IN THE COURT OF THE SECOND ADDITIONAL SUBORDINATE JUDGE AT NAGERCOIL

Present: Thiru. S. Sivasubramanian, B.Com., B.L.,
II Additional Subordinate Judge,
Nagercoil.

Saturday, this the 4th day of July, 2026

O.S.No.49/2024.

(CNR No.TNKK03-000269-2024)

Thomas … Plaintiff.

/Vs/

1. Bharathi Raja
2. Lalitha … Defendants.

This suit came up before me on 15.06.2026 for final hearing in the presence of M/s. S. Krishna Prasad and C. Mohan Dhas, Jegan, R.M. Arun and A.P. Arul Raj Counsels for the plaintiff and of M/s. T. Santhosh Kumar and S. Sahaya Arasu, Counsels for the defendants and on hearing the arguments of both sides and upon perusing the entire material records and having stood over for consideration till this date, this Court has delivered the following:

JUDGMENT

The plaintiff has filed the suit against the defendants for recovery of money a sum of Rs.6,15,000/- directing the defendants to pay to the plaintiff with 12 % interest per annum from the date of suit till the date of decree and for costs.

2.Crux of the Plaint averments would run thus:

2.1 It is the case of the plaintiff that the defendants are well known to the plaintiff when he was in Nagercoil and the defendants requested the plaintiff to provide a loan of Rs.5,00,000/- and offered to give 12 % interest per annum to the plaintiff for a sum of Rs.5,00,000/-. On 25.02.2021 at his residence at Door No.104A, Library Street, Sarakal Vilai, Kottar Post, Nagercoil, Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District, the defendants borrowed a sum of Rs.5,00,000/-from the plaintiff and agreed to pay a sum of Rs.5,000/- per month (that is 12 % interest per annum) up to the repayment of the above said loan and further agreed to settle the entire loan along with interest within 3 years on demand from the plaintiff and executed a loan document in favour of the plaintiff. The defendants paid only Rs.60,000/-to the plaintiff in various times and repeated demands made by the plaintiff the defendants not yet repaid the principal loan amount along with remaining pending interest.

2.3. The plaintiff further stated that he does not know to read the content of the said document and he did know the nature of the document which executed by the defendants. On 07.01.2024 the plaintiff friend gone through the above said instrument he revealed that the said document is captioned as a mortgage document. As per the said document the defendants stated they delivered the possession and enjoyment of the property situated in Re.Sy.No.198/2 in Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District and a house building having electricity meter Number V.K.1069/plaint schedule property in favour of plaintiff. The defendants willfully committed fraud on the plaintiff by executing otti document/mortgage deed instead of loan document. The plaintiff never intended to agree or create for the otti deed (mortgage deed). Therefore, the plaintiff issued a notice to the defendants through his counsel on 09.01.2024 and the same were returned stating that insufficient address. The loan amount is Rs.5,00,000/- and monthly interest per month is Rs.5,000/- the total interest from the 25.02.2021 to 25.01.2024 is Rs.1,75,000/-. Out of the said Rs.1,75,000/- the defendant paid interest Rs.60,000/-. Hence, pending interest is Rs.1,15,000/-. The total amount is Rs.6,15,000/-. Hence, the suit.

3. **Brief of written statement filed by the defendants are as follows: -**

3.1. All the averments contained in the plaint except those that are specially admitted in the written statement other facts are denied. The plaintiff is a money lender by profession and was lending money for usurious rate of interest. The defendants never borrowed Rs.5,00,000/- or any other amount from the plaintiff as alleged on 25.02.2021 or any other date and never executed any documents infavour of the plaintiff. The defendants have no necessity to borrow such a huge amount of Rs.5,00,000/- as alleged and never paid as Rs.5,000/- as interest with rate of 12 % per month. The first defendant borrowed a sum of Rs.60,000/- from the plaintiff for his marriage expenses in the the year 2019 and as security for the amount borrowed, the plaintiff obtained a document including the schedule property and the plaintiff was collecting interest at the rate of 36 % from the 1st defendant. In the mean while the defendant paid the above said borrowed amount with the plaintiff but he did not return the documents obtained as security.

3.2. The defendants further stated that the plaintiff himself have categorically admitted that the plaint document is an invalid document and he pleaded that he did not know the nature and content of the document. The defendants 1 and 2 never signed in the document and no consideration has been passed under the plaint document. The defendants never executed any document infavour of the plaintiff as alleged and never surrendered possession of the suit property infavour of the plaintiff as alleged. The plaint document is invalid document and the same is void abinitio and the said document is insufficiently stamped. The plaintiff cannot file this suit on the basis of void instrument which is not enforceable under law. The attempt of the plaintiff filing this suit on the basis of forged, fabricated and invalid document so as to harass the defendants. The defendant never received the suit notice. There is no borrowal or any other transaction between the plaintiff and defendants. But the amount of Rs.60,000/- borrowed and repaid by the first defendant is admitted. The plaintiff has no cause of action to file this suit. The plaintiff is not entitled to get any relief in the suit and prayed for dismissal of the suit with costs.

