IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 31.08.2023

CORAM:

THE HON`BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.132 of 2012

S.Mohan Kumar .. Plaintiff

versus

1.K.Ramesh
Proprietor of M/s.Rammag Foundations
No.62/34, Chitrakulam North Street
Mylapore, Chennai-4.

2. K.Mahesh
Proprietor of M/s.Abhinaya Foundations
No.62/34, Chitrakulam North Street
Mylapore, Chennai-4.

3.S.S.Chandrasekaran
4.Radhika Chandrasekaran
5.S.G.Gopalakrishnan
6.S.G.Ramakrishnan
7.S.G.Radhakrishnan
8.Santosh Chandrasekaran
9.Suresh Chandrasekaran
10.S.S.Gurumurthi
11.Visalakshi

3 to 11 defendants are represented
by their Power of Attorney holder
Mr.K.Ramesh .. Defendants

Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendants.

a) directing the defendants to pay a sum of Rs.1,22,00,000/- together with interest at the rate of 24% per annum, accrued on the sum of Rs.1,00,00,000/- from the date of plaint till repayment in entirety.

b) permanent injunction restraining the defendants, their men, servants, agents or any person acting under them from selling, leasing, encumbering or dealing with the property bearing Flat No.9 and 10, having a built up area of 2000 sq.ft. along with 420 sq.ft. UDS out of 2400 sq.ft. of land in Door No.22, New Door No.27, Sundareswarar Street, Mylapore, Chennai-4, in any manner till repayment of entire loan and accumulated interest, as per the Loan Document dated 08.09.2010.

c) for costs of the suit.

For Plaintiff : Mr.A.Damodaran

For Defendants : D1, D3 to D11 -Set Exparte on 19.07.2023.
D2- deceased

JUDGMENT

The suit is filed for recovery of a sum of Rs.1,22,00,000/- together with interest at the rate of 24% per annum accrued on the sum of Rs.1,00,00,000/- from the date of plaint till repayment in entirety; for permanent injunction restraining the defendants and their men from selling, leasing, encumbering the suit schedule property in any manner till repayment of entire loan and also for costs.

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

The plaintiff is running a finance business for several years. The defendants 1 and 2 are brothers and they approached the plaintiff for a loan of Rs.1,00,00,000/- to complete construction in their ongoing project in Door No.22, New No.27, Sundareswarar Street, Mylapore, Chennai, owned by the defendants 3 to 11 and offered to secure the loan against the immovable property for due repayment. The defendants 1 and 2 stated that they are jointly constructing the superstructure in the property and that the entire property was in their possession after having entered into a joint venture with the original owners of the land viz., defendants 3 to 11 herein who are proper parties to determine the suit. Further, the defendants 3 to 11 had granted power of attorney as referred in the sale agreement empowering the 1st defendant to deal with the property which fell into the share of the 1st and 2nd defendants under the joint venture. The 1st and 2nd defendants further assured that a registered sale agreement in respect of the above property would be executed to protect the interest of plaintiff until repayment of the entire loan. These defendants also assured that they will repay the loan in one year and pay interest regularly till date of repayment in full and till then they will not deal with the property in any manner.

2.01. Believing the representation of the defendants 1 and 2, the plaintiff parted with a sum of Rs.1,00,00,000/- on 08.09.2010 as loan on interest at the rate of 24% per annum repayable in one year. They agreed to pay interest on monthly basis till repayment. A loan document was executed by the 1st and 2nd defendants on 08.09.2010 to record the terms of loan whereby they undertook that the property that was offered as security will not be alienated or encumbered in any manner until repayment of the entire loan of Rs.1,00,00,000/- along with interest, giving liberty to the plaintiff to enforce the covenant upon default in payment of interest or principal. They further assured that interest will be paid on monthly basis promptly and that proportionate amount towards repayment of principal would directly be paid to the plaintiff as and when individual units are brought for sale/lease. The 1st and 2nd defendants also executed a demand promissory notes for Rs.50,00,000/- each being the value of money received by them promising to repay on demand the entire loan with interest at the rate of 24% per annum. They duly acknowledged the receipt of money under separate stamped receipt and signed a confirmation of payment dated 08.09.2010. Simultaneously, the 1st defendant executed a sale agreement in favour of the plaintiff in respect of the property bearing Flat No.9 and 10, having a built up area of 2000 sq.t. along with 420 sq.ft. UDS in out of 2400 sq.ft. of land in Door No.22, New Door No.27, Sundareswarar Street, Mylapore, Chennai-4 to secure the loan and the same was registered as Doc.No.2228 of 2010 on the file of the SRO, Mylapore.

