IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 20.09.2023

Judgment Pronounced on : 07.11.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.S.No.220 of 2019

Subhashini .... Plaintiff

Vs.

1.B.Venugopal

2.Prshanth Vennugopal

3.Pavan Kumar Venugopal .... Defendants

Prayer : Civil Suit filed under Order IV Rule 1 of CPC and Order IV Rule 1 of the Madras High Court O.S.Rules praying for a judgment and decree against the defendants for the following reliefs:

(a) directing the defendants jointly and severally, to pay a sum of Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs only);

(b) directing the 1st defendant to pay interest @ 12% p.a. on Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs only) from the date of the suit till the date of decree and thereafter, at the same interest rate till the date of its realization;

(c) directing the defendants to pay costs of the suit

For Plaintiff : Ms.Rukmini for Mr.P.B.Ramanujam
For Defendants : Mr.V.G.Sureshkumar for D1 toD3
: M/S.Mominic S.David,
Advocate Commissioner

JUDGMENT

This Civil Suit has been filed seeking for a relief of recovery of a sum of Rs.2,50,00,000/- along with an interest at the rate of 12% per annum from the date of the suit till the date of the decree and thereafter, at the same rate till the date of its realisation.

2. The Plaint in brief:

The first defendant is the owner of the property at Door No.1, 1st Street, Abiramapuram, Chennai 600 018, Chennai. He offered to sell the said property to the plaintiff, who was interested in purchasing it. The plaintiff and the first defendant negotiated and executed an agreement of sale on 07.12.2009. The plaintiff paid an advance amount of Rs.54,00,000/-. However, the transaction did not go through and subsequently, the first defendant gave back the advance amount to the plaintiff.

2.1. In view of the good acquaintance developed during the above transaction, the wife of the 1st defendant and the mother of defendants 2 and 3, Mrs.Sheela Venugopal, became friends with the plaintiff. By using the proximity, Sheela Venugopal approached the plaintiff for financial assistance. On believing the words of Sheela Venugopal and being satisfied with her capacity to repay the loans, the plaintiff agreed to lend money to her. This is also due to her ownership over the property at No. 34, Sriram Colony, Alwarpet, Chennai 600 018.

2.2. The plaintiff lent huge amounts on various dates to Sheela Venugopal and the money used to be transacted through cheques. Occasionally, cash payments were also made. Apart from the promissory notes and cheques signed and delivered by Sheela Venugopal. Sheela Venugopal was in the habit of confirming the loans obtained by her by writing on some occasions.

2.3. After consolidating the entire dues, Sheela Venugopal executed one consolidated promissory note on 26.09.2016 for a sum of Rs.2,50,00,000/-, which represents the entire principal and interest due to be paid by her. On the very same day, Sheela Venugopal confirmed the same by writing and stated that the entire amount would be paid by 19.10.2016. But she did not keep up her promise. On 01.12.2018 the 1st defendant had also confirmed pending dues to a total sum of Rs.2,18,50,000/- and had undertaken to repay the same on or before 30.12.2018 in the presence of his wife Sheela Venugopal and another person named Uttam, who attested the undertaking. The 1st defendant also assured that, in the event of default in repaying the amount by 30.12.2018, he would settle his apartment on or before 28.02.2019 in favour the plaintiff in lieu of the dues.

2.4. Despite repeated assurances, neither the first defendant nor his wife, Sheela Venugopal, came forward to pay any amount. When the plaintiff personally met the first defendant and his wife in the middle of January 2019, they requested one final indulgence to settle their dues. Sheela Venugopal died suddenly on January 28, 2019. In view of the bereavement, the plaintiff did not trouble the defendants by demanding repayment immediately. After the ceremonies were over, the plaintiff met the defendants and reminded him about the dues and the defendants also agreed to do the needful.

2.5. After sometimes, the first defendant denied the liability and disowned the loan borrowed by his late wife. He assured to pay a miniscule amount as a full and final settlement to the plaintiff and for which the plaintiff disagreed.

2.6. The first defendant took undue advantage of his wife's demise and attempted to defeat the plaintiff's legitimate claim. The defendants, who are the legal heirs of Sheela Rajagopal are entitled to succeed her property at No. 34, Sriram Colony, Alwarpet, Chennai 600 018. Hence, they are liable to pay the dues of Sheela Venugopal from the estate inherited by them.

