A.2, loan agreement dated 08.08.1995 to contend that the defendants were very much aware that the amounts were being advanced not only by the plaintiff but also by 3rd parties and that the security furnished by the 1st defendant in favour of the plaintiff would constitute the security for any amounts advanced by the plaintiff by himself or through 3rd parties. Under this agreement the plaintiff had further undertaken that in the event of default in the payment of the promissory notes would together constitute a single cause of action and therefore there was no necessity for filing separate suits on behalf of each of the



promissory notes holders.

16. He would draw the attention of the Court to the letters of authorization given by defendants 1 to 4 and Rajammal for herself and on behalf of the defendants 5 and 6, wherein they have authorized the 1st defendant to take return of the original documents from the plaintiff and once again re-deposit the same. He would therefore submit that the contentions of the defendants that the documents were handed over at the time of the execution of the simple mortgage deed and that there was no deposit 15.08.1995, stands disproved. He would submit that the defendants are bound by the terms of Ex.A.2 in the light of the letter of authorization given under Ex.A.5 series.

17. Per contra, Mr.Krishnasamy appearing on behalf of the respondent would make his arguments under two heads:

- " (a) With reference to deposit of title deeds and
- (b) With reference to the execution of the promissory notes."

18. The learned counsel would submit that as regards the simple mortgage dated 07.08.1995 the same has been discharged and cleared as held in the Second Appeal which emanated from the suit O.S.No.615 of 2007 filed by the defendants. He would submit that even according to the recitals in the plaint, the plaintiff has admitted that the title deeds were handed over to the plaintiff at the time of execution of the simple mortgage Ex.A.1, recitals in this regard would be found in paragraph 6th of the plaint. On the very next day Ex.A.2, loan agreement dated 08.08.1995 has been executed by the 2nd defendant in favour of the plaintiff, pursuant to which the plaintiff had arranged finances from 26 financiers under 26 promissory notes. 22 promissory notes are dated 09.08.1995, 2 are dated 10.08.1995 and one each are dated 11.08.1995 and 14.08.1995 totalling a sum of Rs.15,00,000/-. The defendant would submit that a sum of Rs.13,09,750/- alone was received by them. He would submit that the defendants had signed blank promissory notes and at the time of the execution of the promissory notes the defendants were not aware of the amount or the person from whom the sum had been received. He would submit that there was no mortgage by deposit of title deeds on 15.08.1995, as contended by the plaintiff and that apart, the mortgage was not in any way a security for the promissory notes, since the mortgage is issued in favour of the plaintiff whereas the promissory notes have been issued in the name of several individuals and the amounts admittedly have been issued by these persons and not the plaintiff.

19. The learned counsel would further submit that, although the mortgage is said to have been executed by all the defendants



in favour of the plaintiff however, the plaintiff has given up the claim against the defendants 5, 7 and 8 to this suit, despite the fact that they are also co-owners in respect of the suit property. Therefore, the suit if it is to decreed, it can be done so only with reference to a 7/10th share. He would draw the attention of the Court to the recitals contained in Ex.A.5 series executed by the defendants 1, 2, 3 and 4 and Rajammal. The letter executed by D.W.4 S.B.S Mohan would clearly demonstrate that the documents were taken return of only on 15.08.1995 and re-deposited on the very same day. Further the letter of authorization executed by Rajammal (Ex.A.5 series) would show that on 15.08.1995, the original documents remained only with the plaintiff and that the defendants had not taken return of their original documents which were given to the plaintiff at the time of executing the simple mortgage. Similar recitals are contained in the letters given by S.B.S. Mohan, S.Ganesh and S.Prakash, therefore it is evidently clear that the original documents which were already handed over at the time of execution of the simple mortgage continued with the plaintiff and Ex.A.5 has been created by the plaintiff by using the blank signed papers.

20. He would further point out the anomaly in Ex.A.4, letters of guarantee. The letter issued by S.B.S Kumar for self and as proprietor of M/s. Seturamann and Company does not contain the place or date of execution of the said documents. Therefore, according to the plaintiff the document is an inchoate document and this would clearly substantiate the defendants contention that their signatures had been obtained in blank forms which have been utilized to create the promissory notes. P.W.1 has not been able to explain as to why the promissory notes were kept blank. In fact, in his evidence as P.W.1 the witness has admitted that he has obtained signatures in blank sheets. The learned counsel would further argue that a perusal of the stamping on the promissory notes would indicate that these documents had been obtained even prior to the execution of the simple mortgage.

