

IN THE COURT OF THE SUBORDINATE JUDGE OF METTUPALAYAM.

PRESENT : TMT.S.INDULATHA, B. B.L.,
Subordinate Judge, Mettupalayam.

Tuesday this the 5th day of April 2022
(Thiruvalluvar Aandu 2052, Sri Pilava Aandu, Panguni Thingal 22nd day)

ORIGINAL SUIT No.25/2020
CNR.No.TNCB190000932020

Mr.D.Veerasley

...Plaintiff

-Vs-

Mrs.S.Mariammal

... Defendant

This suit coming up for final hearing before me on 28.03.2022 in presence of Thiru.R.Santha Moorthy, Advocate for the plaintiff and Thiru.P.Chandrakumar, Advocate for defendant, written statement filed, defendant failed to appear before court and defendant called absent Set Exparte and after perusing the records and hearing the counsel for the plaintiff, this court doth pass the following.

J U D G M E N T

01. Suit is for Recovery of money directing the defendant to pay a sum of Rs. 9,97,523/- with subsequent interest at the rate of Rs.1.50 per Rs.100/- per month on Rs.8,00,000/- from the date of suit till the date of realisation and for costs.

02. Brief averments of the Plaint as follows:

On 12.10.2018, the defendant borrowed the loan of Rs. 8,00,000/- from the plaintiff and on consideration of the same, on the same day, the defendant executed a Promissory Note in favour of the Plaintiff agreeing to repay the same on demand with interest at the rate of 18% (Rs.1.50 per Rs.100/- per month) per annum. Thereafter, inspite of repeated demands from the plaintiff, the defendant has deliberately failed to pay any amount towards the said loan either for interest or for the principal. Whiles, during last month, the plaintiff reliably came to know that the

defendant is heavily indebted and trying to sell her entire valuable assets with intent to defeat the right to Plaintiff and delay the payment of suit claim. She owns and in possession of an immovable property described in the accompanied petition by virtue of a sale deed dated 01.02.1979 under Regn. No.168/1979 executed by one N.Ramachandran. Hence the suit filed with petition for an order to attach the said property before Judgement. Hence the suit.

03. Written Statement filed by the Defendnat as follows:

The suit is false frivolous and vexatious and not maintainable on the factual and legal aspects. The suit averments are denied and it is a false avement that for her urgent family expenses the plaintiff had borrowed an amount of Rs. 8 Lakhs from the plaintiff on 12.10.2018 and executed a promissory note in favour of the plaintiff agreeing to repay the said amount with interest at rate of 18 % per annum. It is a false averments that the plaintiff had been given the xerox copy of the sale deed document 168/1976 purchased from one Ramasamy asa security for the said loan. The signature in the suit pronote is not that off defendant and on the ground of verifying the document of the defendant the plaintiff obtained the said documents and failed to return the same and also threatened the defendant when asked for return of the same. The defendant is a age old women and by threatening the defendant the plaintiff had obtained her title deeds and the plaintiff had put up the defendnat signature the suit pronote and the plaintiff and the defendant are friends once and due to the said friendship the plaintiff knew very well about the signature of the defendant and had put forth same and to gain illegally he had filed the suit and the defendant and the plaintiff were at a misunderstanding now and only to grab money and property this false suit is filed and the suit is liable to be dismissed . Since it was filed on fabricated document and with false

averments.

04. ISSUES:

On considering the pleadings of Plaintiff side and the materials available, this Court framed the following issues for consideration. They are

Sl. No.	ISSUES
1	Whether the suit pronote is true, valid and binding upon the Defendant?
2	Whether the plaintiff is entitled to the relief of recovery of suit amount with interest?
3.	To what other relief ?

5 . The defendant appeared through her counsel, written statement filed and the defendant called absent Set Exparte due to non- cross examination of PW2. The Plaintiff had been examined as PW.1 and the attesting witness was examined as P.W.2 on the side of Ex.A1 and A2 had been marked.

