



A.S.No.14 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :03.06.2025

Pronounced on :10.06.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.14 of 2022

Mrs.Nisha

Wife of Mr.Dinesh Kumar Bora,

New No.13, Old No.7, Perumal Koil Street,

West Mambalam, Chennai 600 033.

.. Appellant/Plaintiff

/versus/

1.Mrs.Sulochana,

Wife of Late Shanmugam

2.Ms.S.Divya,

Daughter of Late Shanmugam

3.Mr.S.Arun Kumar,

Son of Late Shanmugam

All are residing at No.76, Subramaniasamy Koil Street,

(Facing Sembada Street), Saidapet,

Chennai 600 015.

..Respondents 1 to 3/
Defendants 1 to 3



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Prayer: Appeal Suit has been filed under Section 96 r/w Order XLI, Rule 1 of Civil Procedure Code praying to set aside the judgment and decree dated 10.08.2021 passed in O.S.No.4328 of 2018 by the learned XVII Additional City Civil Judge, Chennai.

For Appellant :M/s M.Sneha

For Respondents :No appearance

=====

J U D G M E N T

Original Suit O.S.No.4328 of 2018 (on the file of the XVII City Civil Court, Chennai) is for recovery of money based on the mortgage deeds and promissory notes. The Trial Court partly allowed the suit vide judgement and decree dated 10.08.2021.

2. This Appeal Suit is preferred by the plaintiff as against the disallowed portion of the relief prayed.

3. Averments in the plaint:-

The first defendant Mrs.Sulochana, on her behalf and on behalf of her



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minor children/the 2nd and 3rd defendants, mortgaged the suit schedule mentioned property with the plaintiff on 17.03.2013 and borrowed Rs.2,00,000/-. She agreed to repay the same with interest at the rate of 24% p.a. The title deeds of the suit schedule property were deposited with the plaintiff as collateral security for the loan advanced. Subsequently, the defendants borrowed a further sum of Rs.2,00,000/- from the plaintiff on 18.11.2014 and executed a simple mortgage deed in favour of the plaintiff. Both the mortgage deeds (Ex.A-1 and Ex.A-2) were duly registered . Later, the first defendant borrowed Rs.2,25,000/- on 12.08.2016 and Rs.75,000/- on 15.09.2016. For the above said borrowings, she executed pro-notes (Exs.A3 and A4) on the respective dates for the respective amounts. Towards the mortgage amount, the defendants paid interest till December 2014 and thereafter, wilfully neglected to pay interest or to discharge the loan amount. Hence, after causing notice through an Advocate on 27.07.2018, the suit been laid for the following relief:-

(a)To pass a Preliminary Decree for mortgage against the defendants for a sum of Rs.4,00,000/- with subsequent interest from



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the date of suit till the date of realisation at 24% per annum directing them to pay the amount failing which to pass final decree or sale of mortgaged property for realisation of the amount within the time frame to be fixed by this Hon'ble Court.

(b) In default of payment on or before a date to be fixed by this Hon'ble Court, directing the sale of the mortgaged properties described in the schedule hereunder and the application of the proceeds in payment of the decreed amount.

(c) To pass a decree directing the defendants to pay the sum of Rs.3,00,000/- together with interest at 18% per annum from the date of suit till date of realisation in respect of two demand promissory note dues, due and payable by the defendants to the plaintiff.

(d) Directing the defendants to pay the cost of the suit; and

(e) Grant such other suitable relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice.



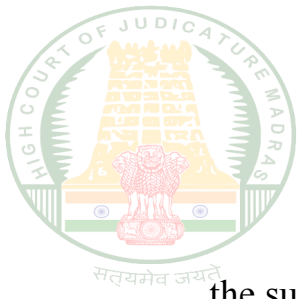
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4. Averments in the Written Statement: -

The first defendant filed a written statement and the same was adopted by her children, who are the defendants 2 and 3. In the written statement, the contractual relationship between the plaintiff and the defendants denied, Execution of mortgage deed for borrowing money denied. Likewise, the execution of pro-notes and borrowal of Rs.2,25,000/- and Rs.75,000/- on two different dates also denied.

5. According to the defendants, they got the suit schedule property through a release deed. They are the joint owners of the property. The 2nd and 3rd defendants were minors at the time of executing the alleged mortgage deed. No prior permission obtained from the Court before creating encumbrance of a minor's property. Therefore, as against the minors, the mortgage is not enforceable. The suit filed misusing the documents obtained from the first defendant by misrepresentation taking advantage of her illiteracy. The plaintiff is an unknown person to the first defendant. Hence,



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the suit has to be dismissed.

