



A.S.No.815 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14.06.2023

Judgment Delivered on : **07.07.2023**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.815 of 2012

1. K. Nirmala
2. K. Ramya
3. K. Lavanya
4. K. Sivagami
5. K. Durga
6. K. Sivakumar

... Appellants

Versus

1. Kirubakaran
2. V. Shanmugham
3. M. Kulasekaran
4. M. Ganesh Kumar
5. K. Geetha
6. N. Rajan & sons, (HUF),
Rep. by Karta C.R. Narayanasamy,
Tirupur.

... Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 19.11.2010 made in O.S.No.102 of 2006, on the file of the Additional District Court (FTC-II), Salem District.



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For Appellants : Mr. K. Sivasubramanian

For Respondents : Ms. R. Sasi,
for Mr. A. Thiyagarajan
(for R1 to R3, R5 & R6)

: Mr. M.Guruprasad (for R4)

JUDGMENT

A. The Appeal :

This Appeal is directed against the Judgment and Decree dated 19.11.2010 in O.S.No.102 of 2006, by the Learned Additional District Judge Salem, in and by which, the suit filed by the plaintiff to pass a preliminary decree directing the defendants 1 to 5 to pay a sum of Rs.1,68,250/- with further interest at the rate of 9% per annum, and failing which, to order for the sale of the mortgaged property by way of a final decree, was dismissed by the Trial Court. The aggrieved plaintiffs are before this Court.

1.1 Hereinafter, in this judgment, the parties are referred to as per their array in the original suit.



B. The Case of the Plaintiffs :

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2. The case of the plaintiffs is that the first plaintiff is the wife of one *T.K.Kuppusamy*, and the plaintiffs Nos.2 to 6 are the children. The said *T.K.Kuppusamy* died on 27.10.2004. The plaintiffs constituted a joint family. The first defendant is the son-in-law of the second defendant. Both of them borrowed a sum of Rs.10,00,000/- from the deceased *T.K.Kuppusamy*, and executed a promissory note dated 21.09.2003, agreeing to repay the same with interest at the rate of 18% per annum. The third defendant is the father of the first defendant. The fourth defendant is the brother of the third defendant. The fifth defendant is the mother of the first defendant and the wife of the third defendant. Defendants 3 to 5 guaranteed the payment of the above loan by executing guarantee letters dated 05.07.2003, 01.09.2003 and 23.07.2003 respectively.

2.1 By the guarantee letter of the third defendant, he stood as a surety for the liability of his wife *Geetha*, his son *Kirubakaran*, his daughter-in-law, *Aruna*, and his daughter *Vijaya*. The guarantee letter executed by the fourth defendant is for his brother *Kulasekaran*, *Geetha*, *Kirubakaran*,



Aruna & Vijaya. The guarantee letter by the fifth defendant is surety for others. This apart, the third defendant deposited the document of title to his property with an intention to create an equitable mortgage by way of security for the amount due on 02.09.2003. To confirm the deposit, he executed a memorandum of deposit of title deeds on 23.09.2003. The sixth defendant in the suit is an alleged mortgage lender by subsequent mortgage deed dated 16.10.2003. The said mortgage is invalid in law and is created to defeat the claim of the creditors. The plaintiffs, therefore prayed for the decree of recovery of money and for other reliefs.

C. The Case of the Defendants :

3. The suit is resisted by the defendants 1 to 5 by a filing separate written statement. The first defendant stated that, on inspection by him the suit promissory note is found to be fabricated and forged by misusing his signature in a blank form, earlier given by him, while he had borrowed monies in the years 2002 and 2003 from P.S.K Finance, belonging to the said *T.K.Kuppusamy* and family. They have also subscribed to the chit funds conducted by the said finance. The said *T.K.Kuppusamy*, himself is a former



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lawyer, well versed in Court proceedings. He had all the while been fabricating the promissory notes over the blank signatures and there is no such borrowal occurred as alleged by the plaintiffs. The alleged memorandum of deposit of title deeds is again forged and fabricated and there is a material alteration in the same. The earlier amounts borrowed in the year 2003 have been repaid, and therefore, the suit is liable to be dismissed.

3.1 The second defendant filed a written statement specifically denying his signature in the suit promissory note. It is his case that the signature is forged. He has not borrowed any amount from the said *T.K.Kuppusamy*.

