



A.S.(MD)No.92 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2024

PRONOUNCED ON : 21.05.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

A.S.(MD)No.92 of 2022

Selvalakshmi

... Plaintiff / Appellant

Vs.

1.Ramu

2.Pitchaikannu

3.Anandhavalli

4.Devi

... Defendants / Respondents

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree passed by the Additional District Court, Sivagangai in O.S.No.38 of 2017 dated 31.08.2021 and allow this First Appeal.

For Appellant : Mr.N.Tamilmani

For respondents : Mr.R.Senthil Kumar



A.S.(MD)No.92 of 2022

JUDGMENT

WEB COPY

The Appeal Suit is directed against the judgment and decree passed in O.S. No. 38 of 2017, dated 31.08.2021, on the file of the Additional District Judge's Court at Sivagangai.

2. The plaintiff / Appellant has filed the above suit claiming the following reliefs:

(i) Seeking to pass a decree directing the defendants to pay an amount of Rs. 12,00,733/- (Rupees Twelve Lakhs Seven Hundred and Thirty Three only) including the principal amount of Rs. 7,00,000/- (Rupees Seven Lakhs only) and interest to an amount of Rs. 5,00,733/- (Rupees Five Lakhs Seven Hundred and Thirty Three only) in terms of the promissory note executed by Mrs.Amma Kannu, dated 09.08.2014, in favour of the plaintiff .

(ii) To pass a decree directing the defendant to pay future interest to the principal amount of Rs. 7,00,000/- (Rupees Seven Lakhs only) from the date of filing of the suit.

(iii) Cost of the suit.



A.S.(MD)No.92 of 2022

(iv) Any other reliefs to which the plaintiff is entitled to in the facts and circumstances of the case.

3. For the sake of convenience and brevity, the parties hereinafter will be referred as per their status / ranking in the Original Suit.

4. The plaintiff 's case in short is as follows:

4.1. Amma Kannu is the wife of the 1st defendant and mother of the 2nd to 4th defendants. On 09.08.2014, the 1st defendant's wife and the mother of the 2nd to 4th defendants, namely, one Amma Kannu, for the purpose of her urgent family expenses and other miscellaneous expenses, availed a loan of Rs. 7,00,000/- (Rupees Seven Lakhs only) in cash from the plaintiff for interest at a rate of 24% per annum at Kalayarkoil in the residence of the plaintiff, for which she had executed a promissory note in favour of the plaintiff. The daughter of the said Amma Kannu, i.e., the 3rd defendant had signed in the said promissory note as one of the witnesses. The 1st defendant and his wife, Mrs. Amma Kannu were running a shop for rent at the building belonging to the plaintiff's father-in-law situated at Kalayarkoil, behind the house of the plaintiff. Gaining acquaintance



A.S.(MD)No.92 of 2022

because of the 1st defendant running a shop along with his wife behind the house of the plaintiff, both the 1st defendant and his wife, Amma Kannu, for the purpose of disbursing the common family expenditure and also for the common family loans on execution of the aforesaid pro note, had availed the said loan from the plaintiff.

4.2. That apart, the 1st defendant's wife, Mrs. Amma Kannu had given an undertaking that in case of default in payment of loan, in discharge of the debt borrowed for the purpose of the joint family, they together agreed to execute a sale deed with respect to the 1st defendant's property situated in Survey No. 173/5 part at Kalayarkoil in favour of the plaintiff. Only on such assurance, the plaintiff had come forward to extend a loan of Rs. 7,00,000/- (Rupees Seven Lakhs only) to the 1st defendant and his wife, Mrs. Amma Kannu on execution of a promissory note. It has been specifically agreed in the said promissory note that either the said Mrs. Amma Kannu or anyone claiming through her would be entitled to repay the loan amount to the plaintiff. While so, during 2015, Mrs. Amma Kannu passed away. Since the said loan was availed by Mrs. Amma Kannu for the common family expenditure, after her demise, the plaintiff sought for repayment of the aforesaid loan from the defendants several times, but



A.S.(MD)No.92 of 2022

the same proved futile. Despite diligent efforts by the plaintiff directly, through mediators and through police to recover the amount from the defendants several times, the defendants without paying either the principal amount or the interest amount, kept evading from repayment of the amount borrowed by the deceased Mrs. Amma Kannu. During the lifetime of the deceased Mrs. Amma Kannu, though the 1st defendant agreed to sell the property belonging to him to discharge the promissory note amount, after the death of his wife, he executed a settlement deed with respect to the said property in favour of his daughter i.e., the 3rd defendant on 05.02.2016. Hence, this suit.

