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A.S.No.313 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 27.10.2022

Judgment Delivered on : **15.11.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.313 of 2015

Mrs.R.Shanthi

... Appellant

Versus

1.Gopikrishnan

2.J.Lakshmi

3.CJ.Susindran

... Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to allow the First Appeal, set aside the Judgment and Decree dated 21.04.2010, made in O.S.No.2868 of 2009 passed by the learned Additional District Judge (Fast Track Court – V), Chennai, and pass a decree as prayed for by the Appellant/plaintiff in the above said suit in O.S.No.2868 of 2009 as prayed for with costs.

For Appellant : Mr.Swaminathan Associates,
Mr.R.Md. Naszrullah

For Respondents : Mr.P.V.Muralidhar

JUDGMENT

This Appeal Suit is filed against the Judgment and Decree of the learned Additional Judge, Fast Track Court No.IV, Chennai, dated 21.04.2010 in O.S.No.2868 of 2009, in and by which, the plaintiff's suit was for a direction to the defendants to pay a sum of Rs.8,15,750/- together



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with interest thereof at 18% per annum of Rs.6,50,000/- from the date of the plaint and till the date of realisation, which was dismissed by the Trial Court.

2.The case of the plaintiff is that the first defendant is a Landlord. The first defendant introduced the 2nd and 3rd defendants as his relatives. The plaintiff being a deserted woman was having a sum of Rs.5 Lakhs in her Postal Savings Account and upon insistence and guarantee of the first defendant, the plaintiff lent a sum of Rs.4,50,000/- and the 3rd defendant also executed a document and handed over two cheques drawn on ICICI Bank also as security for repayment of the said amount. Once again on 03.03.2007, the 2nd defendant executed two promissory notes in favour of the plaintiff at Chennai, viz., one for a sum of Rs.1,50,000/- and another for a sum of Rs.50,000/-. However, after the said borrowal, the defendants stopped paying the interest on both loan amounts. The plaintiff found it difficult to pay the rent. For some time, the first defendant also did not insist for the monthly rent since the money was not repaid. The plaintiff insisted for repayment and even lodged a Police complaint. Thereafter, the first defendant behaved in a manner so as to outrage her modesty, and neither the advance amount of one lakh was repaid nor the said amount of



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Rs.6,50,000/- along with accrued interest of Rs.1,60,750/-, in all totalling

of Rs.8,15,750/- was repaid. The plaintiff issued a legal notice on 25.11.2007. Thereafter, a criminal case in CrI.M.P.No.1598 of 2008 was filed before the XVII – Additional Metropolitan Magistrate Court, Saidapet. Even though in the said investigation, the first defendant produced a message that the 2nd and 3rd defendants will repay the amount, but, the amount was not paid. Hence, the suit.

3.The suit was resisted by the first defendant by filing a written statement. The first defendant denied that he ever introduced the 2nd and 3rd defendants to the plaintiff. The 2nd defendant and the plaintiff were classmates and they were known to each other. As far as the tenancy is concerned, the monthly rent was Rs.3,500/- and the advance amount was Rs.20,000/-. Apart from the Landlord and Tenant relationship, the first defendant has got nothing to do with the borrowal. He did not stand as a guarantor. Only because the plaintiff defaulted in payment of rent and the defendant is taking steps for evicting her, vindictively a Police complaint was lodged against him and also he has been arrayed as the first defendant in the suit.



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4.The 2nd defendant filed a separate written statement, which was adopted by the 3rd defendant, in which it is admitted that the 2nd defendant and the plaintiff are natives of *Chidambaram* District and they are school mates. They did know each other. The 2nd defendant's husband got introduced with the husband of the plaintiff. The 2nd defendant's husband suffered a loss in his business and borrowed several amounts from third parties and finally committed suicide on 25.07.2007. But he did not mention any liability with the plaintiff in his suicide note. Even though, the first defendant has executed a letter dated 04.05.2006, and the same cannot be termed as a promissory note. As far as the two promissory notes dated 03.03.2007 are concerned, and the same are not supported by considering that the plaintiff did not have any wherewithal to lend such a huge amount. The plaintiff did not issue a pre-suit notice to the 2nd and 3rd defendants. The promissory note shows as if it is obtained at Pattukottai in printed format and therefore, is abused by the plaintiff.

5.On the strength of the above said pleadings, the Trial Court framed seven issues, which were, thereafter, re-casted as six issues, as under :-

“1. Whether the plaintiff is entitled to a decree for a sum of Rs.8,15,750/- against the defendants 1 to 3 ?



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2. *Whether the defendants are liable to pay interest at 18% p.a. To the plaintiff ?*
3. *Whether the first defendant is the guarantor for the suit transactions ?*
4. *Whether the 2nd and 3rd defendants had borrowed the amount from the plaintiff ?*
5. *Whether the suit as framed is maintainable ?*
6. *To what relief ? ”*

6. On the above said issues, the parties let in evidence, the plaintiff examined herself as P.W.1 and **Exs.A-1 to A-16** were marked. On behalf of the defendants, one R. Jayakumar, was examined as D.W.1 and **Exs.B-1 to B-16** were marked.

