

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
VIRUDHUNAGAR**

Present : Thiru. **T.V.Hemanandakumar, B.A.,LL.M.,**
Additional District Judge, Virudhunagar

Thursday, the 07th day of March, 2024

OS No.57/2021
(CNR No.TNVR 080003062021)

Muthulakshmi ... Plaintiff

Vs

Muthumanickam ... Defendant

The suit was originally presented before Hon'ble Principal District Judge, Virudhunagar District at Srivilliputtur on 05.05.2021 and was taken on file as OS No.69/2021 on 13.05.2021 and the case was made over to this court on the same day as per order of hon'ble Principal District Judge, Virudhunagar District at Srivilliputtur and received by this court on 31.05.2021 and renumbered as OS No.57/2021.

This suit came up on 26.02.2024 for final hearing before me in the presence of Thiru.A.Balasubramanian, Learned advocate for the plaintiff, Thiru.J.Marikumar, Learned advocate for the defendant and upon considering all material records in this case and hearing the arguments on both sides and having stood over till this day for consideration and this court doth deliver the following

JUDGMENT

Suit for recovery of a sum of Rs.53,02,667/- with interest at the rate of 18% per annum for the principal sum of Rs.40,00,000/- from the date of plaint and for costs.

2. The plaint averments in brief as follows:

The plaintiff and defendant are residing in Pandian Nagar, Kariyapatti. The defendant is the dealer of Roomy Herbal Products. The plaintiff was sub-dealer under the defendant and so, known to each other from the year 2011. From 2011, the defendant used to borrow money from the plaintiff and repaid it. In the month of August, 2018, the defendant approached the plaintiff and requested Rs.40,00,000/- for the improvement of his business and also for the medical education of his son. The plaintiff was having Rs.10,00,000/- in his hand and borrowed Rs.30,00,000/- from her uncle Gopalakrishnan who was residing in railway quarters, Trivandrum and paid Rs.40,00,000/- to the defendant on 18.08.2018. The defendant agreed to pay interest at the rate of 1% per month and executed a promissory note in the presence of witnesses. After that the defendant did not repay the principal sum and interest even after requested. Now, the defendant has borrowed money from various persons and trying to abscond. Hence, this suit.

3. The defendant filed written statement with following contentions:

The defendant is known to the plaintiff because the defendant is the dealer of Roomi Herbal Products. The other averment that the plaintiff and defendant are friends is false. The further averment that from the year 2011, the defendant used to borrow money from the plaintiff and repaid it with interest are false. The averment that the defendant requested loan of Rs.40,00,000/- from the plaintiff for his business and for the studies of his son and the plaintiff borrowed Rs.30,00,000/- from her uncle and on 18.08.2018 she paid Rs.40,00,000/- to the defendant are false. The averment that the defendant agreed to pay interest at the rate of 1% per month and executed a promissory

note are false. Further averment that the defendant did not repay the amount and trying to abscond are false. The plaintiff was sub-dealer under the defendant and she incurred a loss of Rs.5,00,000/- in her business and so he quarrelled with the defendant stating that the defendant has to pay money. Since, the defendant did not pay it, the plaintiff fraudulently created the promissory note and put the signature of this defendant. The witnesses to the promissory note are not known to the defendant. The cause of action stated in the plaint is false. The further averment that the plaintiff lent a sum of Rs.40,00,000/- after receiving only promissory note itself is not believable.

4. On the basis of these pleadings, this court framed the following issues:

- (1) Whether the defendant borrowed a sum of Rs.40,00,000/- from the plaintiff and executed the suit promissory note?
- (2) Whether the plaintiff is entitled for the decree for recovery of money as prayed for?
- (3) What other relief the plaintiff is entitled for?

5. To prove the case of the plaintiff, PW1 to PW5 were examined and Ex.A1 to Ex.A5 were marked. On the side of defendant, he was examined as DW1 and no document was marked.

6. Heard and documents perused.

7. Issue No.1:

Whether the defendant borrowed a sum of Rs.40,00,000/- from the plaintiff and executed the suit promissory note?

The suit is filed for recovery of a sum of Rs.53,02,667/- on the basis of a promissory note. To prove the case, the plaintiff was examined as PW1. PW1 in

her evidence stated that the defendant was the dealer of Roomi Herbal Products and the plaintiff was the sub-dealer under the defendant. So, they were known to each other and the defendant used to borrow money from the plaintiff. She has further stated that in the month of August, 2018, the defendant approached the plaintiff and asked for Rs.40,00,000/- for improvement of his business and medical education of his son. According to the plaintiff, she was having Rs.10,00,000/- with her and she borrowed Rs.30,00,000/- from his uncle Gopalakrishnan and paid to the defendant. On 18.08.2018 after receiving money, the defendant executed Ex.A2 promissory note.

8. Then, to prove the consideration plaintiff examined PW5 Gopalakrishnan who has stated that he was working in railway and when he retired from service, the amount received as retirement benefits Rs.30,00,000/- was paid by him to the plaintiff. The attesting witnesses were examined as PW3 and PW4. Both of them have stated that on 18.08.2018 the defendant borrowed a sum of Rs.40,00,000/- from the plaintiff and executed promissory note in their presence.

9. The defendant who was examined as DW1, denied the entire case of plaintiff and denied the execution of Ex.A2 promissory note. In the proof affidavit DW1 has stated that the plaintiff has fraudulently created Ex.A2 promissory note putting his signature.