2.02. The 1st and 2nd defendants paid interest on monthly basis for first four months alone. Thereafter, they committed default in payment of interest for the month of February 2011 onwards till date. Every time when a demand for payment of interest was made, the defendants would cite that their construction activities in the property was wringing their finances and granted time. The plaintiff bonafidely believed the defendants and patiently waited for settlement of the arrears of interest and for straightening up of the accounts. However, repeated demands made by the plaintiff had fallen in deaf ears. However, on 07.12.2011 when the plaintiff visited the property that was offered as security to meet the 1st defendant, he shocked to see few persons inspecting the flat no.9 and flat no.10 with an intention to enter into a lease. A broker named Elumalai who was accompanying them informed the plaintiff upon query that the defendants had negotiated for a long term lease of the property. The plaintiff was taken aback by the conduct of the defendants in attempting to part with possession of the property offered as security without any reference to the plaintiff and without repayment of the loan. The plaintiff offered the loan only on the security of the property by way of registered sale agreement. Even though the plaintiff met the defendants 1 and 2 on several occasions for payment, there was not even a whisper about their plans to lease the security or that there were takers for long term lease of the flats. The defendants, despite having undertaken not to deal with the property in any manner untill full settlement of loan, is now stealthily attempting to create third party interest to defeat the enforcement of registered sale agreement.

2.03. When the plaintiff contacted the 1st and 2nd defendants and questioned them on their conduct, they informed that they want to create long term lease of the property to settle the loan which is contrary to their undertaking given to the plaintiff. The plaintiff issued a written demand on 12.12.2011 calling upon the 1st and 2nd defendants to repay the entire loan amount of Rs.1 Crore together with interest from February 2011. They gave a stamped confirmation letter on the outstanding, promising to clear the entire loan including accumulated interest within 20 days from 12.12.2011, but failed to honour the same. Since the plaintiff had recalled the entire loan amount and demanded arrears of interest and the defendants having failed to honour their commitments, the defendants as on date are due and liable to pay the plaintiff a sum of Rs.1,00,00,000/- together with accrued interest of Rs.22,00,000/-. Hence the suit.

3. The averments made in the written statement filed by the second defendant in brief are as follows:

All the allegations contained in the plaint are denied except those that are specifically admitted hereunder. It is true that the 1st and 2nd defendants are brothers, but the averment that the 1st and 2nd defendants had jointly undertaken construction business is false as they are doing business separately. This defendant never approached the plaintiff for completing the said project as averred in the plaint and the plaintiff is put to strict proof of the averments. This defendant is not a party to any joint venture agreement allegedly entered into between the 1st defendant and 3rd to 11th defendants. The averment that the defendants 1 and 2 are jointly constructing the superstructure and that the entire property was in their possession after having entered into a joint venture with the original owners is denied as false. The averment that the defendants also assured that they will repay the loan in one year and pay interest regularly till date of repayment in full and till then they will not deal with the property in any manner as they are utter falsehood. The allegation that on 08.09.2010, the plaintiff had given a sum of Rs.1,00,00,000/- to the defendants as loan with interest at 24% per annum repayable in one year is denied as false. The plaintiff did not disburse any amount to this defendant and hence, there is no question of repayment with interest. This defendant has not executed any loan document on 08.09.2010. This defendant never executed any promissory note in favour of the plaintiff for Rs.50,00,000/- as averred and he did not issue any stamped receipt nor sign any confirmation of payment on 08.09.2010. No consideration has been passed to this defendant from the plaintiff and the plaintiff cannot make any claim against this defendant. The averment that simultaneously the 1st defendant executed a sale agreement in favour of the plaintiff in respect of the property bearing Flat No.9 and 10, having built up area of 2000 sq.ft. along with 2400 sq.ft. of land in Door No.22, New Door No.27, Sundareswarar Street, Mylapore, Chennai-600 004 to secure loan and the same was registered as document no.2228 of 2010 on the file of the SRO Mylapore, are not within the knowledge of this defendant and hence are denied as false. Even assuming without admitting that the 1st defendant had executed such agreement it is not binding on this defendant. There is no cause of action as against this defendant and the suit is not maintainable as against this defendant. The suit is bad for misjoinder of cause of action as even according to the plaint averments the plaintiff is making claims against the 1st and 2nd defendants on the basis of two different promissory notes.

