IN THE COURT OF THE MUNSIFF, VARKALA

PRESENT : Smt. RAJASREE C.R, B.A.L, L.L.M, MUNSIFF

SATURDAY 29th JUNE, 2019/8th ASHADHA 1941.

OS. No.420/2015

Plaintiff :

Vatsalakumari, aged 45, W/o Babu, Thiruvathira,
Palamkonam desom, Perumkulam, Manamboor village.

By Adv. Sri. S.V. Shinu

Defendant :

Seena, aged 33, W/o Sajeev, Charuvila puthenveedu,
Bhaskar colony, Palamkonam, Perumkulam,
Manamboor village.

By Adv. Sri. N.Sunil Joseph

This original suit having been heard on 27/06/2019 and the court on 29/06/2019 delivered the following:-

J U D G M E N T

Suit is for realisation of money based on a promissory note.

2. Plaint averments in brief are stated as follows:- Plaintiff and defendant are friends. The husband of the plaintiff died on 13/3/2015. After his demise, plaintiff had deposited his insurance amount, received from the Life Insurance Corporation of India, in her account at State Bank of Travancore, Alamcode branch. Defendant who was aware of this deposit borrowed an

amount of Rs.3,00,000/- (Rupees Three Lakhs only) from the plaintiff on 9/7/2015, at her residence, and executed a promissory note assuring that the amount will be paid within one month. Defendant and the witnesses signed the promissory note in the presence of the plaintiff. Plaintiff withdrew the amount advanced to the defendant from her bank account. Though the plaintiff demanded the amount from the defendant, she failed to repay the same. On 16/09/2015, a lawyer notice was sent to the defendant demanding the amount. As the defendant failed to repay the amount, this suit is filed to realise the amount.

3. Defendant filed written statement contending as follows:- This defendant neither borrowed an amount of Rs.3,00,000/- (Rupees Three Lakhs only) from the plaintiff nor executed a promissory note in her favour. On 19/08/2012, this defendant had borrowed an amount of Rs. 50,000/- (Rupees Fifty Thousand only) from the plaintiff assuring that the amount will be repaid together with monthly interest of Rs. 5/- per Rs. 100/-. On that date, the plaintiff took the signature of the defendant in a blank white paper in which a revenue stamp was affixed. Resultant to mediation, the plaintiff granted time to the defendant till 28/12/2015 to repay the amount borrowed. The defendant paid an amount of Rs. 2,500/- (Rupees Two Thousand and Five Hundred only)

every month towards interest. Till date, an amount of Rs. 90,000/- (Rupees Ninety Thousand only) was paid towards interest alone. This defendant has sent a reply notice on 05/10/2015. This defendant neither wrote the contents of the promissory note nor put her signature therein. Thus, this suit is only to be dismissed with costs.

4. Based on the aforesaid pleadings, the following issues were framed for trial:-

1. Did the defendant borrow an amount of Rs.3,00,000/- (Rupees Three Lakhs only) from the plaintiff on 9/7/2015?
2. Did the defendant execute a promissory note in favour of the plaintiff on 9/7/2015?
3. Is the plaintiff entitled to get a decree for money prayed for?
4. What is the order as to costs?

5. On the side of the plaintiff, the plaintiff was examined as PW1 and Ext.A1 to Ext.A6, Ext.A8 and Ext.A9 were marked. The document tendered in evidence as Ext.A7 was a computer generated print out of the statement of account of the plaintiff. As the document lacks certification as contemplated under section 65B(4) of the Indian Evidence Act, the same was rejected. One

witness on the side of the plaintiff was examined as PW2 and Ext.X1 was marked. On the side of the defendant, the defendant was examined as DW1 and one witness was examined as DW2.

6. Heard both sides.

7. **<u>Issue No.1 to 3:-</u>** To avoid repetition and for brevity, these issues are considered together. Plaintiff has set up a case that on 9/7/2015 the defendant borrowed an amount of Rs.3,00,000/- (Rupees Three Lakhs only) from her and issued Ext.A1 promissory note assuring repayment within one month from the date of borrowal. On the contrary, DW1 denied the transaction alleged and contended that the signature in Ext.A1 promissory note was not put by her.

8. This suit is based on Ext.A1 promissory note. The execution of Ext.A1 promissory note is under challenge. When the execution of a document is under challenge, the burden is upon the person who wants this court to pass a decree relying on the said document. So, primarily if the plaintiff discharges her burden of proving the advancement of money and the execution of Ext.A1, she is entitled for a decree. PW1 deposed that she had advanced an amount of Rs. 3,00,000/- (Rupees Three Lakhs only) to DW1 on 09/07/2015 at her residence. During cross examination she added that the amount was advanced in the presence of her son and sister in the afternoon of 09/07/2015. PW2 is the sister of the

plaintiff. She deposed that she was present at the time of advancement of money to DW1. Presence of PW2 and the son of PW1 at the time of advancing the amount was an addition made by PW1 at the time of cross examination. Their presence was not disclosed either in the pleadings or at the time of chief examination. So, this evidence of PW1 has to be viewed with caution.