<u>4. On the basis of the pleadings of both the parties and documents filed by them, this court has framed the following issues for trial on 07.01.2025:</u>

1.	Whether the plaintiff is entitled for money decree as prayed for?
2.	For what other relief the both parties to the suit are entitled?

5. Having formulated the above issues, the Court has called upon the parties for trial and accordingly, the case went up for trial, whereby the plaintiff was examined as PW1 through him Ex.A1 to Ex.A5 were marked and one Jeba Sherin was examined as PW2. Plaintiff side witnesses were cross examined by the defendants side. Thereafter, the plaintiff side evidence was closed on 31.07.2025.

6. On the side of the defendants, the 2nd defendant examined herself as DW1 and no documents were marked and also cross examined by the plaintiff side. Thereafter Defendants side evidence was closed on 04.02.2026.

7. Heard both side arguments. Carefully perused the entire available material records.

8. **<u>Answer to the issue No.1 :</u>**

8.1. The plaintiff has filed the suit against the defendants for recovery of money a sum of Rs.6,15,000/- directing the defendants to pay to the plaintiff with 12 % interest per annum from the date of suit till the date of decree and for costs.

8.2. As per section 101 of Indian Evidence Act, 1872, corresponding to u/s.104 of the Bharatiya Sakshya Adhiniyam, 2023 "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person". Therefore, it is clear that the plaintiff has to prove his case through proper oral and documentary evidence, not on the weakness of the defendant case.

8.3. To substantiate the case of the plaintiff, he himself examined as a PW1 and through him Ex.A1 to Ex.A5 were marked and also cross examined by the defendants side. The plaintiff in his proof affidavit he has reiterated the averments made in the plaint. Ex.A1 is the Original loan document naming it as Otti deed, dated 25.02.2021, Ex.A2 is the legal notice along with three postal receipts, dated 09.01.2024, Ex.A3 is the returned notice covers (2 Nos), Ex.A4 is the acknowledgment card, dated 12.01.2024, Ex.A5 is the online copy of encumbrance certificate, dated 14.02.2024. Further to support the case of the plaintiff one Jeba Sherin was examined as PW2 and no document were marked.

8.4. To disprove the case of the plaintiff, the defendants filed written statement thereby denied the case of the plaintiff. The 2nd defendant herself examined as DW1 and no document were marked. In his proof affidavit she has reiterated the averments made in the written statement.

8.5. It is the case of the plaintiff stated in the plaint as well as the proof affidavit of PW1 that he laid suit for recovery of money against the defendants and stating that they are husband and wife. They borrowed a sum of Rs.5,00,000/- promising to repay it Rs.5,000/- per month interest ie., 12 % interest per annum and they executed the Ex.A1 loan document on 25.02.2021 in the presence of witnesses. The defendants paid Rs.60,000/- on various times thereafter inspite of repeated demands the defendants neither paid principal nor paid pending interest. On 07.01.2024 when his friend gone through the Ex.A1 document he revealed that the said document named as a mortgage document. As per the said document the defendants delivered the suit property to him. No such possession of the suit property hand over to him. It is not otti deed/mortgage deed, but indeed it is a loan document executed by the defendants. Therefore, the plaintiff issued the Ex.A2 legal notice to the defendants and the same were returned with endorsement as insufficient address. The said returned notice cover were marked as Ex.A3. Ex.A4 is the acknowledgment card and Ex.A5 is the encumbrance certificate. Therefore, the plaintiff has came up with this suit for stated supra relief.

8.6. The defendants taken the defence that they never borrowed Rs.5,00,000/- from the plaintiff as alleged by the plaintiff and they never executed the Ex.A1 in favour of the plaintiff and they denied the signature found in the Ex.A1 is not that of them. The defendants never surrendered the possession of the suit property to the plaintiff. Further taken the defence that the 1st defendant borrowed Rs.60,000/- from the plaintiff in the year 2019 at the time the plaintiff obtained document including the schedule of property for the security of the loan. The said loan amount of Rs.60,000/- repaid by the defendants. The plaintiff filed the suit on the basis of forged, fabricated and invalid document.