7. The Trial Court, thereafter, proceeded to consider the case of the parties and by Judgment dated 21.04.2010, found that except for being a Landlord, the first defendant had got nothing to do with the loan transactions and even **Ex.A-1**/letter did not contain the signature of the first defendant. This apart, when the case of the plaintiff that the first defendant introduced the 2nd and 3rd defendants, by itself cannot fasten the liability, in any event, that also turned out to be false as the plaintiff herself in her evidence admitted that she already knew the 2nd defendant. Therefore, the



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Trial Court held that the suit against the first defendant is liable to be dismissed.

8.As far as the 2nd and 3rd defendants are concerned, the plaintiff's claim was that on 04.05.2006 she lent a total sum of Rs.4,50,000/-. The Trial Court on perusal of the letter dated 04.05.2006, which was marked as **Ex.A-1**, found that same cannot be termed as a promissory note. Once it is not a promissory note, it is for the plaintiff to prove the advancing of the said sum of Rs.4,50,000/-. No proof whatsoever was produced by the plaintiff. As a matter of fact, it is the plaintiff's own case that she did not have any source and except the Postal savings. When she had paid Rs.1 Lakh as advance amount out of the sum of Rs.5 Lakhs she had, then she could not have paid another sum of Rs.4,50,000/- to the 2nd and 3rd defendants. Further, no other independent witnesses were examined for lending such a huge amount to the 2nd and 3rd defendants. This apart, when there is no source available, the claim about the second borrowal is also doubtful. Especially, when the plaintiff has not let in any evidence in tune with her own plaint and has made contrary improvements that she was working as an LIC agent and her husband has left money with her. The plaintiff's evidence was not believable and in the absence of any other



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witness, the Trial Court answered all the issues in favour of the defendants and dismissed the suit.

9. Heard, *Mr.R.Md.Nasrullah*, learned Counsel for the appellant and *Mr.P.V.Muralidhar*, learned Counsel appearing on behalf of the respondents.

10. *Mr.R.Md.Nasrullah*, learned Counsel for the appellant would submit that in this case, the claim of the plaintiff is supported by the promissory notes. The presumption under the Negotiable Instruments Act, 1881 is in favor of the plaintiff. It is for the defendants to disprove the fact that no consideration was passed on pursuant to the promissory note. The plaintiff being a poor lady and being a destitute person abandoned by her husband, was lead into the entire transaction to the first defendant and only upon guarantee given by the first defendant, the amount was advanced. The 2nd and 3rd defendants themselves in the written statement has thoroughly admitted that there was a loss in the business of the husband of the 2nd defendant. As a matter of fact, the cheques were handed over by the 3rd defendant for borrowing the money, which was issued from the account of the deceased husband of the 2nd defendant, were marked as ***Exs.A-10***,



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A-11, A-12. So as to prove her capacity, her savings books from Sri Ram Chits Tamil Nadu Ltd., Balussery Benefit Chit Fund Pvt, Ltd., were also marked as **Exs.A-6 and A-7**. Therefore, the learned Counsel for the plaintiff would submit that the Trial Court erred in dismissing the suit. The suit is a simplicitor for recovery of money, which is supported by the suit promissory notes and the guarantee letter.

11.Per contra, *Mr.P.V.Muralidhar*, learned Counsel appearing for the 2nd and 3rd defendants would submit that admittedly there is no claim as against the first defendant that he borrowed the money. As far as the 2nd and 3rd defendants are concerned, it may be seen that the first transaction of borrowal of loan is not supported by any promissory note. **Ex.A-1**, does not contain the requisite ingredients of a promissory note as defined under Section 4 of the Negotiable Instruments Act. In the absence thereof, the plaintiff, who has averred that she had taken money from Postal Department could not have easily proved the same by producing the said records of the Postal Fixed Deposit of her. As a matter of fact, when it is the case of the plaintiff that she has advancing the entire money which was her life time savings by selling her Jewels etc., and which was the sole source of future income, it is hardly believable that she will advance such a



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huge amount which would cost, her life and livelihood, without even any written document and without even any witness to the transaction.

Therefore, the entire case of the plaintiff is an after thought. There seems to be some transactions when the husband of the 2nd defendant was alive, on account of which these signatures were found in the hands of the plaintiff. Now, so as to guard herself from eviction and so as to wreak vengeance she conveniently framed the present suit. The suit is on different and distinct causes of action and is also liable to be dismissed for misjoinder of the cause of action. Even according to the plaintiff, she did not have the sum of Rs.6,50,000/- and the Trial Court has rightly come to the conclusion that the entire transaction is unbelievable and dismissed the suit.