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6. Based on the pleadings, initially the following Issues were framed:-

(i) Whether the plaintiff is entitled for recovery of Rs.3,00,000/- with interest at the rate of 18% p.a, as prayed for?

(2) Whether the plaintiff is entitled for preliminary decree for recovery of Rs.4,00,000/- with interest at 24% per annum as prayed for?

(3) Whether this Court has no jurisdiction to try the suit as the mortgaged property belongs to minors?

(4) Whether the suit is barred by limitation?

(5) To what relief?

7. After examination of witnesses, the Issues were recasted as under:-

1. Whether the plaintiff is entitled for preliminary decree for recovery of mortgage money from the defendants as prayed



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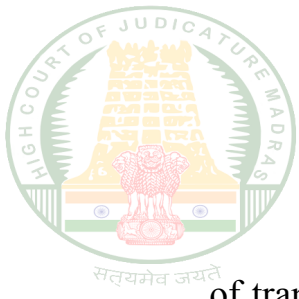
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for?

2. Whether the plaintiff is entitled for recovery of amount lent through pro-notes from the defendants as prayed for?

3. To what other relief, the plaintiff is entitled to?.

8. The Trial Court after considering the oral evidence of the plaintiff examined as PW-1 and the oral evidence of the first defendant examined as DW1 and the documentary marked as Ex.A1 to Ex.A6, dismissed the suit against defendants 2 and 3 and partly allowed the suit as against the first defendant declaring the amount due and payable to the plaintiff on the mortgage is Rs.4,00,000/- only and the plaintiff is entitled only for 6% interest per annum from the date of plaint as against the agreed interest at the rate of 24%. p.a. Preliminary Decree in respect of the property mortgaged to an extent of the first defendant's 1/3rd share was ordered. In respect of the recovery of Rs.3,00,000/- with interest of 18% p.a., based on the two pro-notes (Ex.A3 and Ex.A4), the claim was dismissed for want of proof. The suit against the defendants 2 and 3, who were minors at the time



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of transaction, was dismissed in entirety for not obtaining permission of the Court before creating mortgage and for the failure to prove that the amount borrowed was utilised for the benefit of the minors.

9. The plaintiff aggrieved by the dismissal of the suit as against defendants 2 and 3, the dismissal of the relief in respect of the recovery of Rs.3,00,000/- which is the loan advanced to the first defendant against promissory notes and the restriction of the interest rate to 6% for the mortgage loan of Rs.4,00,000/- as against the 24% interest agreed and claimed had preferred the instant appeal.

10. Points for determination:-

(1) Whether the mortgage executed by the mother on her behalf and on behalf of the minors will bind the defendants 2 and 3, who were minors at the time of executing the mortgage deed ?

(2) Whether the Court below erred in restricting the



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interest at the rate of 6% as against the agreed rate of interest at 24% p.a. for the loan advanced on mortgage (Ex.A1 and Ex.A2)?

(3)Whether the pro-notes (Ex.A3 and Ex.A4) are not enforceable for want of attestation by witnesses?

11. Point 1:

The mortgage deeds Ex.A-1 and Ex.A-2 are duly registered documents. The first defendant on her behalf and on behalf of the minor children (defendants 1 and 2) had executed it in favour of the plaintiff. In Ex.A-1 dated 16/03/2013, the property mortgaged been mentioned as property acquired by the defendants through a release deed dated 06/08/2010 and Rs.2,00,000/- is borrowed for the purpose of discharging certain debts and to raise certain funds. The first defendant had acknowledged the receipt of the loan amount and affixed her signature in the mortgage deed and further participated in the registration of the document before the Joint Sub-Registrar-1, Chennai South. Similarly, while



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executing ExA-2, the second simple mortgage deed on 18/11/2014 for additional loan of Rs.2,00,000/-, she had executed the deed on her behalf and on behalf of the minor children as mother and natural guardian. In this deed. It is mentioned that the loan is availed for the business purpose. On perusal of Ex.A-1 and Ex.A-2, this Court find that though the recital of these two deeds states that the first defendant had executed the deeds on her behalf and on behalf of her minor children, she had signed on her behalf alone and presented the documents for registration, there is no recital to show that the loan was raised for the benefit of the minors.

12. It is settled principle of law that the absolute property of minors can be dealt only by the Court designated guardian with permission of the Court. However, in case of joint family property of any Hindus, even without permission under Section 8 of the Hindu Minority and Guardianship Act, 1956, kartha can deal with the property provided, the transfer or alienation or encumbrance is for the benefit of the minors. For easy reference, the relevant provision of the Act is extracted under:



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“Section 4. Definition – In this Act:-

(a) "minor" means a person who has not completed the age of eighteen years;

(b) "guardian" means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards.