3.2 The third defendant filed a written statement specifically alleging that, upon the permission of the court, he had inspected the alleged letter of guarantee dated 05.07.2003, and that the signature contained in the said letter of guarantee is a forged one and not his signature. The third defendant never agreed to be a guarantor for any debt and never went to the office or



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residence of this said *T.K.Kuppusamy*. The third defendant admits the signature in the memorandum of deposit of title deeds, but, however, he submits that his one signature was obtained in a blank paper by holding the first defendant as a hostage and the said that paper is now being misused as a memorandum of deposit of title deeds.

3.3 The fourth defendant filed a separate written statement stating that, after inspection, he finds that the guarantee letter said to have been executed by him in favour of *T.K.Kuppusamy*, is a forged document. The fourth defendant did not have any transaction with *T.K.Kuppusamy* and he did not agree to be a guarantor and never signed the guarantee letter dated 01.09.2003 and the said signature is not his signature.

3.4 The fifth defendant also filed a separate written statement specifically denying the signature in the guarantee letter dated 23.07.2003 and contending that it is a forged one.



D. The Issues :

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4. On the strength of the said pleadings, the Trial Court framed the following issues:-

“1) Whether the case of the 1st defendant that the 1st defendant had borrowed money on the basis of daily, weekly Kandu from P.S.K. Finance Ltd., Salem belong to the family of T.K.Kuppusamy in 2002, 2003 and signed in blank papers, and blank promissory notes and they are used in this case for filling this case?

2) Whether the case of the defendants 1 and 3 that the signature of the defendants 1 and 3 were obtained by threat and coercion through rowdy elements and the letters for creating equitable mortgage by depositing of title deeds was created?

3) Whether the case of the defendants 3, 4, 5 that the guarantee letters dated 5-7-2003, 23-7-2003 were fabricated?

4) Whether the plaintiff is entitled for the recovery of Rs.12,68,250/-?

5) Whether the plaintiffs are entitled for interest @ 9% and costs for the principle amount of Rs.10,00,000/-, as prayed for in the plaintiff?

6) To what relief, if any, the plaintiff is entitled? ”



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E. The Trial & The Findings:

5. On the above issues, the sixth plaintiff / *K.Shivakumar*, was examined as **P.W.1**, one *Ramasamy* was examined as **P.W.2**, and one *Venkatachalam* was examined as P.W.3. On behalf of the plaintiffs, **Exs.A-1 to A-14** were marked. The first defendant/*Kirubakran* was examined as D.W.1. The fourth defendant/*Ganesh* was examined as **D.W.2**, and the second defendant/*Shanmugam* was examined as **D.W.3**. On behalf of the defendants, **Exs.B-1 to B-9**, were marked.

5.1 Thereafter, the Trial Court proceeded to consider the case of the parties and found that, except for the admission of the first defendant regarding the signature in **Ex.A-2**/promissory note, all the other documents namely guarantee letters and the execution of the equitable mortgage, were all flatly denied by the defendants. It considered the evidence of **P.W.1** that even though he submitted before the Trial Court that he had personal knowledge about the transactions and he had deposed in the connected proceedings arising out of the dishonor of cheque before the learned Judicial



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Magistrate that he did not personally know about the transactions between his father and the defendants. The Trial Court found that **P.W.1** was in the United States of America during the relevant period when the suit transactions took place. The Trial Court further found that when the second defendant had specifically pleaded that he did not sign in Ex.A2/ Promissory note and when the second defendant filed an application in I.A.No.628 of 2008 for comparing the admitted signatures, and the same was dismissed, ultimately holding that it was for the plaintiff had to prove the signature of the second defendant and even thereafter, the plaintiff had not taken any steps for comparing the admitted signatures of defendants 3 to 5 in respect of the signatures in suit promissory note or the guarantee letters. The Trial Court further compared the admitted signatures of the defendants and concluded that on the face of it, the disputed signatures do not belong to that of the defendants 3 to 5. There were conspicuous, deletions, erasures, and interlineations in the account book submitted by the plaintiffs. Though the Income Tax Accounts were produced, the relevant Returns which are filed, were not produced and the auditors who prepared these accounts were not examined. Thus, the Trial Court came to the conclusion that there is serious



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doubt in the case of the plaintiffs regarding the borrowing.

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5.2 On the whole, the Trial Court found that when the previous transaction such as subscribing to the chit run by *T.K.Kuppusamy* are being admitted by *P.W.1* himself. Even though the defendants did not give any criminal complaint, still the transaction is not proved by the plaintiff and dismissed the suit. Aggrieved by the same, the present Appeal Suit is filed before this Court.