10. In this case, it is admitted that the plaintiff and defendant are known to each other. The defendant was dealer of Roomi Herbal Products and plaintiff was sub-dealer under the defendant. So, the execution of Ex.A2 promissory

note is in dispute. PW1 has stated that on 18.08.2018 the defendant borrowed a sum of Rs.40,00,000/- in her house and executed Ex.A2 promissory note in the presence of witnesses. PW3 Venkateswaran and PW4 Murugandi who are the attesting witnesses in the promissory note also stated that the defendant borrowed a sum of Rs.40,00,000/- from the plaintiff and executed promissory note and they also put their signature as witnesses. This court has perused the cross-examination of PW1, PW3 and PW4. During cross-examination on the side of defendant nothing was culled out to disbelieve the evidence of above said witnesses. The evidence of above said PW1 was corroborated by the evidence of PW3 and PW4 regarding the execution of promissory note. Moreover, during cross-examination of PW1, the learned counsel for the defendant suggested that the plaintiff already obtained the promissory note from the defendant and when she incurred loss, she filled up the promissory note and filed this suit. The suggestion is as follows:

"பிரதிவாதி எண்ணிடம் கடன் பெறவில்லை என்றும் எனக்கு தொழில் நஷ்டம் ஏற்பட்டதால் அந்த நஷ்டத்தை ஈடுகட்ட ஏற்கனவே பிரதிவாதியிடம் வாங்கி வைத்திருந்த புரோ நோட்டை பூர்த்திசெய்து வழக்கு தாக்கல் செய்தேன் என்றால் சரியல்ல."

So, as per the suggestion the plaintiff has already got promissory note from the defendant and so, the denial of signature in Ex.A2 promissory note is not specific denial. In this case, as already discussed, the evidence of PW1, PW3 and PW4 the evidence regarding the execution of Ex.A2 promissory note is cogent and believable.

11. Another important aspect in this case is that during cross-examination

of DW1 on the side of plaintiff Ex.A4 and Ex.A5 were marked from the custody of plaintiff. Ex.A4 and Ex.A5 are the original sale deeds in favour of the defendant. There is no explanation on the side of defendant as to how his original sale deeds came to the custody of plaintiff. When it was questioned during cross-examination the defendant replied that he did not know how the documents were in the custody of plaintiff. So, the defendant failed to explain how his original documents are in the custody of plaintiff.

12. Regarding the consideration, it is the case of plaintiff that she borrowed Rs.30,00,000/- from her uncle PW5 Gopalakrishnan and paid Rs.40,00,000/- to the defendant. PW5 in his evidence stated that he paid Rs.30,00,000/- from his retirement benefits to the plaintiff on the 2nd week of August, 2018. To prove the source, on the side of plaintiff Ex.A3 details of terminal benefits of PW5 were also filed. So, the plaintiff has proved the source of money for the consideration also.

13. These all would probablise that defendant borrowed a sum of Rs.40,00,000/- from the plaintiff and executed Ex.A2 promissory note. The defendant failed to disprove the case of plaintiff and hence, it has to be held that the defendant borrowed a sum of Rs.40,00,000/- and executed the suit promissory note and this issue is answered in favour of the plaintiff.

14. Issue No.2:

Whether the plaintiff is entitled for the decree of recovery of money as prayed for?

In earlier issue number 1, this court has held that the plaintiff proved that

the defendant borrowed a sum of Rs.40,00,000/- from her and executed Ex.A2 promissory note. Hence, the plaintiff is entitled for recovery of money as prayed for.

15. Issue No.3:

What other relief the plaintiff is entitled for?

The plaintiff is entitled for decree for recovery of Rs.53,02,667/- with 12% interest per annum on principal amount Rs.40,00,000/- with costs, from the date of filing the suit and thereafter she is entitled to get 6% interest per annum on principal amount Rs.40,00,000/- till the date of realization.

16. In the result,

(a) The suit is decreed with costs.

(b) The plaintiff is entitled for recovery of sum of Rs.53,02,667/- with interest at the rate of 12 % per annum from the date of filing the suit till the date of decree for principal amount Rs.40,00,000/- and thereafter interest at the rate of 6% per annum from the date of decree till the date of realization for principal amount Rs.40,00,000/-.

Dictated to the Steno-typist, typed by him, corrected and pronounced by me in open court, on this the 07th March, 2024.

Additional District Judge,
Virudhunagar.

Plaintiff's side witnesses:

PW1 : Tmt.P.Muthulakshmi

PW2 : Thiru.P.Murugan

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- PW3 : Thiru.M.Venkateswaran
PW4 : Thiru.G.Murugandi
PW5 : Thiru.S.Gopalakrishnan.

Plaintiff's side exhibits:

- Ex.A1 : - Copy of Aadhar Card of the plaintiff P.Muthulakshmi.
Ex.A2 : 18.08.2018 Promissory note executed by M.Muthumanickam in favour of Muthulakshmi.
Ex.A3 : - Details of terminal benefits paid to one Gopalakrishnan.
Ex.A4 : 22.07.2004 Sale deed executed by Narayanan and 2 others in favour of M.Muthumanickam.
Ex.A5 : 22.07.2004 Sale deed executed by Narayanan and 2 others in favour of M.Muthumanickam.

Defendant's side witnesses:

- DW1 : Thiru.M.Muthumanickam.

Defendant's side exhibits:

Nil.

Additional District Judge,
Virudhunagar.

Additional District Court,
OS No.57/2021
(CNR No.TNVR 080003062021)
JUDGMENT
Dated : 07.03.2024