21. The learned counsel would further contend that there is discrepancy in the plaintiff's case with reference to the advancement of the loan of Rs.15,00,000/-. In paragraph number 6 of the plaint, the plaintiff would submit that the amount of Rs.15,00,000/- has been advanced by the plaintiff himself. However, in paragraph number 9, he would contend that the amounts financed has been given by 3rd parties. He would therefore submit that when the amounts had been advanced by 3rd parties the execution of the memorandum of deposit of title deeds in favour of the plaintiff appears to be strange and it is therefore clearly evident that the plaintiff had taken advantage of the blank documents signed by the defendants. The suit as



filed is based on both the promissory note as well as the deposit of title deeds, however the endorsement in favour of the plaintiff is only with reference to the promissory notes and that too with specific instructions that the same was only for collection. He would therefore submit that the mortgage is not supported by any consideration (loan).

22. Coming to the promissory notes he would submit that there are several anomalies in the endorsement under the promissory notes. In many of the promissory notes the endorsement has been made not by the persons whose name is found in the promissory notes but by some 3rd person. The learned counsel would also draw the attention of the Court to the fact that under 5 promissory notes there was no endorsement by the holder of the promissory notes. The promissory notes would read that the payments have been made both by cash and by cheques there is no details as to what was the amount that was given to by cash and the amount that was given to by cheque.

23. The learned counsel would submit that the account book of each of the promissory note holders had not been produced and on account of the non- production of the same adverse inference has to be drawn by the Court. The person in whose name the promissory notes had been executed and who had endorsed the same to the plaintiff have not been examined. He would contend that the plaintiff has made submissions which does not find mention in the pleading, and without a pleading no amount of evidence can be admitted. He would further submit that by reason of the non-production of the statement of accounts, the Court is not in a position to come to the conclusion as to how the respective promissory note holders had accounted for the payments made by the plaintiff. Even according to the plaintiff a sum of Rs.4,65,000/- has been paid by the defendants although the defendants would plead that a sum of Rs.9,00,000/- had been paid. If the account books had been produced it would be clearly demonstrate as to how the payment has been apportioned by the respective landers. The learned counsel would rely on the judgments reported in AIR 1939 Mad 846 - Rakapalli Vira Raghavulu Naidu Vs. Dhara China Rajalingam and Ors., AIR 1998 (3) SCC 410 - Central Bureau of Investigation Vs. V.C.Shukla and Others and 2020 (10) SCC 729 - Biraji Alias Brijraji and Another Vs. Surya Pratap and Others. He would therefore submit that the suit based on the mortgage is not maintainable since the mortgage is not given as security for the promissory notes and further the promissory notes had been executed in favour of different persons whereas the alleged deposit of title deeds is only in favour of the plaintiff who has admitted that he has not extended a single penny as a loan. With reference to the mortgage the learned counsel would summarize his arguments as follows:



i) The blank documents have been made use of to create the documents.

ii) Ex.A.5 series would show that the loan had been advanced by the plaintiff however even according to the plaintiff no amount have been advanced by him.

iii) There is no pleading that the deposit of title deeds were for the promissory notes and no evidence without pleading can be let in. He would therefore plead that the appeal be dismissed.

24. Mr. S.R.Rajgopal by way of a reply has contended that the arguments now advanced has not been raised as a defence in the suit. It is for the first time that these contentions have been raised. As regards the striking of the suit against the defendants 5, 7 and 8, he would reply that the defendants had raised objections to the striking of the suits against the defendant 5, 7 and 8. However, despite these objections the defendants had been struck off as parties to the suit and this order has not been challenged by the defendants. He would therefore contend that the appeal be allowed and the suit be decreed as prayed for.

Points for consideration

25. Upon hearing the above submissions the following points arise for consideration in the above First Appeal:

a) Whether the defendants have created an equitable mortgage as contended by the plaintiff in respect of the amounts due towards the Promissory notes?

b) Whether the defendants are liable to pay the suit claim?

c) Whether the plaintiff has rightly given credit to the amounts paid by the defendants?

Discussion:

26. This suit on a mortgage has been filed by the plaintiff on the following basis:

a) The 1st defendant had approached the plaintiff with a request for extending financial assistance for his proprietary concern for which a financial loan agreement dated 08.08.1995 (Ex.A.2) was extended between plaintiff and Sethuramm and Company.