F. The Submissions :

6. Heard, *Mr. K.Sivasubramanian*, learned Counsel for the appellants, and *Ms. R.Sasi*, learned Counsel appearing on behalf of respondents Nos.1 to 3, 5 & 6 and *Mr. M.Guruprasad*, learned Counsel appearing for respondent No.4.

6.1 *Mr. K.Sivasubramanian*, learned Counsel appearing on behalf of the appellants would submit that firstly the first defendant had admitted his signature in *Ex.A-2*/promissory note. Secondly, there was no explanation as to how and why the original title deeds in respect of the suit schedule



property, which was mortgaged to the plaintiffs, came to be in possession of the plaintiffs. Thirdly, the plaintiffs' father, Late *T.K.Kuppusamy*, was admittedly running the finance business and the accounts in respect of the relevant period were duly produced before the Trial Court, which contains the entries in respect of the borrowals. To corroborate the lending, the Income Tax Accounts were also marked, which contain the particulars of lending the sum of Rs.10,00,000/- to the defendants. Referring to the promissory notes and the guarantee letters to handwriting experts for comparison of signature is not the only mode, by which the plaintiffs can prove their case. When the promissory notes, memorandum of deposit of title deeds, and the letters of guarantee were produced by the plaintiffs and when the attesting witness was also examined and when corroborating evidence in the form of account books, Income Tax Accounts, having been submitted, the Trial Court ought to have decreed the suit.

6.2 The learned Counsel would further submit that the evidence and other materials relating to the connected criminal cases, do not relate to the suit promissory note and they were different transactions. In any event, the



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same were not marked before the Trial Court and when the said documents were not marked, the Trial Court ought not to have taken into consideration of the same.

6.3 The learned Counsel would further submit that even though it is the case of the defendants that the signature in the memorandum of deposit of title deeds is that of the third defendant, they have not proved their case that the signature was forcibly taken by holding the first defendant as a hostage. There is no evidence to support the case of the defendants. The defendants never lodged any Police complaint regarding the same. Therefore, when the execution of the memorandum of deposit of title deeds itself is admitted, then there is no question of the Trial Court dismissing the suit. Therefore, he would pray that the Appeal Suit be allowed and the suit be decreed with costs.

6.4 *Ms. R.Sasi*, learned Counsel appearing on behalf of respondents Nos.1 to 3, 5 & 6, by placing reliance on additional typed set of papers relating to the Judgments in Criminal Appeals relating to the cases arising



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out of private complaints under Section 138 of Negotiable Instrument Act, 1881 for dishonor of cheques, would submit that against the same defendants, repeatedly and assortedly, without any reconciliation, claims have been made about borrowals and issuance of cheques, which would go to show that these were blank documents obtained by the deceased *T.K.Kuppusamy*, in the course of his chit transactions. Sporadically, one or two signatures obtained during the said period, is being belatedly misused and the story is woven by the plaintiff by including all the family members of the defendants so as to bind them, threaten them and extract some money from them which legally they did not owe.

6.5 The learned counsel would submit that when the second defendant had denied the signature, and even if the promissory note is partly forged in respect of the second defendant, the whole borrowal and the document would become questionable, thereby creating no liability over the same. Similarly, when the guarantee letters contain signatures and even the left thumb impression are present in two guarantee letters, in spite of specific denial and in spite of an application taken by the defendants to compare the



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same, where the plaintiffs had not taken any steps to prove the same as that of the defendants, then, that would be like a drop of poison in the cup of milk, rendering the entire case of the plaintiffs as false and unbelievable.

6.6 Specifically, the learned Counsel, taking this court to the detailed cross examination of all the three plaintiffs' side witnesses, would submit that the serious redundancies and contradictions even in respect of personal knowledge about the transactions have been brought on record by way of cross-examination, and therefore, the non-marking of the connected evidence in the criminal case is not fatal to the case of the defendants. She would further point out the cross-examination of P.W.1, wherein he specifically says that the defendants had gone out and brought the guarantee letters after typing the same, when questioned about the forged signatures of the same. This evasive answer, coupled with the fact that he was not at all in the country during the alleged transaction and was in the United States of America, is enough to throw out the entire evidence of P.W.1 and consequently, the suit of the plaintiffs is bound to fail.



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6.7 The learned Counsel would further submit that it is settled law that it is only the plaintiffs who have to prove the signatures, once the defendants specifically plead the same as forged. Taking this Court through the various written statements filed by the defendants, the learned Counsel would submit that the plea is not bald. The plea of forgery is clear and categorical in the instant case, and therefore, she would submit that the suit has been rightly dismissed by the Trial Court.