2.7. On 13.02.2019, the plaintiff issued a legal notice to the defendants demanding the repayment. The notice was received by the defendants, but the defendants did not send any reply. Hence, the plaintiff has filed a suit for recovery of a sum of Rs. 2,50,00,000/- along with interest at the rate of 12% per annum from the date of the suit till the date of the decree and thereafter, at the same rate till the date of its realisation.

3.The brief facts of the written statement filed by the defendants:

The plaintiff is not entitled to get any relief as prayed for. There is absolutely no material to support the claim of the plaintiff and she has not stated how the sum of Rs.2,50,00,000/- was arrived at. As per the statutory guidelines, any sum paid for a value above Rs.20,000/- can only be made through bank transaction. Hence, the plaintiff has to establish that the alleged borrowing was done through bank transactions. The defendants are liable to answer the borrowings alleged to have been effected by Sheela Venugopal only to the extent that they derived the benefit of her estate. Sheela Venugopal was entitled to half share of the property at No. 34, Sriram Colony, Alwarpet, Chennai 600 018, and she had no other assets. The defendants are liable only to the extent of half share belonging to her.

3.1. In fact, the defendants discharged other liabilities incurred by Sheela Venugopal during her life-time, as they were all supported by evidence and exceeded half of the value of the suit property and hence, the defendants are not liable to answer the suit claim. The promissory notes are supported by consideration. The plaintiff has to establish that Sheela Venugopal has borrowed various sums from the plaintiff right from the year 2010. If no repayment was made by Sheela Venugopal, no prudent person will keep on advancing money to someone who did not make any repayment. The bank records of Sheela Venugopal would indicate that money had flowed from the account of Sheela Venugopal to Plaintiff as well. Since huge amount is said to have got obtained by way of loan, the plaintiff has to establish the flow of consideration.

3.2. The first defendant was employed by a reputed company, and he was away from Chennai and he retired a few years ago. The 2nd and 3rd defendants are employed at abroad. The first defendant is not aware of any financial transaction that was in the nature of loan between the plaintiff and his wife Sheela Venugopal during her life-time. The plaintiff kept quiet until the demise of Sheela Venugopal and came forward with this present claim after her demise, which is unnatural. Had the plaintiff made the claim during her lifetime, the true facts would have come to light.

3.3. The promissory note is not written in the handwriting of Sheela Venugopal and the signature of Sheela Venugopal is not seen on the revenue stamp, but underneath. So there is a lot of cloud over the promissory note executed on 29.06.2016. It is alleged that on 01.12.2018, the 1st defendant had executed a document by stating that the 1st defendant had acknowledged the loan availed from the plaintiff between the years 2010 to 2017 and promised to settled the dues on or before 30.12.2018 and on his failure to do so or settle his Surya apartment on or before 28.02.2019.

3.4. The plaintiff's case is that Sheela Venugopal borrowed the amount from the plaintiff. The signature found in the document dated 01.12.2018 is not of the first defendant. The first defendant neither borrowed any money nor executed any document, as alleged by the plaintiff on 01.12.2018. He never agreed to transfer the apartment to the plaintiff. There was no loan transaction between the plaintiff and the first defendant. The defendants actually offered to resolve the issue without admitting their liability. The plaintiff has claimed exorbitant amount without any basis and hence, the defendant is not willing to oblige to the unrealistic and unsubstantiated claim of the plaintiff. Hence, the plaintiff is not entitled to get the relief sought by her.

4. On the basis of the above pleadings and materials available on record, this Court has framed the following issues on 03.02.2022:

> *"(i) Whether the defendants are jointly and severally liable to pay the plaintiff a sum of Rs.2,50,00,000/-?*
>
> *(ii) Whether the alleged promissory note dated 26.09.2016 is supported by consideration?*
>
> *(iii) Whether the suit is barred by law of limitation?*
>
> *(iv) Whether there is an admission of liability on the part of the first defendant and his wife, late Sheela Venugopal to the plaintiff to the tune of Rs.2,50,00,000/-?*
>
> *(v) Whether the sums the plaintiff is stated to have paid to the deceased Mrs.Sheela Venugopal are a loan and consequently a debt which is legally enforceable and recoverable?*
>
> *(vi) Whether the first defendant is liable to pay interest @ 12% per annum on the suit claim of Rs.2,50,00,000/- from the date of the suit till the date of decree and thereafter at the same rate till the date of*

realization of the same?