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b) That the petitioner has obtained the loan amount from various third parties in whose favour the 1st defendant has executed promissory notes (Ex.A.3, Series) and defendants 2 to 4 have signed promissory notes. Rajammal the mother of defendant 1 to 4 had also signed these promissory notes for herself and as the power agent of defendants 5 and 6.

c) That the defendants 2 to 4 and Rajammal for herself and as power agent of defendants 5 and 6 have executed letters of guarantee.

d) That defendants 2 to 4 and Rajammal for self and as power agent of the defendants 5 and 6, the defendants have authorised the 1st defendant to take a return of the documents submitted at the time of execution of the simple deed and re-deposit the same in favour of the plaintiff for creating a mortgage by deposit of title deeds.

27. The reading of the plaint as a whole would indicate that the plaintiff has advanced a loan of a sum of Rs.15,00,000/- in addition to the loan of a sum of Rs.10,000/-. In paragraph 6 of the plaint the plaintiff would submit as follows:

"The plaintiff further submits that pursuant to the loan agreement dated 08.08.1995, referred to above the plaintiff has in addition to the above mortgage loan had advanced a total sum of Rs.15,00,000/- and the first defendant has executed promissory notes and the mother of the first defendant viz., late Rajamal, and defendants 2 to 4 have also signed the same, the mother of the first defendant late S.Rajammal had executed a letter of guarantee for the loan advance to the first defendant. She had also executed a letter of guarantee on behalf of defendants 5 and 6 as their power of Attorney. The other defendants 2 to 4 have also executed guarantee letters to the plaintiff guaranteeing due and prompt payment of all monies advanced to the first defendant and thus the first defendant as the Principal Debtor and other defendant namely Suriyanarayanan Ravi, Ganesh, Prakash, Mohan and late Rajammal, mother of the defendants as



Guarantors are also jointly and severally liable to pay the suit claim of the plaintiff as Guarantors."

Once again the plaintiff in para 8 would reiterate that the defendants were jointly and severally liable to pay the suit claim to the plaintiff.

28. However in paragraph 9 of the plaint, the plaintiff would contend that the amounts have been advanced as per the terms of Ex.A.2, Loan Agreement by the plaintiff as well as the other third parties through the plaintiff to the defendants. These third parties have endorsed the promissory notes (Ex.A.3 Series) in favour of the plaintiff. It is the case of the plaintiff that the entire cause of action arises out of the loan agreement dated 08.08.1995 (Ex.A.2).

29. A perusal of the documents would show that the plaintiff has lent only a sum of Rs.10,000/- and the other amounts have been paid by various persons as evidence by Ex.A.3 Series. Therefore, the amount which is the subject matter of this suit has not been advanced by the plaintiff, though pleadings are to the contrary. Further, the transaction regarding the sum of Rs.10,000/- has ended in a decree in favour of the defendants. Since it is the case of the plaintiff that the loan agreement dated 08.08.1995 forms the entire cause of action it would be useful to refer to the same which has been marked as Ex.A.2.

30. Ex.A.2 would commence with the recital "This loan agreement entered into at Madras. This, the 8th day of August 1995 between M/s Sethuramm and Company, represented by its proprietor S.B.S.Kumar and R.Ravinder Kumar". However at page 6 of this agreement the date is given as "10th day of August 1995". Defendants 2 to 4 and Rajammal have not signed this document. This agreement clearly provides that the proprietary concern should pay 1% commission for the loan arranged and advanced either by the plaintiff or through 3rd parties which was exclusive of the interest payable on the loan. It was also agreed that any security furnished by the said concern in favour of the plaintiff would enure to the benefit of any 3rd party who had advanced amounts.

31. The defendant had pleaded that when they had entered into Ex.A simple mortgage their signatures were taken in blank papers and with these papers the loan agreement, letters of guarantee and letter of Authorization etc were created. Let us examine this defence by perusing the concerned documents.

(i) A perusal of the loan agreement Ex.A.2 would show that the typed dates have been struck off and interpolated with



different dates and year and further the dates of the deed is different at the beginning of the argument and its ending (as extracted in para 30 supra).