6.8 *Mr. M. Guruprasad*, the learned Counsel appearing on behalf of the fourth respondent, while adopting the submissions made by the learned Counsel for respondents 1 to 3, 5 & 6 would submit that even the Income Tax Returns of the first defendant have also been filed which would disprove the case of the plaintiffs. He would further submit that even the account books submitted on behalf of the plaintiffs contain so many material alterations and that by itself is enough to dismiss the case of the plaintiffs.

G. Point for consideration :



7. I have considered the rival submissions made on either side and perused the material records of the case. Upon perusal, the point which arises for consideration in this case is :

“Whether the plaintiffs have proved that the defendants have borrowed a sum of Rs.10,00,000/- and executed the suit promissory note/Ex.A-2 and Ex.A-6/memorandum of deposit of title deeds creating equitable mortgage?

7.1 As far as **Ex.A-2**/promissory note is concerned, the second defendant had denied his signature in the same, specifically contending forgery. They have also taken out an application to compare the signatures, which was opposed by the plaintiffs and it was dismissed with an observation that it was for the plaintiffs to take steps to prove the signatures. The law and the point are very well settled that when there is a categorical and clear denial of the signature and allegation of forgery, it was for the plaintiffs to prove the signature by sending the suit promissory note for analysis of an expert by comparing it with admitted signatures. When the plaintiffs have not discharged their onus, then the claim based on **Ex.A-2**/promissory note is bound to fail. Similarly, by comparing the guarantee letters with the admitted signatures, the Trial Court has come to



the conclusion that even with a naked eye, their signatures vary. It is seen that two of the guarantee letters even contain left thumb impressions. If it is really executed by defendants Nos.3 to 5, nothing stopped the plaintiffs from sending the said documents also for expert analysis.

7.2 On the other hand, the plaintiff in the cross-examination evades and ducks by saying that the defendants had brought the letters after being typed and signed from outside. Therefore, **Ex.A-3 to A-5** /Letters were also not proved by the plaintiffs. The only document in which the signature is obtained is **Ex.A-6(series)**/the memorandum of title deeds. Even though the said memorandum of title deeds can be taken as correct, especially, in the absence of any criminal complaint regarding the abduction of the first defendant, when the borrowal itself is not proved by the plaintiffs, and the execution of the memorandum of title dates is not supported by any consideration. The plaintiffs' case is compounded by the fact that there are interpolations and alterations in the Account Books. When the crucial Day Book and Ledger alleged to have been maintained by them in **Exs.A-11 and A-12**, themselves contain such material alteration, especially, when a huge



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sum of Rs. 10,00,000/- is said to have been borrowed by way of cash, in view of the blatant contradictions in the evidence of the plaintiffs and lapses in the discharge of onus staring at the plaintiff, when admittedly parties have past transactions during the running of business by the father of the plaintiffs in the name of P.S.K Finance and when the chit transactions were also admitted, this Court is unable to hold that the plaintiffs have proved their case, even to the level of preponderance of probability. As rightly held by the Trial Court, there is serious doubt over the manner of transactions, the persons involved and the way in which every person in the family is sought to be woven into the transactions. There are no clear-cut pleadings in the plaint as to the other transactions and a perusal of the judgments in the criminal appeals also is clear that there are no clear-cut pleadings and that those transactions were apart from the suit transaction. When between the same persons, there is more than one transaction of borrowal, normally, in the pleadings, it would have been mentioned by the plaintiffs. This is yet another circumstance.

7.3 Above all, when P.W.1's personal knowledge itself, is in doubt, in



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view of his admission in the cross-examination and non-production of his passport, this Court has to conclude that the plaintiffs have not proved the borrowal and the execution of the suit promissory note and consequently, they are not entitled for any relief based on **Ex.A-2**/promissory note or **Ex.A-6**/memorandum of deposit of title deeds. Accordingly, the point is answered.

H.The Result:

8. In the result :

- i) The Appeal Suit in A.S.No.815 of 2012 is dismissed;
- ii) There shall be no order as to costs.

07.07.2023

Index : Yes
Speaking order
Neutral citation : Yes
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To

- 1.The Additional District Court FTC -II, Salem District.
- 2.The Section Officer, V.R.Section, High Court of Madras.



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D.BHARATHA CHAKRAVARHY, J.

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Pre-Delivery Judgment in

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