(vii) To what other reliefs is this plaintiff entitled to?

5. However, I feel the issues have to be reframed as under;

(i) Whether the defendants are jointly or severally liable to pay the suit amount from and out of estates of late Sheela Venugopal, inherited by them?

(ii) Whether the suit promissory note dated 26.09.2016 is true and valid and supported by consideration?

(iii)Whether the suit is barred by limitation?

(iv)Whether the 1st defendant has acknowledged the liability as claimed by the plaintiff?

(v) Whether the plaintiff is entitled to get the decree as prayed for?

(vi) To what relief if any?

6. During the course of the trial, the plaintiff had examined herself as PW.1 and Ex.P1 to Ex.P5 were marked. On the side of the defendants, the 1st defendant had examined himself as DW.1 and Ex.D1 to Ex.D21 were marked.

7. Heard the submissions made by both sides learned counsels and perused the materials available on record.

8. The learned counsel for the plaintiff submitted that the 1st defendant's wife, Sheela Venugopal herself, had executed an undertaking by admitting the total amount borrowed as on 01.12.2018 by detailing as spilt figures relevant to the dates of borrowing and the first defendant had also agreed to settle the said amount on or before 30.12.2018 and on his failure to do so, to settle his Surya apartment in favour of the plaintiff on or before 28.02.2019. The report of the scientific expert in respect to disputed signatures of Sheela Venugopal affixed in Ex.P1 and Ex.P2 has confirmed that they were the signature of Sheela Venugopal only.

8.1. The fact that the executant of the promissory note did not affix the signature on the stamp will not render the promissory note invalid, unless the promissory note is not properly stamped. Since the promissory note dated 26.09.2016 has been properly stamped and the signatures on the promissory note has also been proved to have been affixed by Sheela Venugopal, the plaintiff is entitled to the initial presumption under Section 118 of the Negotiable Instruments Act in her favour. The defendants did not prove that the promissory note is not supported by consideration. On the other hand, the plaintiff had proved the liability of the defendants. Only because the first defendant knew the genuineness of the transaction between the plaintiff and his wife, he initiated the settlement talks. Hence, the defendants are estopped from stating that Ex.P1 promissory note is not supported by consideration.

8.2. Sheela Venugopal had executed the promissory note and the undertaking on 26.09.2016 and the suit has been filed within 3 years from the said date. Hence the suit is well within the period of limitation. The defendants have made false statements with an intention to enjoy unlawful enrichment. Since the plaintiff has proved that the promissory note has been executed by the 1st defendant's wife, Sheela Venugopal for valuable consideration and her liability had also been admitted through the undertakings executed by herself and the 1st defendant the suit should be decreed as prayed.

9. Per contra, the learned counsel for the defendants submitted that the suit is barred by limitation. Though the plaintiff has stated that the sums were availed between the period from 2010 and 2018, she has not stated any specific dates when the loans were given to the deceased Sheela Venugopal. Any payment exceeding the value above Rs. 20,000/- ought to have been made through bank transaction. But the plaintiff has not shown any bank transaction would show that the alleged transaction has been made through bank as stated by her.

9.1. In fact, the bank account of Sheela Venugopal would indicate that the amount had flown from her account to the plaintiff's account and not *vice versa*. Sheela Venugopal had half share in the property at No. 34, Sriram Colony, Alwarpet, Chennai 600 018, and the defendants had discharged other liabilities of Sheela Venugopal to those persons who had produced the proof of payment from her share in the property. The plaintiff has not proved her financial capability to lend a huge sum of Rs.2.50 crore to Sheela Venugopal. The plaintiff who is in the habit of purchasing blank stamp papers, had utilised them for the purpose of this suit. Ex.P3 is alleged to have been executed on 01.12.2018. But it is actually a fabricated document.

9.2. Even for the sake of argument, Ex.P3 is taken as a genuine document that would show only Rs.2,18,50,000/-, but in Ex.P1 and P2, it was written as Rs.2.50 crore. The fact that Ex.P1 and P2 are supported by consideration is not proved. The burden of proof would lie upon the person who asserts a particular fact and not upon the defendants who denied the same.

