



C.S.No.147 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 13.08.2025	PRONOUNCED ON 07.10.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

C.S.No.147 of 2020

Srichand Chhabria

... Plaintiff

Vs

1.Crown Rotmax Engineering Pvt. Ltd.,
Represented by its Director Sasikumar,
No.117, TTK Road,
Alwarpet, Chennai – 600 018.

2.Kamali Rakesh Kumar,
3.Reethika Rakesh
4.Reneesh. R
5.Chandrakumari
6.Minor R.Rishika
D/o. Late Rajesh Kumar
Represented by her mother and legal Guardian
5/63, Rajiv Gandhi Salai (OMR)
North Avenue, Brentwood B201,
Hiranandani Upscale, 2nd Floor,
Egattur, Kanchipuram District – 600 130.

... Defendants

(Six dependt impleaded as per orderdated 05.08.2021 in A.No.2310 of 2021)



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Prayer : Civil Suit filed under Order IV Rule 1 of Madras High Court Original Side Rules read with Order VII Rule 1 of CPC to pass decree and Judgment against the defendant as hereunder:-

a) Directing the defendant to pay a sum of Rs.1,03,00,000/- with future interest pending the suit and till the realisation of the amount by the plaintiff;

b) To grant permanent injunction restraining the defendants 2 to 6 or their men, agents servants or any other person acting through them or on their behalf from in any way alienating, encumbering, or dealing with the suit schedule property;

c) Directing the defendant to pay the cost of the suit and;

d) pass such other relief or reliefs as this Court may deem fit.

(Amended as per order dated 01.10.2021 on Memo SR.No.26406 of 2021 dated 28.09.2021 in C.S.No.147 of 2020)

For Plaintiff : Mr.B.Ullasavelan

For Defendants : Mr.P.Elayaraj Kumar

for Mr.G.Sudhagar for D6

D2 to D4- Set ex-parte on 21.01.2025

D1 & D5 – Set ex-parte on 14.12.2020



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JUDGMENT

This suit has been filed for recovery of a sum of Rs.1,03,00,000/- (Rupees One Crore Three Lakhs only) together with future interest, and for a permanent injunction restraining defendants 2 to 6 from in any manner alienating, encumbering, or otherwise dealing with the suit schedule property.

2. The case of the plaintiff is that the plaintiff and the first defendant have been well acquainted for the past several years. The first defendant approached the plaintiff and borrowed a sum of Rs.40,00,000/- promising to repay the same within thirty days. Subsequently, he borrowed a further sum of Rs.30,00,000/- on different occasions and executed acknowledgement receipts and promissory notes for the said borrowings. A Memorandum of Understanding was thereafter entered into between the plaintiff on the one hand, and the first defendant and his son, Rakesh Kumar, on the other hand, on 27.09.2018. As the first defendant failed to discharge the loan, and since Rakesh Kumar, who stood as guarantor, died on 09.05.2019, the present suit has been instituted for recovery of money as against the first defendant and the legal heirs of Rakesh Kumar.



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3. The defence of defendants 2 to 4 is that they are not the legal heirs of Rakesh Kumar and were never parties to the agreement in question. Consequently, they cannot be held liable for the claim of the plaintiff, and they pray that the suit be dismissed as against them.

4. The sixth defendant contends that she is the minor daughter of Rakesh Kumar through Nalini, who was the second wife of Rakesh Kumar and represented by her mother Nalini. She has denied the borrowal of any money by Rakesh Kumar. She further alleges that the plaintiff, in collusion with defendants 2 to 4, is attempting to defeat her rightful share in the subject property. She prays that the suit be dismissed as the plaintiff has failed to substantiate the alleged transactions by acceptable evidence.

5. Based on the pleading of the both the parties, the following issues were framed by this Court:-

a) Whether the plaintiff is entitled to recover a sum of Rs.1,03,00,000/- (Rupees One Crore Three lakhs Only) from the defendants jointly and severally?



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b) If so, whether he is entitled for permanent injunction as prayed for?

6. On the side of the plaintiff, Mr.Srichand Chhabria, the plaintiff examined himself as PW1 and marked Ex.P1 to Ex.P12. The defendants 1 and 5 were set ex parte on 14.12.2020 and the defendant 2 to 4 set ex parte on 21.01.2025. On the side of the sixth defendant, Mrs.Nalini, the mother of the minor sixth defendant has been examined as DW1.

7. Heard Mr.B.Ullasavelan, learned counsel appearing for the plaintiff and Mr.P.E.Elayaraj Kumar, learned counsel appearing on behalf of Mr.G.Sudhagar, learned counsel appearing for the sixth defendant.