9. The execution of Ext.A1 promissory note is challenged. In Ext.A1, there are two signatures. One signature in on the stamp affixed in the document and the other signature is below the same. Even by naked eye it can be seen that the two signatures in Ext.A1 does not tally with each other. When a specific question was posed regarding the signature of DW1 in Ext.A1 promissory note below the revenue stamp, PW1 queried 'is it not put by her signature'. PW1 deposed that the signature in the revenue stamp was put by DW1 in her presence and she saw the same. She is totally ignorant of the signature below the revenue stamp. The two signatures seen in Ext.A1 would create a doubt in my mind regarding its execution. The learned counsel for the plaintiff argued that the difference in the two signature in Ext.A1 were noticed even at the time of execution of the promissory note. However,the pleadings are totally silent about the same. In the absence of pleadings regarding the two signature in Ext.A1, the argument advanced by the counsel for the plaintiff cannot be

accepted. PW1 is an educated lady, a post graduate. If she has noticed the difference in the signature even at the time of execution of the document, she could have rejected the same and ought have insisted for another promissory note. Why PW1 has accepted the promissory note with two signature is not explained. As PW1 has not offered any convincing explanation regarding the glaring difference in the two signature in Ext.A1, I am of the view that the plaintiff has failed to let in convincing evidence to prove its execution. PW1 deposed that DW1 had prepared Ext.A1. No instruction was given by PW1 regarding the witnesses to be cited in Ext.A1. It has come in evidence that it was DW1 who decided as to who all are to be made as witnesses in the document. Even the details of the witnesses cited in Ext.A1 were not furnished by PW1. As the witnesses cited are the relatives of PW1, it is quite difficult to believe the evidence of PW1 that Ext.A1 was prepared by DW1 without informing her and without gathering any information from her regarding the witnesses cited therein. Normally when a person receives a promissory note in respect of the money advanced, she will take every endeavour to check whether the document contains relevant details and also regarding the witnesses shown therein. The testimony of PW1 that she played no role in the preparation fo Ext.A1 is not convincing especially when DW1 has denied the execution of the same.

10. PW1 deposed that she had withdrawn an amount of Rs. 3,00,000/- (Rupees Three Lakhs only) from her account maintained at State bank of India, Alamcode branch. The manager of the bank produced Ext.X1, the statement of account of the plaintiff showing that on 9/07/2015 an amount of Rs. 3,00,000/- (Rupees Three Lakhs only) was withdrawn by PW1. Ext.X1 would only show that PW1 had withdrawn an amount of Rs.3,00,000/- (Rupees Three Lakhs only) from the bank on the alleged date of transaction. That does not mean that the amount was advanced to DW1. As the plaintiff has failed to let in convincing evidence proving the advancement of the amount and the execution of Ext.A1, I am not inclined to pass a decree for money in her favour. In the light of these discussions, these issues are found against the plaintiff.

11. **Issue No.4:-** Normal rule is that costs shall follow the event. In this case also, I do not wish to deviate from this normal rule. Thus, the defendant is entitled for costs.

In the result, this suit is dismissed with costs to the defendant.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 29th day of June, 2019.

Sd/-

RAJASREE. C.R,
MUNSIFF.

APPENDIX:

Exhibits for plaintiff:

A1	09/07/2015	Promissory Note executed by Seena in favour of Vatsalakumari.
A2	16/09/2015	Copy of Advocate Notice.
A3	05/10/2015	Postal receipt.
A4	05/10/2015	Postal acknowledgment card.
A5	27/11/2002	LIC first premium receipt.
A6	15/05/2015	Death claim.
A7		Copy of account statement from 1st January 2015 to 31st December 2015 (rejected).
A8	16/10/2015	Copy of reply to Advocate Notice.
A9	17/04/2015	Death Certificate of Babu.P.

Third party Exhibits:

X1	03/04/2019	Statement of account issued by the State Bank of India, Alamcode Branch.

Witness for the plaintiff:

PW1	19/01/2019	Vatsalakumari K.S.
PW2	05/02/2019	Sholy.

Witness for the defendant:

DW1	17/06/2019	Seena Beevi.
DW2	17/06/2019	Sobha.

Id/-
MUNSIFF

//True copy//

Typed by: Vineetha
Compd by:

MUNSIFF