(ii) The plaintiff has pleaded that the documents have been executed by Rajammal on the basis of Ex.A.9 Power of Attorney. This deed has been executed on 24.07.1995, much before the 1st borrowal by M/s Sethuramm and Company. The recital of this deed authorises the Power Agent to execute a mortgage deed and have the same registered in the jurisdictional Sub-Registrar's Office. Similar power is given in respect of a sale, gift, settlement and as security. As pointed out by the learned counsel for the defendant the deed does not authorise the power agent to offer it as security for any loan that was to be borrowed by M/s Sethuramm and Company or its proprietor S.B.S.Kumar.

iii) A perusal of Ex.A.4 letters of guarantee would show that none of the letters contain the date or the place of execution. Further the letter of guarantee executed by the 2nd defendant does not indicate the person/concern to whom the letter is addressed. Further the recitals in this agreement would indicate that the conditions referred to in the letter would hold good to the same extent as it would to the plaintiff if he were to act on his behalf as principal/agent/partner of any other Bankers in Madras, Bombay or in any other part of India. Therefore, a reading of this last clause in the letter of guarantee conveys that only were the plaintiff acts as the Principal/Agent/Partner of Bankers at Madras, Bombay or elsewhere in India, the letter of guarantee would be applicable. Further the 2nd defendant has not executed any letter of guarantee in favour of the plaintiff. While so, in the letter of Authorization Ex.A.5, dated 15.08.1995 alleged to be executed by the 2nd defendant, there is reference to the letter of guarantee.

iv) A perusal of Ex.A.5, letters of Authorization all dated 15.08.1995 indicate that on 15.08.1995 the documents of title already in the custody of the plaintiff would be taken return of by the 1st appellant who would re-deposit it with an intent of creating an equitable mortgage in respect of the further loans advanced by the plaintiff after the amounts covered under the simple mortgage dated 07.08.1995. As discussed earlier except for the sum of Rs.10,000/- covered under Ex.A.1, no other amounts have been advanced by the plaintiff.

32. Even when Ex.A.1 is perused, there is an interpolation in the said document which is a registered document. The parties executing this deed are Rajammal and defendants 1 to 6. However, the deed has not been signed by the 5th and 6th defendants. To overcome this anomaly in page 13, the following words have been



inserted in a typewritten form.

"Mr.S.B.S. Suriyanarayan and S.B.S.Ravi has given power to S.Rajammal"

This addition has not been counter signed by the parties and the impression of these words and the font does not correlate with the typewritten words above. It is therefore, very clear that these words have been interpolated later.

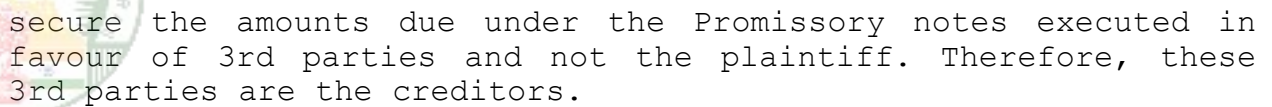
33. From the above documents it is clear that the plaintiff has made use of the signatures of the defendants obtained in blank papers, printed forms and stamp paper to create the document. Reference to Ex.A1 and the interpolation is only to highlight the fact that the plaintiff has obtained blank deeds/papers which have been made use to create documents and the conduct of the plaintiff.

34. The 1st defence of the learned counsel for the defendant is that the alleged mortgage by deposit of title deeds is independent of the Promissory notes. As already held, the letters of Authorization Ex.A.5 has been created by the plaintiff making use of the signatures of defendants 2 to 4 and Rajammal in the blank papers. The letter would read that it is towards the loan advanced by the plaintiff to the 1st defendant for his, business purpose. The letter does not contain a recital that it is for the loan borrowed from third parties for which promissory notes had been executed in their favour. Admittedly, the defendant has not advanced the sum of Rs.15,00,000/-.

35. Further the promissory note has been executed in favour of the different persons who have disbursed different amounts on different dates but Ex.A.5 is addressed only the plaintiff stating that he has advanced the loan. The plaintiff has taken advantage of the fact that he continued to retain the original documents to create Ex.A.5 letter using the signatures obtained from the defendants on blank papers.

36. The falsity in the plaintiff's case is further highlighted from the fact that in the plaint the plaintiff would contend that the documents were taken return of by the 1st defendant and re-deposit on 15.08.1995. However, a reading of Ex.A.5 would falsify this contention. The letter clearly shows that on 15.08.1995, the documents which continued to remain in his custody have been symbolically taken back and the 1st defendant has re-deposited it to create a mortgage by deposit of title deeds.

37. The learned counsel appearing for the plaintiff would submit that the deposit of title deeds has been made only to



39. In a Judgment of this Court reported in 2000 (1) MLJ 223 -Sirish Kumar Bros. Vs. The Offical Assignee, High Court this Court while dealing with a similar set of facts held as follows in para 12.