(c)'natural guardian' means any of the guardians mentioned in Section 6”.

Section 6: Natural guardians of a Hindu minor- The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a)in the case of a boy or an unmarried girl-the father and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b)in the case of an illegitimate boy or an illegitimate unmarried girl-the mother and after her, the father;

(c)in the case of a married-the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provision of this



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section-

(a) if he has ceased to be a Hindu; or

(b) if he has completely and finally renounced the world becoming a hermit (*vanaprastha*) or an asceti (*yati or sanyasi*).

Section 8: (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the Court,--

(a) mortgage or charge, or transfer by sale-gift, exchange or otherwise, any part of the immovable property of the minor, or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of Sub-section (1) or Sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in Sub-section (2) except in case of necessity or for an evident advantage to the minor.”



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13. Section 8 of the Hindu Minority and Guardianship Act, 1956 read along with Sections 4 and 6 of the Act, which defines the legal term guardian and who can be a guardian of a Hindu minor, and Section speaks about right to alienate minors property, a combined reading of these Sections makes it clear that in case of Hindu joint family property, in which the minors also have interest, prior permission of the Court is not required, if the Kartha or the natural guardian deals the property on behalf of the minor and it is sufficient to prove that the mortgage or sale was done for the benefit of the minors.

14. The law on this point is well explained by Allahabad High Court in *Arun Kumar and Ors. vs Smt.Chandrawati Agrawal and Ors. (AIR 1978 ALL 221)* as under:-

Hindu Minority and Guardianship Act, Section 4.
(b) defines "guardian" while Clause (c) thereof defines "natural guardian" as meaning any of persons mentioned in Section 6. Now Section 6 deals with natural guardians of a Hindu minor. It mentions in the order of priority the



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persons who are entitled to be natural guardians of a Hindu minor. The opening words of the section, however, say that "the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are those mentioned below in the section, The words "excluding his or her undivided interest in joint family property" which have been put in brackets make it clear that the undivided interest of a Hindu minor is excluded from the operation of the provisions of the Act and the subject-matter with which the Act deals is limited to guardians in respect of minor's person or in respect of minor's property other than his undivided interest in joint family property, whether they be natural guardians or testamentary guardians or guardians appointed or declared by Court. The concept of a guardian in respect of undivided interest in the joint family property is thus specifically excluded from the purview of the Act. (emphasis added). The powers which a Hindu father therefore has, as a natural guardian of his minor sons under Hindu Law, are kept intact and are not in any way affected by the provisions of the [Hindu Minority and Guardianship Act](#) so far as the undivided interest of a Hindu minor in the joint family property is concerned.



The restrictions contained in [Section 8](#), therefore, do not apply in respect of the undivided interest of a minor in joint family property and consequently [Section 8](#) does not debar the Manager or karta of a joint Hindu family from alienating joint family property including the interest of minor without obtaining the previous permission of the Court, even if the Manager or Karta happens to be the natural guardian in respect of the separate property of any one or more of the minor coparceners. Of course the alienation would have to be justified under Hindu Law but [Section 8](#) does not require that any previous permission of the Court should be obtained before effecting such alienation.(Emphasis added). Under Hindu Law a Manager and Karta of a joint Hindu family can alienate joint family property so as to bind the interest of minor coparceners in such property provided the alienation is either for legal necessity or for the benefit of the estate. If the Manager and Karta happens to be the father he has certain additional powers of alienation under Hindu Law and in exercise of those powers he can alienate joint family property so as to bind the interest of his minor coparceners in such property. These powers are not at all curtailed or affected in any way by the provisions of the [Hindu Minority and Guardianship Act.](#)"



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15. In the case of *Sunamani Dei v. Babaji Das* (AIR 1974 On 184), the Orissa High Court has held that when the minor and his mother constitute a Hindu joint family each with a moiety undivided interest in the house belonging to the family, in the absence of the father, the mother as natural guardian can alienate even the minor's half share in the house under the personal law. **Section 8** of the Hindu Minority and Guardianship Act will not apply to such alienation.