The admitted signature does not amount to execution of the document. The forensic expert report would prove that the signature of the first defendant is a forged one. The evidential value of the expert report in respect of the signature of Sheela Venugopal is not a conclusive one. Hence, on the basis of the above report alone, the plaintiff cannot claim that she has proved her case. The defendant's objection to the forensic report would make it clear that the report of the forensic expert is not reliable. Since the plaintiff has not proved her claim, the suit is liable to be dismissed.

Discussion

10. The acquaintance between the plaintiff and the defendant's family is not denied. The plaintiff was interested in purchasing one of the properties of the first defendant and entered into a sale agreement on 07.12.2009 and paid a partial sale consideration. Thereafter, for the reasons best known to the parties the transaction was not fructified. According to the plaintiff, the contact between the plaintiff and the defendants continued and the first defendant's wife, Sheela Venugopal, maintained a good rapport with the plaintiff. During the course of such friendship, plaintiff has lent huge sums on several occasions to Sheela Venugopal and that had accumulated to a sum of Rs. 2.50 crores. Sheela Venugopal is said to have executed a promissory note for a sum of Rs.2.50 crore, and the said promissory note was produced as Ex.P1.

11. It is claimed by the 1st defendant that the promissory note has got lot of blanks. The rate of interest and the details of the witnesses are not written. It is further submitted that the borrower's signature is not found on the stamp but below the stamp. The signature of Sheela Venugopal on Ex.P1 promissory note and another stamp paper, dated 26.09.2019 have been sent to handwriting expert for comparing them with the admitted signatures and give a report. As per the handwriting expert's opinion the signatures on the disputed documents tallied with her admitted signatures. The report received in this regard in Doc.No.16/2023 is marked as Ex.C1.

12. It is submitted by the defendants that the report of the scientific expert can not be treated as a conclusive proof. So far as comparison of signatures is concerned the court itself can do comparison if the similarities and dissimilarities in the signatures are apparently clear even to the bear eyes examination. However, it is always safe to leave the job to the expert's appreciation. A division bench judgement of the Hon'ble Supreme Court in the case of ***Ajit Savant Majagvai Vs. State of Karnataka*** [reported in **(1997) 7 Supreme Court Cases 110**] has held that the court normally should not assume the charge of comparing the signature and even in case a slightest doubt arises, it should be referred to an handwriting expert. The essential paragraphs are extracted as under:

> *"37. This Section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court, to give his specimen writing or finger prints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The Section does not specify by whom the comparison shall made. However, looking to the other provision of the Act, it is clear that such comparison may either be made by a handwriting expert under* Section 45 *or by anyone familiar with the handwriting of the person concerned as provided by* Section 47 *or by the Court itself.*
>
> *38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature of handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not power to compare the disputed signature with admitted signature as this power is clearly available under* Section 73 *of the Act. "*

13. In the case of ***Thiruvengadam Pillai Vs. Navaneethammal and another*** [reported in **(20058) 4 Supreme court cases 530**], it is held that the court is not dis-empowered to compare even the disputed thumb impressions and after analysis of characteristics and findings in this regard should be recorded. The relevant portion is extracted as under:

> *"While there is no doubt that court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/ signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of finger prints, the court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by a casual perusal. "*

14. In the instant case, the court did not take up the risk of doing the job of comparative analysis of the disputed signature by itself. Instead they were sent to expert analysis and hence there is no harm in recording the finding of the expert as the first step. But accepting the findings of the expert is the second part of the exercise. Usually, there can not be any reason to disregard the opinion of the expert, unless there is any patent defect or irregularity is seen to be present in the analysis or established so by the defendants. The first defendant has opted to give a selective acceptance to the part of the report which states that the signature of the first defendant in Ex.P3 did not tally with his admitted signatures. However, he had objected to the positive opinion of the expert in respect of the signature of the deceased Sheela Venugopal. As the disputed promissory notes and the undertaking. Though the defendants had filed objections to the expert's report, none of the objections are found to be strong enough to affect the validity of this report. The first defendant had chosen to accept the report of the scientific expert suiting to his convenience and it can not be countenanced. In my view, the defendants did not establish anything adverse to the acceptance of the expert's report. Hence I choose to accept the same. Consequently, the signature of Sheela Venugopal in the promissory note dated 26.09.2019 and her other signature in Ex.P2 are proved to be true. The date '26.09.2016' mentioned below the above signature in Ex.P2 also proved to be in the handwriting of Sheela Venugopal.