06. ISSUES No 1 to 3:

06(1) The defendant borrowed the loan of Rs. 8,00,000/- from the plaintiff and on consideration of the same, on the same day, the defendant executed a Promissory Note in favour of the Plaintiff agreeing to repay the same on demand with interest at the rate of 18% (Rs.1.50 per Rs.100/- per month) per annum. Thereafter, inspite of repeated demands from the plaintiff, the defendant has deliberately failed to pay any amount towards the said loan either for interest or for the principal. While so, during last month, the plaintiff reliably came to know that the defendant is heavily indebted and trying to sell her entire valuable assets with intent to defeat the right to

Plaintiff and delay the payment of suit claim. On perusal of Ex.A1 is Promissory note executed by the defendant in favour of the Plaintiff. Ex.A2 is signature of Mavazhagan. The plaintiff case is that on borrowed of Rs.8 Lakhs on 12.10.2018 the promissory note was executed by the defendant before the witness and the signature was Ex.A1 denied by the defendant and in a written statement the defendant had alleged that the plaintiff failed to return the documents obtained from the defendant on the pretext of verifying the same. The signature in Ex.A1 is forged and only to grab money from the defendant the false suit was filed. In the cross examination of PW1 also the signature of defendant in Ex.A1 pronote was denied and the plaintiff had stated in his cross examination that only before him the said signature was put up by the defendant herein the plaintiff had examine PW2 who is the 1st witness in the suit promissory note and he had stated that the defendant had signed before him on the stamp affixed upon the suit promissory note. He further stated that the defendant had affixed her thumb impression in the suit Pronote Ex.A1. The defendant is denying the signature in the suit promissory note in her written statement and also in the cross examination of PW.1 the plaintiff herein. She failed to cross examine PW2 the attesting witness produced by the plaintiff herein. Even though there is bare denial of signature in Ex.A1 the defendant failed to establish the same through satisfactory evidence. Further she had not sought for Handwriting Expert's opinion as to the genuinenity of the signature in Ex.A1. In the absence of proof of a valid evidence as to the alleged fabrication of the defendant's signature in Ex.A1 the presumption under section 118 of the Negotiable instruments can be drawn in favour of the plaintiff.

“118 Presumptions as to Negotiable Instruments Act runs as follows:

- (a) of consideration that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

- (b) as to date that every negotiable instrument bearing a date was made or drawn on such date;
- (c) as to time of acceptance that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) as to time of transfer that every transfer of a negotiable instrument was made before its maturity;
- (e) as to order of indorsements that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) as to stamps that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) that holder is a holder in due course that the holder of a negotiable instrument is a holder in due course;

06(2) Further the oral testimony of PW.2 remains Uncontroverted. The unchallenged oral testimony of PW.2 would also advocate the case of the plaintiff. The Execution the lending and the non repayment by the defendant stands proved. As such the plaintiff's claim for the money stand proved. The interest claimed by the plaintiff is to be varied in accordance with the legal restrictions. Therefore the plaintiff is found entitled to the suit claim with restricted future interest. Thus the issues 1 and 2 are answered.

In the result,

- a) The suit is decreed.
- b) The defendant is directed to pay a sum of Rs.9,97,523 /- along with interest at 9% p.a from the date of suit to date of decree upon the Principal amount and thereafter at 6% p.a. till realization.

c) The defendant shall bear the cost.

Dictated to the typist, directly to computer corrected by me and pronounced in open Court, this the 5th day of April 2022.

Sd/-S.Indulatha,
Subordinate Judge,
Mettupalayam.

LIST OF EXHIBITS MARKED:

FOR PLAINTIFF SIDE:

Ex.A1	12.10.2018	Promissory Note executed by the Defendant in favour of the Plaintiff	Original
Ex.A2	--	Signature of Mavazhagan	Original

LIST OF WITNESSES EXAMINED:

For Plaintiff side:

PW.1- Mr. T.Veerasley
PW.2- Mr. Mavazhagan

For Defendant side:

--Nil--

Sd/-S.Indulatha,
Subordinate Judge,
Mettupalayam.