5. The defence of the defendants in short is as follows:

5.1. The averment in the Plaint that the deceased Mrs. Amma Kannu borrowed a sum of Rs. 7,00,000/- (Rupees Seven Lakhs only) from the plaintiff on 09.08.2014 by agreeing to repay the same with interest at a rate of 24% per annum is denied as false. However, admitting that the 1st defendant's wife Mrs. Amma Kannu was running a shop in the building belonging to the plaintiff's father-in-law at Kalayarkoil on rental basis and the same is situated behind the house of the plaintiff, the defendants pleaded that even assuming that if the 1st defendant's wife borrowed the



A.S.(MD)No.92 of 2022

aforesaid amount from the plaintiff for her family expenses for discharge of family debts, the plaintiff would have obtained the signature of the 1st defendant. But the signature of the 1st defendant was not obtained in the promissory note alleged to have been executed by his wife in favour of the plaintiff, but it is only the thumb impression alleged to be the thumb impression of the 1st defendant's wife is affixed in the aforesaid promissory note.

5.2. The 1st defendant along with his wife never ever gave any undertaking to the plaintiff to sell the property in Survey No. 173/5 part situated in Kalayarkoil which belongs to him. That apart, no sale agreement was also executed by the 1st defendant with the plaintiff. The 1st defendant's wife had been in habit of making signatures and she had never used her thumb impression for the purpose of execution of any documents or any other official purpose. However, in the promissory note, it is clearly found that the 1st defendant's wife has allegedly made her thumb impression. Hence, the promissory note along with the alleged signature of the 3rd defendant has to be compared and sent for expert opinion, to prove the genuinity of the same.



A.S.(MD)No.92 of 2022

5.3. On 23.09.2015, the plaintiff's husband Muthukumar raped the 1st defendant's daughter, the 4th defendant and a child was born to her on 24.06.2016. The plaintiff's husband also threatened the 4th defendant with his henchmen in order to deceive the 1st defendant's daughter so that the 4th defendant had given a complaint before All Women Police Station, Sivagangai and a case has been registered in Crime No. 4 of 2017 under sections 417, 376, 506(2) IPC. Later, the 4th defendant's child and the plaintiff's husband were subjected to medical examination for comparison of DNA. The plaintiff's husband had also threatened the defendants to withdraw the criminal case against him. Since the plaintiff's husband threatened the defendants, on 05.04.2017, a criminal case was further registered in Kalayarkoil Police Station in Crime No. 135/2017 under sections 294(b), 506(1) IPC. At this juncture, since the plaintiff also threatened the 4th defendant on 20.12.2018 yet another criminal case was registered at Kalayarkoil Police Station in Crime No. 777 of 2018 under sections 294(b), 506(1) IPC. Having known all these facts, the plaintiff has wantonly suppressed the real facts and had filed this Suit with wrong particulars.



A.S.(MD)No.92 of 2022

5.4. Hence, the suit is liable to be dismissed with heavy cost on the ground of suppression of real facts. The plaintiff and her husband continuously threatened the defendants, compelling them to withdraw the criminal case filed against them. They have fraudulently created the suit promissory note alleged to have been executed by the 1st defendant's wife, Mrs. Amma Kannu. The plaintiff also failed to state in the plaint regarding the witness in whose presence the alleged promissory note was executed. The plaintiff also did not mention the details of the scribe in the plaint. The suit promissory note is created fraudulently by the plaintiff and hence there is no cause of action for the suit. Had the claim of the plaintiff been true, the plaintiff would have obtained the signature of the 1st defendant as well. In the absence of the same, the narrative of the plaintiff that the 1st defendant's wife, Mrs. Amma Kannu had borrowed an amount of Rs. 7,00,000/- (Rupees Seven Lakhs only) from the plaintiff is absolutely false. Thus, the case as filed by the plaintiff is liable to be dismissed with exemplary cost.

6. The Trial Court, upon considering the aforesaid pleadings, has framed the following issues:



A.S.(MD)No.92 of 2022

(i). Whether the plaintiff is entitled to the suit amount with subsequent interest as sought for?

(ii). To what other reliefs, are the parties entitled to?

