IN THE COURT OF THE II ADDITIONAL SUBORDINATE JUDGE, ERODE.

PRESENT: **Thiru.Senthil Kumar Rajavel, L.L.M.,**
II Additional Subordinate Judge, Erode
Wednesday this the 31st day of March 2021.
(Thiruvalluvar Aandu 2052,Sarvari Aandu, Panguni,Thingal 18th day)

O.S.No.421/2019

Mohanrasu … Plaintiff

/Vs/

1. A.Vanaja
2. A.Myvizhi
3. A.Yoga Ramkumar
4. The Bank Manager,
   PE 1, The Erode district
   Central Co-operative Bank Ltd.,
   Branch - Chennimalai … Defendants

This suit coming on 23.03.2021 for final hearing before me in the presence of Thiru.M.Muniraja, Advocate for the plaintiff; and of Thiru.C.Yoganathan, Advocate for the 4th defendant; and the defendants 1 to 3 were remained exparte and upon hearing both side arguments and upon perusing all connected material records and having stood over till this day, for consideration, this court delivered the following: -

JUDGMENT

The suit is filed by the plaintiff for the relief of recovery of sum of Rs.1,80,800/- from the defendants with future interest at the rate of 12% per annum on Rs.1,60,000/- from the date of suit till the date of actual payment with the costs of the suit out of the estate of the deceased Ayyasamy.

2. **<u>The plaint averments which are essential for the disposal of the suit is that :</u>**

On 16.02.2018, one Ayyasamy had borrowed a sum of Rs.1,60,000/- from the plaintiff for his open heart surgery and his family expenses and agreed to repay the same with interest at the rate of 12% per annum and executed a promissory note. Inspite of repeated demands made by the plaintiff, the said Ayyasamy did not pay the amount either towards principal or interest. In the meanwhile on 24.10.2018 the said Ayyasamy died intestate leaving behind his wife, his son and a daughter namely defendants 1 to 3 as his legal heirs. After the death of Ayyasamy the defendants have succeeded to the estate of the said Ayyasamy. As the amount borrowed from the plaintiff remains unpaid, the beneficiaries of the estate of the said Ayyasamy are bound to pay the above said amount with accrued interest. Therefore the plaintiff demanded the defendants to pay the suit amount but they did not pay any amount. Though the plaintiff issued legal notice on 27.03.2019 and the same was received by the 1st defendant Defendants 2 and 3 did not receive the said notice. But the 1st defendant did not chosen either to reply or pay the amount. The plaintiff has came to know that the deceased Ayyasamy during his lifetime had deposited a sum of Rs.1,50,000/- in his account with the Erode District Central Co-operative Bank Ltd., Chennimalai. The defendants 1 to 3 are trying to withdraw the amount without the knowledge of plaintiff, in order to keep away the said amount being realized by the plaintiff. If the amount is withdrawn them the plaintiff will not have no source to realized the suit amount. The defendants 1 to 3 are bound to pay the said amount with interest from out of the estate of deceased Ayyasamy. Hence, the suit for afore mentioned relief.

3. <u>By refuting the plaint averments in its entirety the 4th defendants. The averments which are found essential for the disposal of the suit is that:</u>

The suit is not maintainable either under law or on facts. The description of the name of the bank is not properly given. One Ayyasamy is a customer of this defendant bank and he opened a saving bank account on 06.03.2012. He nominated his son A.Yogaraamkumar as his nominee to receive the amount in his deposit in the event of his death and executed the nomination form in Form DA-1. The amount outstanding in the saving bank account of the said Ayyasamy is Rs.1,54,354.84/- as on 31.03.2019 with this defendant. In the event of the death of the said customer, as the banker, the said outstanding amount has to be disbursed to the said nominee, the 3rd defendant herein who has to receive the same as the trustee and disburse the said amount among the legal heirs. This defendant has no information regarding the death of the said customer from the legal heirs of Ayyasamy so far. The said nominee has to produce the death certificate of the said customer to receive the said amount as the nominee of the said Ayyasamy. This defendant is not aware of the alleged borrowal of Rs.1.60 lakhs by the said Ayyasamy from the plaintiff on 16.02.2018 as averred in the plaint averments. There is no cause of action to file the suit as against this defendant bank. No order of attachment of the said amount can be claimed by the plaintiff. There is no deposit of Rs.1.50 lakhs deposited by the said Ayyasamy as alleged by the plaintiff. Hence the suit is liable to be dismissed with exemplary cost of this defendant bank.