8. Mr. B. Ullasavelan, learned counsel for the plaintiff, submits that the plaintiff has been engaged in the electrical business, supplying materials to builders and flat promoters for the past 40 years. He further submits that whenever the plaintiff had surplus funds, he also advanced loans to friends. He submits that the first defendant is a company engaged in electrical contracting, initially run by one Sasikumar and subsequently by his son, Rakesh Kumar. He



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further submits that the first defendant company, along with Rakesh Kumar, undertook contract works relating to laying cables and erecting poles for several kilometres in collaboration with TNEB and Tamil Nadu Transmission Corporation. He contends that the first defendant company has been purchasing electrical goods from the plaintiff for the past 30 years.

9. The learned counsel submits that the first defendant approached the plaintiff for a loan of Rs.40,00,000/-, agreeing to repay the same within 30 days with interest at 3% per month. The said loan amount was disbursed through NEFT/RTGS in two instalments on 25.09.2018 and 26.09.2018. He further submits that the plaintiff and the first defendant's director, along with his son Rakesh Kumar, entered into a Memorandum of Understanding dated 27.09.2018, wherein Rakesh Kumar stood as guarantor and deposited title deed Document No.5919 of 2016 dated 25.05.2016 relating to the suit schedule property as security. Since the loan was agreed to be repaid within 30 days, the said memorandum was not registered.

10. It is further submitted that the first defendant subsequently borrowed an additional sum of Rs.20,00,000/-, executing a payment acknowledgment



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receipt for the same. The first defendant also borrowed a further sum of Rs.10,00,000/-, citing Rs.23 crores receivable from Tamil Nadu Transmission Corporation as security. In respect of the said loan, the first defendant executed five promissory notes for Rs.2,00,000/- each and also issued a letter acknowledging receipt of Rs.10,00,000/-. Counsel submits that although the first defendant and Rakesh Kumar had agreed to repay Rs.40,00,000/- on or before 20.10.2018, only Rs.60,000/- was paid towards six months' interest, and thereafter the loan remained unpaid. On each occasion, the defendants sought further time for repayment.

11. He further submits that, in the meanwhile, Rakesh Kumar died on 09.05.2019, and the first defendant has failed to come forward to settle the outstanding debt. Consequently, the plaintiff caused a legal notice dated 10.06.2019 to be issued to the first defendant, followed by another notice on 18.06.2019. He further submits that there is a genuine apprehension that defendants 2 to 4, the legal heirs of Rakesh Kumar, are attempting to alienate the charged property. Therefore, he submits that the defendants are jointly and severally liable to pay a sum of Rs.1,03,00,000/- being the loan amount and accrued interest. Hence, the plaintiff prays that this Hon'ble Court may be

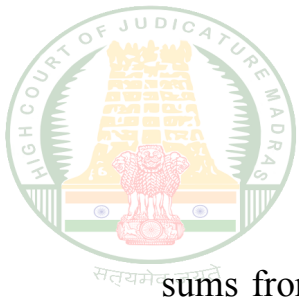


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pleased to direct the defendants to repay the loan with interest and pass an order of permanent injunction restraining the defendants from alienating or encumbering the suit schedule property.

12. Mr.P.E.Elaiyaraj Kumar, learned counsel for the sixth defendant, submits that the sixth defendant is the daughter of Rakesh Kumar and Nalini, the latter being the second wife of Rakesh Kumar. He submits that although disputes arose after the discovery of the first marriage, Rakesh Kumar continued to live with Nalini until his death on 09.05.2019 at Bangalore. He further submits that the sixth defendant's father was engaged in establishing GIS Substations for TANGEDCO under a Turnkey basis with JV Partners and that he was never in the habit of borrowing money for his business purposes. It is further submitted that Rakesh Kumar neither entered into any agreement with the plaintiff nor handed over any title deeds. The learned counsel further submits that the sixth defendant has already filed O.S. No. 542 of 2023 seeking partition of her 1/5th share in the properties belonging to Rakesh Kumar. He also submits that Rakesh Kumar never knew the present plaintiff and had no personal or business dealings with him. On the contrary, he was acquainted only with the plaintiff's son, Nilesh Kumar, who alone used to borrow huge



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sums from Rakesh Kumar for his business purposes. It is therefore contended that the present plaintiff is attempting to secure unlawful enrichment.