7. On the side of the plaintiff , she was examined as P.W-1 and Exhibits A1 to A3 were marked and one of the attesting witness, Thiru.Selvalingam was examined as P.W-2. On the side of the defendants, the 3rd defendant was examined as D.W-1 and 4th defendant was examined as D.W-2 and Exhibits B1 to B6 were marked.

8. The learned Trial Judge, upon considering the pleadings, the evidence both oral and documentary and upon hearing the arguments of both sides has passed the judgment and decree dated 31.08.2021, by answering all the issues in favour of the defendants and dismissed the suit.

9. Aggrieved by the impugned judgment and decree, the plaintiff has preferred the present Appeal Suit. The learned counsel for the Appellant / plaintiff submitted that the Suit has been filed on the basis of the pro-note which had been executed by the 1st defendant's wife, one Mrs. Amma



A.S.(MD)No.92 of 2022

Kannu on 09.08.2014 in favour of the plaintiff and the same has been marked as Exhibit A1. He further submitted that the said promissory note was executed by the 1st defendant's wife, Mrs. Amma Kannu on borrowing an amount of Rs.7,00,000/- (Rupees Seven Lakhs only) for disbursing the common family expenditure and common family debts incurred by her and her husband, i.e., the 1st defendant on execution of the promissory note from the plaintiff. However, the Suit came to be filed after the death of the said Mrs. Amma Kannu as against her legal heirs. Both the attesting witnesses of the said promissory note have been examined by the learned Trial Court at the time of Trial. One of the attesting witnesses had been the daughter of the aforesaid Mrs. Amma Kannu, namely Anandhavalli and she had been examined as D.W-1 on the side of the defendants as defendants side witness. That apart, another attesting witness, namely Selvalingam has been examined as P.W-2 on the side of the plaintiff. Despite the fact that one of the own daughters of Mrs. Amma Kannu had been the attesting witnesses who had deliberately denied her signature in the pro note without considering the evidence deposed in favour of the plaintiff by the other attesting witnesses, the learned Trial Court proceeded to dismiss the Suit.



A.S.(MD)No.92 of 2022

10. The learned Trial Court had proceeded to dismiss the suit on questioning the genuinity of the thumb impression, while the thumb impression is more reliable than that of a signature of a deceased person as far as a document is concerned. The learned Trial Court hastily proceeded to dismiss the Suit by not considering the pertinent factum of the defendants refusal / hesitation to produce the Aadhar Identity Card which would have obviously proved the thumb impression of the deceased Mrs. Amma Kannu. Hence, this is a fit case to be remanded back to the Trial Court for the purpose of directing the defendants to produce the Aadhar Card of the deceased Mrs. Amma Kannu and on that basis pressed for allowing the Appeal Suit thereby remanding the same back to the Trial Court.

11. Per contra, the learned counsel for the respondent / defendant submitted that had the pro note been genuine, the plaintiff would have diligently mentioned the name of the witnesses in whose presence the deceased Mrs. Amma Kannu borrowed the amount and further who actually scribed the aforesaid promissory note. But having not pleaded the aforesaid details, the plaintiff had given the evidence that one Ponnusamy had scribed the aforesaid promissory note. P.W-2 was one of the witnesses



A.S.(MD)No.92 of 2022

in Exhibit A1 promissory note. However, the plaintiff miserably failed to prove that the second witness who had allegedly signed in the suit promissory note and the person who deposed evidence as P.W-1 and P.W-2 are one and the same. Having not duly produced any Identity Card to prove that the witness mentioned in Exhibit A1 promissory note and P.W-2 are one and the same, the plaintiff miserably failed to prove the execution of the said promissory note. The initial onus is always on the creditor to prove that a consideration has passed on to the debtor. However, in the instant case, the plaintiff has miserably failed to prove the same and on that basis, the learned counsel for the respondent pressed for dismissal of the Appeal Suit.

12. The points for consideration are as follows:

(i) Whether the Trial Court erred in deciding that in the absence of any acceptable oral and documentary evidence on the side of the plaintiff to prove the execution of Exhibit A1 promissory note by the deceased Mrs. Amma Kannu, the claim of the plaintiff is not sustainable?



A.S.(MD)No.92 of 2022

(ii) Whether the plaintiff has miserably failed in discharging his initial burden of proof as to the execution of the promissory note by Mrs. Amma Kannu and that a consideration has passed on to the said Mrs. Amma Kannu and the first defendant as decided by the learned Trial Court.