15. The promissory note does not contain any other particulars as to the rate of interest. So it has to be presumed that the loan transaction did not have any term as to interest. If the promissory note is a created one, nothing could have prevented the plaintiff from filling up the rate of interest and particulars of witnesses as per her whims. Ex.P1 has been produced before the Court as how it stood executed and that is the reason why there are blanks in respect of the rate of interest and the witnesses. Though the executor of the promissory note has not affixed her signature on the stamp, the promissory note has been suitably stamped for its value.

16. Ex.P3 is said to have been executed on 01.12.2018 and the said allegation was strongly denied by the first defendant by stating that he did not execute any such undertaking. Before filing this suit, the plaintiff has chosen to send a legal notice Ex.P4 and that was received by the first defendant, as seen from the acknowledgement card Ex.P5. Despite that the defendants did not choose to send any reply notice.

17. So far as negotiable instrument like a promissory note is concerned, once the signature on the promissory note is admitted to be true, the plaintiff has a presumption in her favour in accordance with Section 118 of the Negotiable Instruments Act with regard to passing of the consideration.

However, the defendants have to disprove the presumption by proving that the promissory note is not supported by consideration.

18. Since the executant of the promissory note is no more, the plaintiff can prove the genuineness of the promissory note only by proving the ancillary facts attached to it. As stated already, the first defendant did not deny their acquaintance with the plaintiff. As per the contention of the plaintiff, the loan amount has been given to Sheela Venugopal on several occasions and it was not an one-time payment. After the demise of Sheela Venugopal, the 1st defendant initiated some negotiations with the plaintiff and even according to the 1st defendant, it was some good intention of purchasing peace, but the plaintiff demanded huge sum and hence it did not fructify.

19. Since the above conduct of the 1st defendant would itself support the plaintiff's contention that the 1st defendant's wife, Sheela Venugopal, had executed Ex.P1 promissory note only for a valuable consideration. Though the plaintiff has not shown documents to prove that she had lent money to Sheela Venugopal through bank transaction, some amount flown out from Sheela Venugopal's bank account have been credited in the account of the the plaintiff. The above circumstances, coupled with Ex.P1, would show that there was money transaction between the plaintiff and the 1st defendant's wife and only in support thereof, the 1st defendant's wife, Sheela Venugopal had executed the Ex.P1 promissory note.

20. So far as the quantum of the amount concerned, there is variation between Ex.P1 and P3. In Ex.P3, it is stated as Rs. 2,18,50,000/-, and in Ex.P1, it is shown as Rs.2.50 crores. When the plaintiff was confronted about this difference during her evidence, she stated that both facts are true. The plaintiff has stated that there were multiple transactions and the figure mentioned in the promissory note has to be taken as the consolidated due of those transactions.

21. Ex.P1 and P2 were executed on 26.01.2016 and Ex.P3 is said to have been executed on 01.12.2018. So the variation in the amount can be due to the change of dates and in view of any payments made by Sheela Venugopal during the interregnum. Unless the 1st defendant shows that a part of the consideration of the Ex.P1 promissory note has been repaid, it cannot be presumed that the difference between Ex.P1 and Ex.P3 was the payment made by Sheela Venugopal.

22. The plaintiff has taken the risk of lending money through several transactions and in fact, she had lent a huge sum without obtaining any security. She had chosen to get only a promissory note and an undertaking from the deceased Sheela Venugopal. But in the legal notice of the plaintiff, which is marked as Ex.P4 itself, she has mentioned that Rs.2,18,50,000/- is the amount that was admitted to be paid by the 1st defendant in pursuant to the loan availed by his wife. Since the legal notice of the plaintiff herself coupled with her evidence, the plaintiff stated about the due of Rs.2,18,50,000/-, it can only be presumed that though the suit promissory note was executed by Sheela Venugopal for Rs.2.50 crore, the actual amount due as in the date of the legal notice was Rs.2,18,50,000/-. The 1st defendant has come out with a defence that Ex.P3 was not signed by him and hence, the plaintiff cannot claim that it is an acknowledgement as against the first defendant. The handwriting expert evidence goes in favour of the 1st defendant on this aspect. Hence, Ex.P3 cannot be considered as an undertaking given by the 1st defendant. However, from the fact mentioned by the plaintiff herself in the legal notice about the quantum , which is similar to what is mentioned in Ex.P3, it can be safely concluded that the deceased Sheela Venugopal had dues of Rs.2,18,50,000/-