40. The plaintiff in his cross examination as P.W.1, would initially depose that the sum of Rs.15,00,000/- was paid by him



thereafter he retracts it to say that others have paid this amount. Therefore, the plaintiff has himself admitted that he is not a creditor. The mortgage therefore lacks the prime ingredient viz., a debt.

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41. In these circumstances this Court concurs with the finding of the learned XV Additional City Civil Judge that the defendants have not created an equitable mortgage in respect of the suit property. Therefore, the 1st point for consideration is answered against the plaintiff.

42. The suit claim is in respect of the amounts due towards 26 Promissory notes which have been marked as the Ex.A3 series. These promissory notes are spread over 4 dates:

22 Nos. are dated 09.08.1995.
2 Nos. are dated 10.08.1995.
1 No. is dated 11.08.1995.
1 No. is dated 14.08.1995.

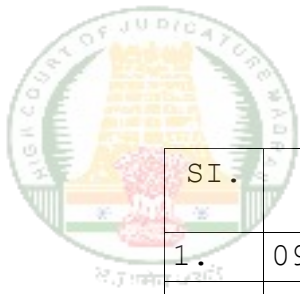
The promissory notes are drawn in the names of different persons and the rate of interest also varies.

43. Though the plaintiff claims that a sum of Rs.15,00,000/- was paid the defendants would contend that ultimately they had received only

a sum of Rs. 13,09,750/-. However, if the amounts described in all the promissory notes are added up it comes to a sum of Rs.15,00,000/-. The defendant has not let in any evidence to rebut the same. The defendants have contended that they had signed blank printed promissory notes and received cheques from different people.

44. The defendants have in their written statement contended that a sum of Rs. 9,45,250/- had been repaid within a year and that these payments have not been given credit to and only a sum of Rs.4,00,000/- were due. On the contrary the plaintiff would contend that only a sum of Rs. 4,65,000/- has been repaid and therefore, the suit claim.

45. A perusal of the promissory notes would show that it is drawn in the names of different persons, on different dates and for different amounts. The learned XV Additional City Civil Judge, Chennai, has tabulated the above details as reproduced herein below:



Sl.	Date	Name of the person advanced loan	Loan amount
1.	09.08.1995	Gyan Devi Bokadia	Rs.50,000/-
2.	09.08.1995	G.Premalatha	Rs.25,000/-
3.	09.08.1995	Sanjay Kumar Bokadia	Rs.25,000/-
4.	09.08.1995	M.Lalitha	Rs.25,000/-
5.	09.08.1995	Mohanlal Sethia	Rs.25,000/-
6.	09.08.1995	Kanka Shree Chordia	Rs.25,000/-
7.	10.08.1995	M.Sardar Mull	Rs.25,000/-
8.	10.08.1995	M.Sikker Mull	Rs.25,000/-
9.	09.08.1995	Sasi & Susi	Rs.25,000/-
10.	09.08.1995	S.Suresh Chand	Rs.25,000/-
11.	09.08.1995	C.Vinay Chand	Rs.25,000/-
12.	09.08.1995	Ashok Finance	Rs.50,000/-
13.	09.08.1995	Mahindra Investment	Rs.75,000/-
14.	09.08.1995	Harshad P. Vora (H.U.F)	Rs.25,000/-
15.	09.08.1995	Mahavir India Finance Limited	Rs.1,00,000/-
16.	09.08.1995	Mahavir India Finance Limited	Rs.1,00,000/-
17.	09.08.1995	Mahavir India Finance Limited	Rs.1,00,000/-
18.	09.08.1995	Mahavir India Finance Limited	Rs.1,00,000/-
19.	09.08.1995	Mahavir India Finance Limited	Rs.1,00,000/-
20.	09.08.1995	Mahavir India Finance Limited	Rs.1,00,000/-
21.	09.08.1995	Priyali Finance Corporation	Rs.1,00,000/-
22.	09.08.1995	Lakshmi & Co.	Rs.1,00,000/-
23.	09.08.1995	J.Prem Chand Bafna	Rs.1,00,000/-
24.	11.08.1995	Jai Chand Lal	Rs.1,00,000/-
25.	09.08.1995	P.Gowdham Chand	Rs.25,000/-
26.	14.08.1995	D.Surendra Kumar Bokdia	Rs.25,000/-
Total			Rs.15,00,000/-

46. It is therefore clear that with the different rates of interest the amount due has to be calculated on each of the promissory notes. The plaintiff has not produced any statement of accounts. The promissory notes have been endorsed in favour of the Plaintiff for the purpose of collection of the dues alone. This clearly indicates that there is no assignment of the debts in favour of the Plaintiff. A perusal of the promissory



notes does not give any details as and when the endorsement was made.