8.7. The first and foremost defence of the defendants that they never borrowed Rs.5,00,000/- from the plaintiff as alleged by him and they never executed the Ex.A1 in favour of the plaintiff and the signature found in the Ex.A1 is not that of them. It is settled position of law that the signature is disputed, it is the duty of the person, who disputed his/her signature to prove the same as forged.

8.8. A careful perusal of Ex.A1 document is naming it as otti pathiram. Wherein it is stated that the 1st defendant executed the Ex.A1 infavour of the plaintiff and further stated that the 1st defendant delivered his property to the plaintiff as otti for the period of three years and he received Rs.5,00,000/-. Further stated that after repaying the said amount within the said period he will take the possession of the said property. The Ex.A1 contains two pages, the 1st page is 100 rupees non judicial stamp paper and the 2nd page is long size green sheet. It appears from the 1st page that the seal is affixed in the year 2019.

Further it appears that the date of purchase of non judicial stamp paper mentioned as 24.02.2021. Further it appears that another name has been written above the name of the 1st defendant and whitener has been applied over it. Further it appears that in the said Ex.A1 the both the parties signature not found in the 1st page of Ex.A1. Further a careful perusal of 2nd page of Ex.A1, below the schedule of property the 1st defendant said to have been signed on the one rupee revenue stamp. Further it appears that the 2nd defendant said to have been signed as a witness in the said document. Further it appears that one Jeba Sherin said to have been signed as a one of the witness in the Ex.A1. Further careful perusal of the 2nd page of Ex.A1 to sign the defendant, witnesses and to write the address of the witnesses and to write the word as W/o. for 2nd defendant, six different ink pens were used to complete the document. The plaintiff examined the one attested witness as PW2. The PW2 in his cross examination he stated that he does not know the content written in the Ex.A1. Further he stated that he was asked to sign as a witness in the document said to have been borrowed the loan he signed the same. Therefore, it is clear that the loan amount was not handed over to the defendant in presence of PW2. Further he stated that defendants executed the loan document, but he did not read the said document. He admitted that the plaintiff is his relative. Further in the chief examination he has not stated that who is the another one witness singed in the Ex.A1. Therefore the evidence of the PW2 is wholly unreliable. It appears from the Ex.A1 another one attested witness is said to have been signed by the 2nd defendant, who has in their written statement as well as the DW1 chief examination and the cross examination categorically denied her signature found in the Ex.A1 is not that of her. In such circumstances of the present case, the plaintiff has to prove the execution of Ex.A1 by the defendants and the plaintiff has not taken any steps to prove the signature found in the Ex.A1 is that of the defendants. The plaintiff neither proved the signature nor chose to takes steps to send the disputed signature of the defendants found in the Ex.A5 for the expert opinion. Therefore, the plaintiff failed to prove the execution of Ex.A1 by the defendants in favour of the plaintiff for the loan of Rs.5,00,000/- borrowed from him and the said document intended to executed as a loan document. Further the plaintiff has not stated the mode of transaction of the amount lend to the defendants. The plaintiff himself admitted in his plaint that he was a coolie. Further the plaintiff has not filed any documents to show that he has sufficient sources of income to lend such a huge amount to the defendants relevant point of time. In view of the discussion made above this court feels that the plaintiff has failed to prove his case through proper oral and documentary evidence and hence, the issue No.1 is answered against the plaintiff.

9. **<u>Issue No.2</u>:-**

In view of the discussion made above and findings arrived at issues No.1 , this Court is of the considered view is that the plaintiff is not entitled to any other relief and hence, this issue is answered against the plaintiff.

10. In the result, the suit is dismissed. No costs.

Dictated by me to Steno-typist and directly typed in computer by her, take down the print out, corrected and pronounced by me in open court on this the 4th day of July 2026.

SIVASUBRAMANIAN S

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Date: 2026.07.04 17:36:12 +0530

II Additional Subordinate Judge,
Nagercoil.

Annexure:

Plaintiff's Side Witness examined:

PW1.	Thiru.Thomas (Plaintiff)
PW3.	Thiru. Jeba Sherin.

Plaintiff's Side Documents:

Sl.No	Date	List of Documents	Remarks
Ex.A1	25.02.2021	Loan document named as Otti deed	Original
Ex.A2	09.01.2024	Legal notice along with three postal receipts.	Original
Ex.A3	-	Returned Postal cover (2 Nos)	Original
Ex.A4	12.01.2024	Acknowledgment card	Original
Ex.A5	14.02.2024	Encumbrance certificate	Online copy

Defendants side Witnesses examined:-

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DW1.	Tmt. Lalitha (2nd defendant)

Defendants Side Documents: Nil.

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