only subsequent to the execution of the promissory note or prior to her death.

23. Admittedly, there was no stipulation about the interest in the promissory note. A huge sum of Rs. 2.50 crore have been lent on several dates and occasions without maintaining any accounts. However, such an unreasonable and an extra ordinary risk has been taken by the plaintiff will not defeat the evidentially value of the Ex.P1 promissory note and the advantage of initial presumption attached to its value of Section 118 of the Negotiable Instruments Act. The initial presumption in favour of the plaintiff has not been rebutted by the defendants in a manner known to law. Hence, the promissory note Ex.P1 is proved to be true, valid and supported by consideration. **Issue No. 2 is answered** accordingly.

24. Though the first defendant has claimed that the suit is barred by limitation, the fact remains that the plaintiff has filed this suit within 3 years from the date of execution of the promissory note, i.e., on 26.09.2016. The suit was filed on 11.03.2019 which is within 3 years from 26.09.2016, on which date the suit promissory note was executed by Sheela Venugopal. So even in the absence of proof that Ex.P3 has been executed by the first defendant, the suit is filed within a period of limitation as stated above. Hence, **Issue No. 3 is**

answered.

25. Ex.C1-the report of the hand writing expert in respect of Ex.P3 is not in favour of the plaintiff and hence, **issue No. 4 is answered against the plaintiff.**

26. The executant of the promissory note is no more and the suit has been filed against the legal heirs of Sheela Venugopal, who have inherited her properties. The 1st defendant, who was examined as DW.1, has admitted in his evidence that they had inherited a half share of the property situated at No. 34, Sriram Colony, Alwarpet, Chennai 600 018, which belonged to the deceased Sheela Venugopal. He valued the said share at Rs. 2.50 crore and stated that has been utilised for discharging the other liabilities of the deceased. But the said fact has not been substantiated by any oral or documentary evidence. Since the defendants have inherited the property of Sheela Venugopal, it is right for the plaintiff to file this suit against the defendants to get a decree for recovery of the suit amount from and out of the estate inherited by defendants 1 to 3 from the deceased Sheela Venugopal. The defendants 1 to 3 are the legal heirs of Sheela Venugopal and in their capacity as her husband and children, they are jointly or severally liable to pay the suit amount from the assets of Sheela

Venugopal inherited by them. Hence, **issue No. 1 is thus answered**.

27. Even though the suit promissory note has been executed for Rs. 2.50 crores, from the legal notice sent by the plaintiff and her oral evidence, she has made it clear that the remaining due was only Rs.2,18,50,000/-. In such case, the legal enforcement of the suit promissory note can be limited to a sum of Rs. 2,18,50,000/-. though Sheela Venugopal had executed the promissory note for Rs.2.50 crores. As stated already, the promissory note did not contain any terms for interest, and hence, the plaintiff is not entitled to claim any interest. In view of the above stated reasons, the plaintiff is entitled to get a decree for recovery of a sum of Rs. 2,18,50,000/- only, from the defendants as against the assets inherited by them from the deceased Sheela Venugopal. Hence, **issue No. 5 is thus answered.**

28. As there is no term about interest on the date when the suit promissory note was executed, the plaintiff is not entitled to get interest for the amount claimed. However, the plaintiff is entitled to get subsequent interest from the date of the decree till the date of its realisation at the rate of 6% interest per annum. Hence, **Issue No. 6 is thus answered.**

In the result, the suit is **partly decreed with cost** and the plaintiff is entitled to get a decree for recovery of a sum of Rs.2,18,50,000/- only from the defendants to be payable from the assets of the deceased Sheela Venugopal and to that extent to which the defendants are jointly and severally liable to pay as inherited by them. The plaintiff is also entitled to get the subsequent interest from the date of the decree and till the date of its realisation at the rate of 6% interest per annum and the suit is partly dismissed in respect of the rest of the suit claim. Time for payment 3 months.