13. It is further contended that defendants 2 to 4 have colluded with the plaintiff in filing the present false and fabricated suit with the intention of depriving the sixth defendant of her rightful share. Counsel submits that, even assuming the allegation of borrowing of Rs.20,00,000/- were true, in the absence of the registration number of the vehicle, it is inconceivable that the plaintiff would have disbursed the alleged loan. He further submits that there is no proof produced by the plaintiff to substantiate the alleged transaction. On the contrary, Ex.P12, which is the bank statement of the plaintiff, shows that transactions were effected on 20.09.2018 to the tune of Rs.25,00,000/- and on 26.09.2018 to the tune of Rs.15,00,000/-. These dates do not corroborate with the dates mentioned in the plaint, thereby casting serious doubt on the veracity of the plaintiff's claim.

14. He also submits that though Ex.P3, the NEFT receipt, evidences a payment of Rs.15,00,000/- on 26.09.2018, the balance sum of Rs.55,00,000/- alleged to have been advanced remains wholly unproved by any acceptable

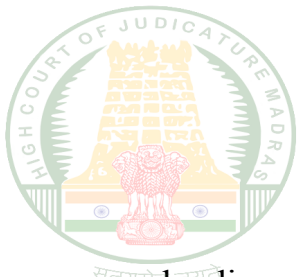


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evidence. Further, he submits that Ex.P4, the alleged Memorandum of Understanding, has not been signed by the first defendant's director. Instead, Rakesh Kumar alone has signed purportedly on behalf of the first defendant's director. Such execution casts serious doubt on the genuineness of the document and undermines the plaintiff's claim that Rakesh Kumar stood as guarantor. He further submits that Ex.P9, the legal notice relied on by the plaintiff, was addressed only to the first defendant and not to the father of the sixth defendant, thereby demonstrating that Rakesh Kumar was never treated as a borrower by the plaintiff.

15. Further, he submits that on a perusal of the exhibits produced by the plaintiff, especially those containing the letterhead of the first defendant company and the signature attributed to its director, serious doubts arise as to the genuineness of the documents. The variations in the letterhead and the manner of execution create a strong suspicion that the documents have been fabricated for the purpose of this litigation. He submits that the plaintiff has not approached this Hon'ble Court with clean hands, as false allegations have been made as if the sixth defendant is attempting to alienate the suit schedule property. It is further submitted that when the plaintiff himself is in the habit of



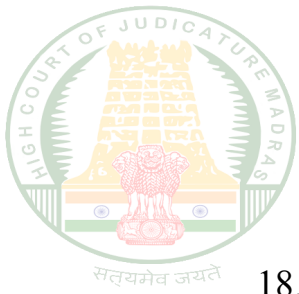
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lending money, his failure to register the alleged memorandum of understanding has not been properly explained. Moreover, the said agreement was not registered so as to create any mortgage or charge over the property purportedly pledged by Rakesh Kumar. It is also pointed out that no pre-litigation notice was served on defendants 2 to 4. In view of the above, the learned counsel prays that the suit be dismissed as the plaintiff is not entitled to the reliefs claimed.

16. I have considered the submissions of the learned counsels for the respective parties and perused the materials available on record.

17. **Issue No.1 :-** On a perusal of Ex.P2, Ex.P3 and Ex.P12, the plaintiff has proved the disbursement of Rs.40,00,000/- to the first defendant company. Ex.P2 shows Rs.25,00,000/- transferred on 20.09.2018, while Ex.P3 shows Rs.15,00,000/- transferred on 26.09.2018, both corroborated by the bank statement Ex.P12. Thus, the liability of the first defendant company to repay the said sum stands established.



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18. The question arises whether Rakesh Kumar can be made liable as guarantor on the basis of Ex.P4, the Memorandum of Understanding dated 27.09.2018. Although the document bears his signature, the inconsistency in dates—25.09.2018 and 26.09.2018 as recited in Ex.P4, versus 20.09.2018 and 26.09.2018 as reflected in Ex.P2 and Ex.P3—raises doubt about its genuineness.

19. Further, the suspicious circumstances in which Ex.P4 was prepared and its lack of registration cast further doubt on whether Rakesh Kumar voluntarily undertook the guarantee. In view of these infirmities, Ex.P4 cannot be relied upon to fasten liability on Rakesh Kumar. Consequently, defendants 2 to 6, being his legal heirs, also cannot be made liable.

20. In addition to the above, Ex.P6, an acknowledgment letter of the first defendant, evidences borrowing of Rs.20,00,000/-, and Ex.P7, another acknowledgment, proves borrowing of a further sum of Rs.10,00,000/-. These documents, being direct acknowledgments by the first defendant, are valid and remain unshaken.