4. **<u>Based on the pleadings the following issues were framed:</u>**

1) Whether the plaintiff is entitled to get relief of recovery of amount as prayed for?
2) What other relief is entitled for?

5. On the Plaintiff side, the plaintiff was examined as PW1 and one Ravindran was examined as PW2. Ex.A1 to Ex.A4 were marked. On the defendants side, the 4th defendant was examined as DW1. Ex.B1 and Ex.B2 were marked.

6. <u>Issue No.1:</u>

It is admitted fact that one Ayyasamy having savings bank account with the 4th defendant bank branch vide Account No.205056575. Further it is not disputed that the said Ayyasamy has nominated his son A.Yogaraamkumar as his nominee to receive the amount in his account in the event of his death and executed the nomination form in Form DA-1 to the 4th defendant bank. The closing bank balance of the Ayyasamy's savings bank account is of Rs.1,54,354.84/-.

7. The learned plaintiff's counsel contended that one Ayyasamy had borrowed a sum of Rs.1,60,000/- from the plaintiff on 16.02.2018 for his medical expenses by acknowledging the same he executed a promissory note infavour of him and agreed to pay along with interest at the rate of 12% per annum. Meanwhile the said Ayyasamy died intestate leaving behind his wife and his daughter and son namely defendants 1 to 3 on 24.10.2018. After the demise of the said Ayyasamy, the defendants 1 to 3

have succeeded to the estate of the said Ayyasamy. Despite of repeated demands and issuance of legal notice, the defendants 1 to 3 neither give reply notice nor paid any amount. The plaintiff came to know that the deceased Ayyasamy during his lifetime, had sum of Rs.1,50,000/- in his bank account with the 4th defendant bank. Now the defendants 1 to 3 are trying to withdraw the said amount in order to keep away from the hands of plaintiff. Hence the suit.

8. Per contra the learned 4th defendant's counsel vehemently opposed that this defendant has no information regarding the death of the said Ayyasamy. Further this defendant is not aware of the alleged borrowal and execution. There is no cause of action as against the 4th defendant. Therefore no order of attachment to be made. There is no deposit of Rs.1,50,000/- as alleged by the plaintiff. In fact one Ayyasamy as customer of the 4th defendant bank and he was opened savings bank account on 06.03.2012. He nominated his son A.Yogaraamkumar as his nominee in the event of his death. In such a circumstance, as a banker, the outstanding amount has to be disbursed to the said nominee. No decree can be passed as against this defendant. Hence the suit is liable to be dismissed as against this defendant with cost.

9. Inspite of receipt of suit summon by the defendants 1 to 3 neither chosen to appear in person nor through their counsel. Therefore they were already set exparte.

10. In order to substantiate the plaintiff's case, while examining him as PW1 he had deposed evidence corroborating the plaint averments and the scribe of the said document was examined as PW2. On the side of the plaintiff the original promissory note for Rs.1,60,000/- given by the deceased Ayyasamy infavour of plaintiff dated 16.02.2018 is marked as Ex.A1. Office copy of legal notice issued by the plaintiff's counsel to the defendants 1 to 3 dated 27.03.2019 is marked as Ex.A2. Acknowledgement card of the 1st defendant dated 28.03.2019 is marked as Ex.A3. Returned postal cover of the 2nd and 3rd defendants is marked as Ex.A4.

11. A bare perusal of the plaintiff's side oral and documentary evidence it seems that the plaintiff has established that the said Ayyasamy had borrowed a sum of Rs.1,60,000/- on 16.02.2018 from the plaintiff to meet out his medical expenses and executed the suit promissory note namely Ex.A1.

