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A.S.No.213 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.213 of 2025

Sujatha

... Appellant

Versus

1. P.Murugesan
2. Devaki

... Respondents

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure to set aside the decree and judgment of the trial Court made in O.S.No.246 of 2016 dated 08.12.2023 by allowing this appeal.

For Appellant : Mr.I.Ramanathan

For respondents : Mr.L.Mouli – R1

JUDGMENT

Challenge has been made to the decree and judgment of the trial Court dismissing the suit filed for recovery of a sum of Rs.11,26,300/- along with

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interest at the rate of 6% per annum till the realization of the amount, in the present appeal by the unsuccessful plaintiff.

2. The parties are arrayed as per their own ranking before the trial Court.

3. It is the case of the plaintiff that the defendants together borrowed a sum of Rs.7 lakhs from the plaintiff on 12.02.2014 agreeing to repay the amount with interest at Rs.2/- on demand either to the plaintiff or to her order. As the defendants have not repaid the amount despite repeated demands, the plaintiff issued a legal notice to the defendants on 05.04.2016. Even after the receipt of the legal notice, the defendants failed to repay the amount. Hence, the suit.

4. The second defendant has remained exparte in the suit.

5. The first defendant denying the execution of the loan agreement, it is his specific defence in the written statement that he never borrowed any amount and the so called agreement has been created in collusion with the second defendant, who is a relative of the plaintiff. The Stamp paper has been



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purchased from Thuraiyur, when admittedly the parties are residing in Salem.

Hence, he disputed the very execution of the loan agreement and borrowal of the loan.

6. On the basis of the above pleadings, the following issues have been framed by the trial Court :

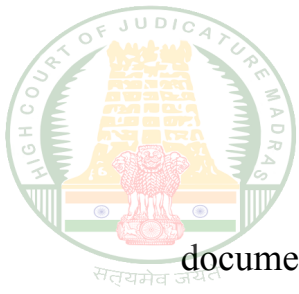
1. Whether the loan agreement deed is true, genuine and supported by consideration?

2. Whether the plaintiff is entitled for recovery of suit claim from the defendants?

3. To what relief?

7. On the side of the plaintiff, P.W.1 to 5 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the defendants, the first defendant examined himself as D.W.1 and Ex.B.1 has been marked.

8. The trial Court, considering entire evidence, both oral and



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documentary, has dismissed the suit on the ground that Ex.A.1 has not been proved in the manner known to law and evidence adduced on the side of the plaintiff has also not supported the case of the plaintiff. Challenging the same, the unsuccessful plaintiff has filed the present appeal.

9. It is the contention of the learned counsel appearing for the appellant that the trial Court dismissed the suit on wrong appreciation of evidence. P.W.2 and P.W.3, attesting witnesses have clearly spoken about the execution of the document. In their evidence they have clearly spoken about the attestation of the document.

10. Whereas, the learned counsel appearing for the respondent would submit that the evidence of P.W.1 to P.W.3 itself is suffice to disbelieve Ex.A.1. The trial Court has clearly taken note of the above facts and dismissed the suit. The very factum of execution and passing of consideration has not been proved in the manner known to law. Hence, prayed for dismissal of the appeal.

11. In the light of the above submissions, now the point that arise for



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consideration in this appeal is :

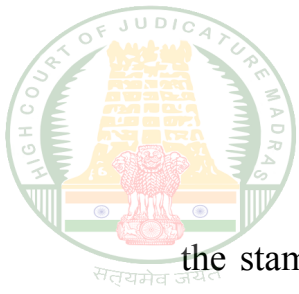
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Whether the execution of the loan agreement dated 12.02.2014 has been proved, if so, whether any consideration has been passed on Ex.A.1?

12. Point :

It is the case of the plaintiff that the defendants together borrowed a sum of Rs.7 lakhs on 12.02.2014 to meet out their urgent family necessity and also to clear their debts. It is relevant to note that the defendants 1 and 2 are not family members. The evidence adduced on the side of the plaintiff itself clearly indicate that the second defendant is a relative of the plaintiff. When the second defendant is no way connected with the first defendant and she joining with the first defendant together to borrow a sum of Rs.7 lakhs for family necessity and clearing debts, is highly improbable. Be that as it may.

13. When the evidence of P.W.1 carefully perused, P.W.1 in her evidence has stated that the loan agreement has been executed by the defendants. Ex.A.1, when carefully seen, indicates that the parties are residing in Salem. Whereas,



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the stamp papers were purchased at Thuraiyur. It creates some serious doubt about the very transaction itself. This doubt is further fortified by variation in the signature of the first defendant found in the first page and the second page. The variation is very apparent. In the first page, the signature was very clear, whereas in the second page, the letters மு, ரு, கே, ச are written in a shaky manner.

14. Now it has to be seen whether the execution of the document has been proved by the plaintiff. The plaintiff in her evidence has stated that the document has been prepared by the document writer at Vasuki Mahal. Whereas, P.W.2, one of the attesting witness, has stated in his evidence that the agreement has not been typed and it is only hand written. He also exhibited ignorance as to who has prepared the document and who is the other attesting witness. Further, in his cross examination, he has admitted that he has not signed in Ex.A.1. His evidence, further indicate that he only heard that Rs.7 lakhs has been paid and he has not seen payment of 7 lakhs to the first defendant. The evidence of the other eye witness P.W.3, when carefully seen, he has stated in his evidence that the amount has not been given to the second defendant and the amount was given



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only by one Boopathy and not by the plaintiff. Therefore, his evidence does not help the case of the plaintiff to show that the document was executed and consideration has been paid by the plaintiff. He has also clearly admitted that the plaintiff and the second defendant are close relatives.

15. It is relevant to note that the plaintiff had admitted that the second defendant is her relative and she was running an unregistered chit in which the first defendant was a subscriber. Therefore, the very pleadings of the plaintiff that both the defendants together borrowed the amount from the plaintiff is highly doubtful. The evidence of the plaintiff further indicate that she was working in a Coffee Bar run by her daughter and she has no account in her name and also has not filed income tax return and has no such income. All these facts clearly probabilize the case of the first defendant that the document has been fabricated. Admittedly, as per the evidence of P.W.1, the first defendant was a subscriber of the chit run by the second defendant. Such being the case, the document should have been created in collusion with the second defendant. The second defendant also conveniently remained exparte before the trial Court. Hence, I do not find any merits in this appeal. The point is answered



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accordingly.

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16. In the result, this Appeal Suit is dismissed and the decree and judgment of the trial Court in O.S.No.246 of 2016 dated 08.12.2023 is confirmed. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To,

1. The II Additional Judge, Salem.
2. V.R.Section, High Court, Madras.



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N. SATHISH KUMAR, J.

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