(iii) To what reliefs, the parties are entitled to?

13. The facts of the Suit is that a promissory note was executed by the wife of the first defendant, namely Mrs. Amma Kannu for a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) in favour of the plaintiff on 09.08.2014. On its basis, the Suit has been laid for its recovery with interest. The defence of the defendants is that, no such promissory note has been executed by the wife of the 1st defendant, Mrs. Amma Kannu at any point of time in favour of the plaintiff. That apart, the thumb impression alleged to have been affixed in the aforesaid promissory note dated 09.08.2014 by late Mrs. Amma Kannu is also disputed emphatically by the defendants in their pleadings as well as the evidence. It was categorically defended by the defendants that, the late Mrs. Amma Kannu, never ever had the habit of affixing thumb impressions, on the other hand, she used to make her signature wherever necessary in her daily course of life.



A.S.(MD)No.92 of 2022

14. Burden of proof:

WEB COPY

The *Division Bench of Madras High Court* in a judgment reported in *100 Law Weekly* page 981 in the case of *Kishanlal .vs. Jograj Bantia* in *Paragraph No. 6* has held as follows:

“6. The plaintiff has come forward with the suit on the basis of pro-note dated 27.10.1973 marked as Exhibit A1 in this case. He examined himself as PW1 and according to his evidence, the defendant borrowed from him rupees 34,000 and executed the suit pro-note. The defendant used to sign only in Hindi earlier as is seen from the copy of the plaint in OS 16 of 1941, Exhibit A6, which was a suit filed by the defendant against his brother and his wife. PW2 has stated that he was also present when Exhibit A1 was written. However, he has not attested Exhibit A1. As the defendant has denied the execution of the pro-note, the burden is on the plaintiff to prove the execution of the pro-note and passing of consideration for the same...”.

15. When the defendant specifically denies the execution of the suit pro-note by the wife of the 1st defendant, Mrs. Ammakannu and condemns that the alleged thumb impression affixed in the aforesaid promisory note is not that of Mrs. Ammakannu, then the initial burden is upon the plaintiff



A.S.(MD)No.92 of 2022

to establish the execution of the suit promissory note. Only if the execution is admitted by the defendant or the plaintiff is able to prove the execution of the pro-note, the invocation of the statutory presumption under Section 118 of the Negotiable Instrument Act would arise. It is a settled proposition of law that no party could be compelled to prove the negative. The plaintiff who is asserting that the defendant had executed the suit pro-note has to prove the same.

16. Proof of execution of pro-note:

The burden of proof is entirely upon the plaintiff to establish the execution of the suit of pro-note since the defendants have categorically denied the execution of the same by the wife of the 1st defendant, one Late.Mrs.Ammakannu. The plaintiff has been examined as P.W-1 and the pro-note has been marked as Exhibit A1 by the plaintiff. A careful perusal of Exhibit A1 would reveal that one S.Anandhavalli has signed as attesting witness and another C.K.Selvalingam has made his signature as attesting witness No. 2. The second attesting witness namely C. K. Selvalingam was examined as P.W-2. Though the plaintiff had never pleaded as to the details of the attesting witnesses and the scribe of the aforesaid promissory note,



A.S.(MD)No.92 of 2022

interestingly both P.W-1, that is, the plaintiff and also the attesting witness C. K. Selvalingam in their cross examination submitted that the aforesaid suit promissory note was filled up by one Ponnusamy. However, both of them fairly conceded that they do not know the name of the father of the aforesaid Ponnusamy. However, a careful perusal of the pleadings of the plaint as well as the proof affidavit filed in examination in chief by the plaintiff that is P.W-1 would reveal that nowhere the plaintiff has claimed that at the time of execution of the aforesaid promissory note, her husband Muthukumar was present. However, in the plaint she has stated that the consideration of Rs.7,00,000/- (Rupees Seven Lakhs only) passed upon the deceased Mrs. Ammakannu in the presence of her husband, that is, the 1st defendant. On the other hand, Thirumathi.Anandhavalli who is alleged to have been the first attesting witness of the aforesaid promissory note has been examined as D.W-1 and the 4th defendant namely Thirumathi.Devi, the daughter of the 1st defendant and the deceased Ammakannu was also examined as D.W-2. Thirumathi.Anandhavalli, the 3rd defendant as well as the daughter of the 1st defendant and the deceased Ammakannu while deposing her evidence as D.W-1 has categorically denied the execution of the aforesaid promissory note by her mother Mrs. Ammakannu as well as the claim of the plaintiff that she herself had attested as the first attesting



A.S.(MD)No.92 of 2022

witness in the pro note.