12. The learned 4th defendant's counsel particularly insisted, the plaintiff has not established that the alleged death of the said Ayyasamy intestate leaving behind the defendants 1 to 3. Of course, the plaintiff has not filed any document to show that the said Ayyasamy was deceased on 24.10.2018. Whereas the plaintiff has categorically mentioned in para 3 of pre-suit legal notice under Ex.A2, caused to the defendants 1 to 3 on 27.03.2019. The said pre-suit notice was received by the 1st defendant under Ex.A3. The defendants 2 and 3 were not claimed the pre-suit notice. They were returned to the plaintiff and it is evident from the Ex.A4.

Further a mere perusal of oral evidence of scribe of the document it seems that the said Ayyasamy was deceased on 24.10.2018 leaving behind the defendants 1 to 3 as his legal heirs. Therefore this court viewed that the entire content of the plaintiff cannot be simply discarded merely because of non filing of the death certificate of the Ayyasamy. In this context this court also viewed that the said aspect can only be agitated by the proper persons, namely defendants 1 to 3. Whereas they were already set exparte. Therefore the contention of 4th defendant that the plaintiff has not established the alleged death of the said Ayyasamy is non sustainable. As such this court viewed that the plaintiff has established the passing consideration and execution of the promissory note by adducing appropriate evidence.

13. Further contention of the 4th defendant that since there is no direct proximity between the plaintiff and the 4th defendant, the plaintiff is not entitled to get any relief as against the 4th defendant. There is no bar to claim the amount lying in the savings bank account of deceased Ayyasamy with the 4th defendant bank, if the defendants 1 to 3 were not paid the said suit amount in the course of execution proceedings. However the plaintiff cannot claim the suit relief straightaway against the 4th defendant, since there is no direct proximity. As such, the plaintiff is not entitled to get any relief as against the 4th defendant in the suit. Considering above discussion this court viewed that the plaintiff is entitled to get suit amount, future interest along with cost only from the defendants 1 to 3. Accordingly this issue is decided infavour of the plaintiff.

14. Issue No.2: -

As the plaintiff is granted with suit relief and entitled to get relief as against the defendants 1 to 3. Although the plaintiff is not entitled to get for any relief from the 4^{th} defendant as discussed above, Considering the facts and circumstance of the case, this court observes that the 4^{th} defendant shall not release the amount lying in the Account No.205056575 to the nominee until the plaintiff realize substantial suit claim. Accordingly this issue also decided infavour of the plaintiff.

15. In the result, the suit is decreed, the defendants 1 to 3, being legal heirs of deceased Ayyasamy and succeeding the estate left behind by him, are directed to pay a sum of Rs.1,80,800/- to the plaintiff, with future interest for the principal amount of Rs.1,60,000/- at the rate of 9% per annum from the date of suit till the date of decree and 6% per annum from the date of decree till the date of realization, with cost. The suit is dismissed as against the 4th defendant, by observing that the 4^{th} defendant shall not release the amount lying in the Account No.205056575 to the nominee until the plaintiff realize substantial suit claim.

Dictated directly to the steno typist, typed by her, corrected and pronounced by me in the open court this the 31st day of March 2021.

Sd./ Senthil Kumar Rajavel
II ADDITIONAL SUBORDINATE JUDGE,
ERODE.

List of Witnesses

Plaintiff side evidence :

PW.1 - Mohanrasu (plaintiff)
PW.2 - Ravindran

Defendants side evidence :

DW.1 - Shanthi (4th defendant bank -branch manager)

List of Exhibits

Plaintiff side documents :

Ex.A1	16.02.2018	Original promissory note for Rs.1,60,000/- given by the deceased Ayyasamy infavour of plaintiff
Ex.A2	27.03.2019	Office copy of legal notice issued by the plaintiff's counsel to the defendants 1 to 3
Ex.A3	28.03.2019	Acknowledgement card of the 1st defendant
Ex.A4	--	Returned postal cover of the 2nd and 3rd defendants

Defendant side documents -

Ex.B1	19.08.2019	True copy of Account opening application form of deceased Ayyasamy
Ex.B2	19.08.2019	True copy of statement of account of deceased Ayyasamy

Sd./ Senthil Kumar Rajavel
II A.S.J., Erode.