07.11.2023

Index : Yes / No
Speaking order / Non-speaking order
Internet: Yes/No
Neutral :Yes/No
jrs

APPENDIX

I. Witnesses :

Plaintiff :	
PW.1	Subhashini

Defendants :	
DW.1	B.Venugopal

II. Exhibits :

Sl. No	Exhibits	Description of documents
1	Ex.P1	The original promissory note (Mrs.Sheela Venugopal to plaintiff) dated 26.09.2016 (marked with objection)
2	Ex.P2	The original undertaking (Mrs.Sheela Venugopal to plaintiff) dated 26.09.2016 (marked with objection)
3	Ex.P3	The original undertaking (1st defendant to plaintiff) dated 01.12.2018 (marked with objection)
4	Ex.P4	The original legal notice dated 13.12.2019
5	Ex.P5	The original acknowledgement cards (2Nos) dated 14.02.2019.
6	Ex.D1	The valuation report dated 21.02.2022 (learned counsel for the plaintiff subject to objection it is an irrelevant documents as he is not the author of the same)
7	Ex.D2	The certified copy of the settlement deed dated 31.01.2008.
8	Ex.D3	The certified copy of the sale deed dated 04.02.2010.
9	Ex.D4	The certified copy of the pay order dated 20.02.2010 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to objection it is marked.)
10	Ex.D5	The certified copy of the bank statement issued by Lakshmi Vilas

Sl. No	Exhibits	Description of documents
		bank from 01.01.2014 to 30.06.2017.
11	Ex.D6	The certified copy of the bank statement issued by ICICI bank from 01.01.2016 to 31.12.2016.
12	Ex.D7	The certified copy of the bank statement issued by ICICI bank from 01.01.2018 to 31.12.2018.
13	Ex.D8	The certified copy of the bank statement of D2 issued by ICICI bank from 01.02.2019 to 20.08.2019 (Learned counsel for the plaintiff subject to objection that DW.1 has no authority to file this documents subject to objection it is marked)
14	Ex.D9	The certified copy of the bank statement of D2 issued by ICICI bank from 01.01.2019 to 29.01.2020 (subject to objection that DW.1 has no authority to file this documents subject to objection it is marked)
15	Ex.D10	The receipt issued by Vikram Choudry dated 05.02.2019 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
16	Ex.D11	The receipt issued by Poongothai dated 13.02.2019 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
17	Ex.D12	The receipt issued by Kalai arasi and Narayanan dated 21.02.2019 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
18	Ex.D13	The certified copy of the receipt issued by Kalaivani to the defendant dated 20.02.2019 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
19	Ex.D14	The receipt issued by Sriram and Kalaivani to the defendants dated 20.02.2019 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
20	Ex.D15	The receipt issued by Raghu to D1 dated 31.10.2019 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
21	Ex.D16	The letter dated 27.02.2018 issued by Gayathiri finance to

Sl. No	Exhibits	Description of documents
		Venugopal & Sheela Venugopal (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
22	Ex.D17	The mortgage deed dated 04.07.2014 executed by Sheela Venugopal (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
23	Ex.D18	The statement of account containing the details of payments made towards debt of deceased Mrs.Sheela Venugopal by Mr.Bl Venugopal, Mr.Prashanth Venugopal, Mr. Pawan Venugopal. (learned counsel for the plaintiff has objected stating that it is a self served document and irrelevant document subject to object it is marked)
24	Ex.D19	The income tax return of Mr.Venugopal for the year 2016-2017.
25	Ex.D20	The power of attorney executed by Pawan Venugopal to Venugopal dated 03.06.2019.
26	Ex.D21	The lease agreement dated 14.02.2013 (learned counsel for the plaintiff has objected stating that it is an irrelevant document subject to object it is marked)
27	Ex.C1	The report of the Handwriting expert i respect of the original undertaking (1st defendant to plaintiff) dated 01.12.2018

07.11.2023

R.N.MANJULA.J.,

jrs

C.S.No.220 of 2019

07.11.2023