WEB COPY

17. A careful perusal of the signature of D.W-1 in her proof affidavit filed as examination in chief would reveal that the same has been made in English. However, she had signed in her cross-examination deposition in Tamil. The comparison of the aforesaid signatures with the attesting witness in the aforesaid pro note will clearly reveal that the signatures made by Mrs. Anandhavalli in her deposition does not match with the one in the pro note as attesting witness No.1. When the 4th defendant Thirumathi.Devi was examined as D.W-2, she had produced the information obtained under Right to Information Act and has duly marked the same as Exhibit B4. The aforesaid information pertains to the information received by her from the State Bank of India, Kalayarkoil Branch by which she produced the complete records pertaining to the Savings Bank Account of her mother, late Mrs. Amma Kannu in which her signature has been clearly made by the said deceased Amma Kannu. By producing the same, the defendants have duly proved that the deceased Mrs. Amma Kannu was of the habit of putting signatures and not affixing her thumb impression for official purposes.



A.S.(MD)No.92 of 2022

18. Further, it has also been categorically pleaded and deposed by D.W-2 that this suit has been filed by the plaintiff only with the sole intention of counter-blasting the criminal complaints which have been given by D.W-2 as against the husband of the plaintiff, namely one Muthukumar. D.W-2 deposed in her evidence that on 23.09.2015, the plaintiff 's husband Muthukumar raped her as a result of which she got pregnant and a child was born to her on 24.06.2006. She further deposed that in this regard she had lodged a complaint before the All Women Police Station and the case was registered in Crime No. 4 of 2017 under sections 417, 376, 506(2) IPC. She also deposed that in DNA test conducted by the Competent Court, it has been duly proved that the plaintiff 's husband Muthukumar is the father of D.W-2's child. Thus, the defendants have also established that the plaintiff 's husband had immoral contact with the 4th defendant and the 4th defendant had also begotten a child through him as a result of which criminal proceedings were initiated against the plaintiff 's husband and due to the enmity which had arisen between the plaintiff and defendant's family and as the plaintiff along with her husband threatened the defendant's family to withdraw the proceedings. Since the defendants did not heed to the threats of the plaintiff and her husband, the plaintiff had fraudulently prepared Exhibit A-1 promissory note to threaten the



A.S.(MD)No.92 of 2022

defendants to withdraw the case initiated as against her husband.

WEB COPY

19. The said defence raised by the defendants has also been established by filing the documents pertaining to the criminal proceedings initiated by the 4th defendant and as against the plaintiff's husband and duly marking the same before this Court as Exhibit B-2. Hence, in the absence of any acceptable oral and documentary evidence on the side of the plaintiff to prove the execution of Exhibit A-1 promissory note by the deceased Amma Kannu, the claim of the plaintiff is not sustainable. That apart, the plaintiff is not even able to establish her source of income by producing cogent documents at the time of deposing her evidence and her answers pertaining to her source of income at the time of cross-examination are also not convincing. Therefore, this is a clear case that the plaintiff has miserably failed to prove the execution of the promissory note dated 09.08.2014 by deceased Mrs. Amma Kannu, that is, the wife of the first defendant and the mother of the second to fourth defendants. That apart, the plaintiff has also failed to establish her means to lend the amount of Rs.7,00,000/- (Rupees Seven Lakhs only) on the date of suit promissory note. Therefore, the judgment and decree of the Trial Court in O.S.No. 38



A.S.(MD)No.92 of 2022

of 2017 on the file of the Additional District Judge's Court, Sivagangai is hereby confirmed.

20. In the result, the Appeal Suit is dismissed and the impugned judgment and decree passed in O.S.No. 38 of 2017 on the file of the Additional District Judge's Court at Sivagangai, dated 31.08.2021 is hereby confirmed. There shall be no order as to costs.

21.05.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

1. The Additional District Court,
Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.92 of 2022

L.VICTORIA GOWRI, J.,

Sml

A.S.(MD)No.92 of 2022

21.05.2024