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21. Accordingly, the total liability of the first defendant company is proved at Rs.70,00,000/-, being Rs.40,00,000/- under Ex.P2, Ex.P3 and Ex.P12, and Rs.30,00,000/- under Ex.P6 and Ex.P7. The first defendant alone is liable to repay the said amount together with interest, while the guarantor Rakesh Kumar and his legal heirs cannot be fastened with any liability.

22.Issue No.2:- The prayer for permanent injunction is directed against defendants 2 to 6, restraining them from alienating or encumbering the suit schedule property. The foundation for this relief, as pleaded, is that Rakesh Kumar had allegedly stood as guarantor for the loan transactions, and therefore, his legal heirs (defendants 2 to 6) are liable for the said debt and cannot deal with the property.

23. However, as already discussed under Issue No.1, the alleged Memorandum of Understanding, Ex.P4, which is relied upon to establish the guarantee, suffers from serious infirmities. The dates of transaction mentioned therein do not tally with Ex.P2 and Ex.P3, and the surrounding circumstances raise doubt about its genuineness. Though the signature of Rakesh Kumar is present, the inconsistencies render the document unreliable. Hence, the alleged



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guarantee is not proved in accordance with law. In the absence of a valid guarantee, Rakesh Kumar cannot be fastened with liability for the loan. Consequently, defendants 2 to 6, who are his legal heirs, cannot be treated as liable for the plaintiff's claim. If there is no legal liability attached to them, the question of granting a permanent injunction restraining them from dealing with their property does not arise.

24. Further, permanent injunction is an equitable relief, which can be granted only when the plaintiff demonstrates a subsisting legal right and the likelihood of its infringement. In the present case, as the liability of Rakesh Kumar or his legal heirs has not been established, the plaintiff has failed to show any enforceable right against defendants 2 to 6 in respect of the suit property. Accordingly, the relief of permanent injunction sought by the plaintiff against defendants 2 to 6 cannot be granted. The issue is answered in the negative.

25. In the result, the suit is partly decreed as follows:-

- a) The plaintiff is entitled to recover a sum of Rs.1,03,00,000/- (Rupees One Crore Three Lakhs only) together with future interest from the date of plaint till the date of realization, from



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the first defendant company.

b) The claim against defendants 2 to 6 is dismissed.

c) The relief of permanent injunction as prayed for is also dismissed.

d) Considering the facts and circumstances of the case, there shall be no order as to costs.

07.10.2025

Gba

Index :Yes/No

Internet:Yes/No



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List of witnesses examined on the side of the plaintiff:

PW1- Mr.Srichand Chhabria

List of documents marked on the side of the plaintiff:

Exp1	The photocopy of the Sale Deed in favour Rakesh Kumar for suit scheduled property dated 25.05.2016.(Original produced, compared and returned)
Exp2	The Original Counter Foil for NEFT Transfer receipt to 1 st defendant company dated 20.09.2018.
Exp3	The Original Counter Foil for NEFT Transfer receipt to 1 st defendant company dated 26.09.2018.
Exp4	The Original Memorandum of understanding between Plaintiff and 1 st defendant company dated 27.09.2018.
Exp5	The Colour Photocopy of the Certificate of Registration issued by State Transport Department to Late.Rakesh Kumar dated 07.11.2018.
Exp6	The Original Letter acknowledging receipt of Rs.20 lakhs by Late S.Rakesh Kumar, Director Crown Rotmax Engineering Pvt. Ltd., dated 10.11.2018.
Exp7	The Original Loan Receipt for Rs.10 Lakhs dated 12.01.2019
Exp8	The Original Promissory Note (5Nos) dated 12.01.2019
Exp9	The Office copy of the Registered Legal Notice by plaintiff to 1 st defendant company dated 10.06.2019
Exp10	The Office copy of the Registered Legal Notice along with original postal receipt and acknowledgment issued by plaintiff to 1 st defendant dated 18.06.2019
Exp11	The handcopy of the letter written by Plaintiff to Sub-Registrar along with original postal receipt, Thiruporur and I.G. Of Registration dated 14.03.2020
Exp12	The Photocopy of the Punjab National Banks saving account statement of plaintiff.



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List of witnesses examined on the side of the defendant:

DW1- Mrs.Nalini

List of documents marked on the side of the defendant:

NIL

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Index: Yes/ No

Internet : Yes/ No



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K.KUMARESH BABU.J.

Gba

Pre-Delivery Judgment in

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