4. Based on the aforesaid pleadings, the following issues were framed for trial:

(1) Have the defendants 1 and 2 borrowed a sum of Rs.1,00,000/- (Rupees one crore) from the plaintiff?

(2) Whether two promissory notes dated 08.09.2010 were executed by the defendants 1 & 2?

(3) To what other reliefs is the plaintiff entitled?

5. It is seen from the records that though the defendants 1, 3 to 11 have been served and they have filed Vakalath, there is no representation on behalf of them. However, the defendants 1, 3 to 11 did not file any written statement despite several opportunities and therefore, they were called absent and set ex-parte on 19.07.2023.

6. It is also seen from the records that pending suit, the second

defendant died and no legal heirs have been impleaded despite several opportunities given to the plaintiff. Hence, the suit against the second defendant is abated.

7. Heard the learned counsel for the plaintiff and perused the records.

8. The plaintiff has filed Proof Affidavit reiterating the plaint averments and the representation of the plaintiff was also examined before the learned Master on 21.03.2023, in which, the plaintiff reiterated the averments in the Proof Affidavit and PW1 was examined and ten documents, namely, Ex.P1 to Ex.P10 were marked. Ex.P1 is the original promissory note executed by the 1st defendant dated 08.09.2010. Ex.P2 is the original promissory note executed by the 2nd defendant dated 08.09.2010. Ex.P3 is the original stamped receipt issued by the 1st defendant to the plaintiff dated 08.09.210. Ex.P4 is the original stampd receipt issued by the 2nd defendant to the plaintiff dated 08.09.2010. Ex.P5 is the original confirmation of payment issued by the 1st defendant to the plaintiff dated 08.09.2010. Ex.P7 is the original loan document executed by

the 1st and 2nd defendants to the plaintiff dated 08.09.2010. Ex.P8 is the office copy of the loan recall letter issued by the plaintiff to the defendants dated 12.12.2011. Ex.P9 is the original stamped confirmation letter with undertaking dated 12.12.2011. Ex.P10 is the original agreement of sale dated 08.09.2010.

9. On a perusal of the oral and documentary evidence adduced on behalf of the plaintiff and in the absence of any evidence on behalf of the defendants to disprove the evidence produced by the plaintiff, this Court is of the view that the plaintiff has proved the case with respect to the reliefs sought for in this suit.

10. In the result, the suit is decreed as prayed for with costs. As far as the second defendant is concerned, the suit is dismissed as abated.

31.08.2023

Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

P.W.1. - S. Mohan Kumar

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	08.09.2010	Original Promissory note executed by the 1st defendant
2.	P-2	08.09.2010	Original promissory note executed by the 2nd defendant.
3.	P-3	08.09.2010	Original stamped receipt issued by the 1st defendant to the plaintiff.
4.	P-4	08.09.2010	Original stamped receipt issued by the 2nd defendant to the plaintiff.
5.	P-5	08.09.2010	Original confirmation of payment issued by the 1st defendant to the plaintiff.
6	P-6	08.09.2010	Original confirmation of payment issued by the 2nd defendant to the plaintiff
7	P-7	08.09.2010	Original loan document executed by the 1st and 2nd defendants to the plaintiff.
8	P-8	12.12.2011	Office copy of the loan recall letter issued by the plaintiff to the defendants
9	P-9	12.12.2011	Original Stamped confirmation letter with undertaking

S.No.	Exhibits	Date	Description
10	P-10	080910	Original agreement of sale

<u>Witnesses and documents on the side of the defendants:</u>

Nil

31.08.2023

<u>A.A.NAKKIRAN,J.</u>

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