12. Upon considering the rival contentions made by both sides of the learned Counsel, and perusal of the records, the following points arise for consideration in the Appeal Suit:-

- i) Whether the first defendant is liable to repay the amount to the plaintiff as a guarantor and is a necessary party to the suit?
- ii) Whether the plaintiff advanced sum of Rs.4,50,000/- on 04.05.2006 and Rs.2,00,000/- on 03.03.2007 ?



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iii) To what relief the plaintiff is entitled to ?

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Question No.1:

13. On the first point for consideration, a perusal of the plaint shows that the only reason for roping in the first defendant is that, it is he who introduced the 2nd and 3rd defendants and represented to the plaintiff that they will duly repay the amount. There is no document of guarantee signed by the first defendant. The fact that the first defendant only introduced the 2nd and 3rd defendants, turned out to be as false, as the 2nd defendant and the plaintiff are classmates in their schools at *Chidambaram* and both of their parents' house in *Chidambaram* were in the same locality and that they are acquainted with each other. Therefore, the whole case as against the first defendant is falsified. Even though in Paragraph No.9 of the plaint it is contended that the plaintiff is withholding a sum of Rs.1 Lakh, no relief is prayed for in respect of that. Therefore, I hold that the case of the plaintiff is that the first defendant undertook to be a guarantor for the due repayment of the loan as not proved. The first defendant has not executed any document of guarantee. Accordingly, I answer the Question No.1 that the first defendant neither stood as guarantor to the loan nor is a necessary party to the suit.



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Question No.2 :

14.As far as the second point for consideration is concerned, the plaintiff had made averments on her own volition that she is a deserted woman and also she had no other money except the sale proceeds of the jewelries presented to her by her parents and the same is deposited in Postal Savings Accounts to Rs.5 Lakhs. From out of the said money, she had paid the 2nd and 3rd defendants a sum of Rs.4,50,000/-. The letter dated 04.05.2006 is only in the nature of acknowledgement of the transaction and not in the form of the promissory note. In that view of the matter, it is for the plaintiff to prove the advancement of the loan. The plaintiff could have herself produced the document relating to the cancellation of the Postal savings deposit at the relevant point of time or could have summoned from the concerned Postal Department. The plaintiff did not do so. On the contrary the entire evidence of P.W.1, regarding her wherewithal in the cross-examination is at variance with her own plaint, and she later claimed to be an LIC agent and the money was from the husband, which throws serious doubt in the case of the plaintiff. In the absence of any positive proof handing over to the sum of Rs.4,50,000/-, the plaintiff has not discharged her onus. According to the plaintiff, this money is the entire



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wealth belonging to her for her own life and for the educational expenses of her son. If that be so, it is strange that the plaintiff did not keep any witness to the said loan. When it is alleged that the cheques were given for repayment, the plaintiff did not even present the same for collection. In that view of the matter, the plaintiff had failed to prove the first transaction dated 04.05.2006. In the same way, when it is the case of the plaintiff that she only had Rs.5 Lakhs and out of the said Rs.5 Lakhs, she had also paid a sum of Rs.1 Lakh advance to the first defendant, the she has to prove as to she was able to advance another sum of Rs.2 Lakhs to the 2nd defendant on 03.03.2007. Though the plaintiff has marked **Exs.A-2**, A3, promissory notes, as rightly pointed out by the Trial Court, the said promissory notes marked under **Exs.A-2, & A-3** mention as if it has been executed at *Pattukottai*. The attestors of the promissory notes were not examined. By due cross-examination of the plaintiff about her capacity to pay and very fact that the plaintiff has given different answers to different questions in the cross-examination, the defendants have rebutted the presumption arisen under **Exs.A-2, & A-3**, promissory notes. In the absence of any other positive proof, the plaintiff did not prove the second loan transaction also. As a matter of fact, when different transactions were made at different points of time with different documents, the filing of one single suit, that



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too coupled with the allegations relating to the tenancy and non-payment of advance amount all amount to mis-joinder of a causes of action and the suit as framed is also bad in law. For all the foregoing reasons, I answer the second point for consideration that the plaintiff has not proved the lending of the sum of Rs.4,50,000/-, thereafter, a sum of Rs.2 Lakhs to the 2nd and 3rd defendants.

15.In view of my above findings, I concur with the findings of the Trial Court in respect of all the six issues and I hold that the plaintiff is not entitled to any relief in the suit and the third point for consideration is also answered accordingly.

16.In the result, the Appeal Suit in A.S.No.313 of 2015 is dismissed.

There shall be no order as to costs.

15.11.2022

Index : Yes
Speaking order

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To

1.The Additional District Judge (Fast Track Court – V), Chennai.



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2.The Section Officer, V.R.Section, High Court of Madras.

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D.BHARATHA CHAKRAVARHY, J.

klt

Pre-Delivery Judgment in

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