47. Mr. Krishnasamy, learned Counsel for the Defendant had submitted that in some of the promissory notes the endorsement has not been made by the person in whose favour the promissory note has been executed. Mr. S.R.Rajagopal, appearing for the Plaintiff had objected to this argument as it was neither raised in the written statement nor raised during the arguments before the Trial Court. The said objection has to be sustained since this defense is taken up for the first time in the appeal.

48. The defendants have pleaded discharge to the tune of Rs.9,45,250/-. The plaintiff would submit that only a sum of Rs.4,65,000/- was received. The defendants case is that though a sum of Rs. 2,90,000/- was given to the collection agent Ravi and Rs. 1,70,250/- paid to Kapali vide a Lakshmi Vilas Bank Cheque bearing No. 581751 they have not been given credit to. As regards the payment of a sum of Rs.1,70,250/- by cheque the Plaintiff in his cross examination as PW 1, would state that all amounts paid has been given credit to and does not deny the payment of this amount. The plaintiff as P.W1 would state that the entire amount was adjusted towards interest.

49. Further he has admitted that the sum of Rs.4,65,000/- has been paid by the defendant between the period 07.08.1995 to 09.09.1995, that is within one month of the borrowal. That the entire sum of Rs.4,65,000/- was adjusted only towards interest is to say the least absurd. After adjusting the amount received towards interest the balance should have been adjusted towards the principal. Admittedly the rate of interest and the principal are different in respect of the promissory notes. The books of accounts of the persons who had lent the amounts have not been produced particularly when the endorsement has been made in favour of the Plaintiff only to collect the dues. The holders of the promissory note while endorsing the promissory notes have not given any details of the outstanding as on the date of the endorsement. Further, the endorsement does not give any date considering the fact that the amounts admittedly received have not been accounted for and the best evidence in the form of the account books have not been produced PW 1, in answer to many of the questions in cross examination would submit that these entries are found in the statement of accounts which however has not been produced. PW 1, has in his cross examination stated that the cheques received from the defendant has been given to the 26 promissory note holders towards repayment as well as towards interest. This answer would imply that amounts were adjusted both towards Principal as well as towards interest.



50. Therefore, in these circumstances the production of the Account books and statement of account assumes significance and on account of its non-production adverse inference has to be drawn. In the judgment reported in AIR 1968 SC 1413 - Gopal Krishnaji Kelkar Vs. Mohammad Haji Latif and others, the Hon'ble Supreme Court while dealing with the question regarding the non-production of the Dargah's account by the appellant has observed as follows:

" But the appellant has not produced either his own accounts or the account of the Dargah to show as to how the income from Plot No.134 was dealt with. Mr. Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of Plot No.134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof."

51. In the absence of the accounts books, the claim made by the Plaintiff has not been substantiated by evidence particularly when the plaintiff has admitted receiving sums of money which has not been accounted for and a huge sum paid within less than a month of the borrowal is claimed to have been adjusted towards interest without showing the actual amount that had been adjusted towards interest. In the circumstances this Court is compelled to hold that the Plaintiff has not proved his right to the suit claim and the 2nd and 3rd points for consideration are also answered against the plaintiff .

52. In fine the appeal is dismissed confirming the Judgment and decree of the learned XV Additional City Civil Judge, Chennai, in O.S.No 3553 of 2013. However there shall be no order as to costs.

After the judgment was pronounced, the learned counsel appearing for the respondents/defendants would submit that a direction should be issued to the appellants to handover the original documents that were offered as security for the simple mortgage dated 07.08.1995, in respect of which the



respondents/defendants have got the decree. Further, this Court has held that no mortgage by deposit of title deeds has been created by the defendants.

2.The appellant is directed to return the above documents within a period of one month from the date of receipt of a copy of this judgment or its production by the defendants.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The learned XV Additional City Civil Court,
Chennai.

+2ccs to Mr.V.Manisekaran, Advocate, S.R.No.60992

A.S.No.3 of 2018

PPA (CO)
PM/21/01/2022