16. The Hon'ble Supreme Court of India in *Sri Narayan Bal And Others vs. Sri Sridhar Sutar and Others reported in [(1996 (8) SCC 54)]*

has said:

Section 6 of the Act inter alia provides that the natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are - in the case of a boy or an unmarried girl - the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. **Section 8** thereof inter alia provides that the natural guardian of a Hindu minor has power,



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subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant. Furthermore the natural guardian shall not, without the previous permission of the court, mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor or lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority. Any disposal of immovable property by a natural guardian, in contravention of sub- section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming on behalf of the minor. [Section 12](#) provides that where a minor has an undivided interest in the joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest : Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need be viewed in a single glimpse, simultaneously in conjunction with each other. Each provisions, and in particular

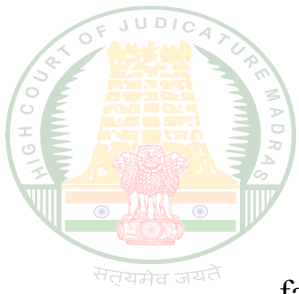
[Section 8](#), cannot be viewed in isolation. If read together the intent of the legislative in this beneficial legislation becomes



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manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under [Section 8](#), where under his powers and duties are defined. [Section 12](#) carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the Joint Hindu Family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under [Section 8](#) a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under [Sections 6 to 12](#) of the Act, the previous permission of the Court under [Section 8](#) of disposing of the undivided interest of the minor in the joint family property is not required. The joint Hindu family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu family property. Thus [Section 8](#) in view of the express terms of [Sections 6 and 12](#), would not be applicable where a joint Hindu



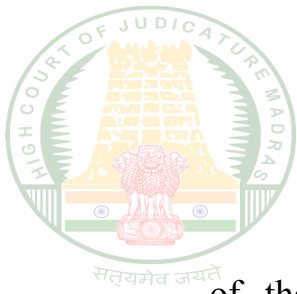
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family property is sold/disposed of by the Karta involving an undivided interest of the minor in the said joint Hindu family property. The question posed at the outset therefore is so answered.

(Emphasis added)

17. In the instant case, the property, which is subject matter of the mortgage, is a property jointly held by the mother and two minor children. From the recital of Ex.A-1, it appears that the defendants acquired the property through a registered release deed. The purpose for availing loan has been mentioned as 'to discharge the existing debts and for business'. Neither in the cross examination of PW-1(the plaintiff) nor in her written statement or in the deposition, the first defendant have elucidated or suggested that the borrowing was not for the benefit of the minors. In fact, the first defendant in her evidence, had candidly admitted the execution of the deeds and borrowing of Rs.2,00,000/- from one Kanthilal for constructing the house on the property which was mortgaged. She also explicitly admits the repayment of interest. She had only denied money transaction with the plaintiff. The said oral denial is contrary to the content



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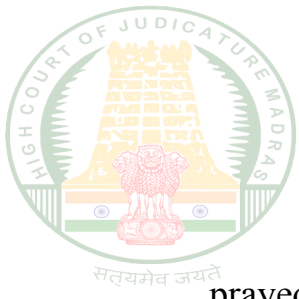
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of the documents. The deeds Ex.A-1 and Ex.A-2 being a registered documents, the oral evidence contrary to the content of the document has not been proved in the manner known to law. Hence, the content of the document has to prevail since it is admitted by the first defendant that she had constructed building from the borrowed money and it is the proof that the money borrowed was utilised for the improvement of the property in which the minors have interest.

18. The defendants 2 and 3 though were minors at the time of transaction they cannot repudiate their liability on the ground of their minority, since the mortgage of the joint family property was by the natural guardian and for their benefit.

19. Point 2:

The Trial Court having held the mortgages under Ex.A-1 and Ex.A-2 by the first defendant proved. Contrary to the terms of the mortgage terms, had denied interest upto to the date of filing the suit inspite of the said relief



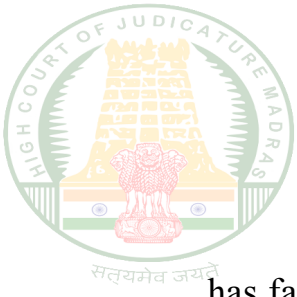
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prayed and court fees paid. Further, instead of agreed rate of interest ie 24% from the date of suit till the date of decree, awarded only 6% interest pa.

20. The specific case of the plaintiff in the plaint is that in respect of the total loan of Rs.4,00,000/- on the mortgage, the interest as agreed was paid only till the month of December 2014 and the suit is filed for the principal amount and interest at the rate of 24% p.a., from January 2015 till the date of the suit i.e. 16.08.2018. The first defendant admits that for the loan amount of Rs.2 lakhs she borrowed, she was paying the interest up to December 2014. Therefore, having admitted the borrowings and payment of interest, the burden to prove she borrowed a lesser amount is on the defendant. Having failed to prove the fact contrary to the document from January 2015, till the date of realisation, the plaintiff is entitled for interest as per the terms of the agreement.

21. Section 34 of the Civil Procedure Code speaks about interest on the principle adjudged in a money suit. This Court finds that the trial Court



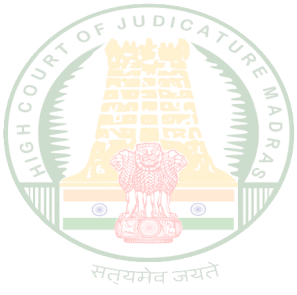
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has failed to specifically mention about the interest from the date of default, till the date of institution of the plaint. Hence, it is ordered that the plaintiff shall be entitled for simple interest at the rate of 24% on the principle amount of Rs 4,00,000/- from January 2015 till the date of institution of the suit. From the date of institution, till the date of decree, the plaintiff shall be entitled for 12% interest pa and from the date of decree, till the date of realisation, the plaintiff shall be entitled for 6% interest p.a.

22. Point No.3:

Regarding the third point for determination the argument submitted by the learned counsel appearing for the appellant is that the trial Court miserably failed to appreciate the ingredient required for a valid pro-notes is a promise to pay on demand. Nowhere in the statute or by judicial pronouncements, attestation for a promissory note is mandated. For want of attestation by a witness promissory note cannot be invalidated. The defendant having admitted her signature in the pronotes Ex A-3 and Ex A-4, is liable to discharge the debt.



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23. In respect of two pro-notes (Ex.A3 for Rs.2,25,000/- and Ex.A 4 for Rs.75,000/-) the court below had held that the plaintiff had not proved the passing of consideration and the probability of advancing further loan based on promissory notes when the borrower has defaulted to repay the prior loan and remain un-discharged is remote. In this regard, the learned counsel submitted that the defendant had admitted the signatures in the pro notes. Having admitted the execution, the burden to rebut the statutory presumption is on the defendants. While the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881 is strongly against the defendants the Court below has erred in dismissing the suit claim in respect of these two pro notes. When no material placed to rebut the presumption.

24. This court while considering the above submission, find that Ex A 3 and Ex.A4 are the pro-notes dated 12.08.2016 (Rs.2,25,000/-) and 15.09.2016 (Rs.75,000/-) respectively. Though, the signature found in the pro-notes are not denied by the defendant, she denies receipt of money



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mentioned in the pro notes. Under Section 118 of the Negotiable Instruments Act, 1881 the presumption of passing of consideration is against the defendants. However the said presumption is not absolute and can be rebutted by preponderance of probability. In this case, the defendants had denied the receipt of any money on executing the pro-notes. The probability of lending loan on promissory notes to a defaulter is doubt. In such circumstances, the plaintiff is expected to provide substantive evidence to corroborate the claim. She cannot solely rely on legal presumption. The failure on the part of the plaintiff to prove the fundamental facts regarding the executions of the disputed pronotes is fatal in this case. The burden of rebutting the statutory presumption is by preponderance of probability it may either by direct or through inference. The trial Court had observed that the plaintiff could have not advanced a further loan in the year 2016, when the borrower had already been in default since 2015. The reason stated by the trial court to improbabilise the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881 is in tune with the normal conduct of any person with prudence.



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25. No doubt, the statute does not mandate attestation of pro-note.

However the probability of lending Rs.2,25,000/- and Rs.75,000/- on a promissory note to a defaulted debtor needs some explanation. In this case, the plaintiff had not come forward with any explanation. Though the court below erred in holding the promissory note without attestation is unenforcible, nonetheless for want of proof of the fundamental fact regarding execution of the pronote on passing of consideration, the plaintiff is not entitle to the relief of recovery of money in respect of Ex A-3 and Ex A-4.

26. In the result, the Appellant/plaintiff is entitled for a preliminary decree as against the respondents 1 to 3/defendants 1 to 3 for recovery of mortgage amount of Rs.4,00,000/- together with 24% interest from 01.01.2015 till the date of institute of the suit ie., 16.08.2018 and 12% p.a for the period pending suit ie., 17.08.2018 to 10.08.2021, thereafter, 6% p.a from the date of decree till the date of realization. In all other aspects, the



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decree of the trial Court is confirmed.

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27. Accordingly, *A.S.No.14 of 2022 is partly allowed as against the respondents with costs.*

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Index : Yes
Neutral citation : Yes/No
Speaking/non-speaking order
ari/vv

To

The XVII Additional City Civil Judge, Chennai.



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Dr. G.JAYACHANDRAN, J.,

ari/vv

delivery Judgment made in
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