

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF AT TIRUVALLUR

Present : Tmt. G. PRIYA, B.A.,M.L.,
Principal District Munsif
Tiruvallur

Thursday, the 21st day of December 2023

O.S.No. 35 of 2023
(CNR No.TNTRIE-000308-2022)

P. Murugan

. . . Plaintiff

//Versus//

Laila

. . . Defendant

This suit has come up before me on 20.12.2023 for final hearing in the presence of Thiru R. Mathiyalagan, Counsel for Plaintiff, and Thiru K.S. Loghanathan, Counsel for Defendant, and upon perusing the case records and arguments and having stood over for consideration till this day and this Court delivered the following

J U D G M E N T

Suit for recovery of money of Rs.63,101/- with interest at the rate of 12 % per annum, from the date of plaint till the date of realization from the defendant and for costs of this suit.

2. Gist of averment in plaint :-

The defendant's Husband Alexandar has borrowed a sum of Rs.50,000/- from the plaintiff on 05.08.2020 to meet his family expenses by executing a Promissory Note in favour of the plaintiff. The defendant's husband had agreed to repay the said amount with interest at the rate of 12% per annum whenever the plaintiff required. After several demand of the plaintiff, the defendant's husband did not pay any amount towards principal or interest. In the circumstances the defendant's husband Alexander was died on 21.03.2021. After the death of the defendant's husband, the defendant herein is only liable to pay the loan amount with interest to the plaintiff. Because, the defendant herein is the wife and legal heir of deceased Alexandar. As per law, the defendant has bind over to settle the loan amount with interest to the plaintiff. The defendant has also acknowledged her husband's loan obtained from the plaintiff and also the defendant is holding sufficient funds by way of acquiring assets from her husband through intestate, hence, the defendant is absolutely liable for repayment of loan with interest. The defendant has to pay a sum of Rs.63,101/- towards the principal amount with interest to the plaintiff. The plaintiff has issued legal notice to the defendant on 26.05.2022 and the same was refused by the defendant on 30.05.2022. Therefore, the plaintiff has no other alternative remedy for the recovery of money from the defendant. Hence, this suit.

3. Gist of averment in written statement filed by the Defendant :-

The defendant and Late Alexandar got married in the year 1998. They had one child out of the wedlock. The said Alexandar has not properly acted as a husband

towards the defendants and there was no understanding between the defendant and the said Alexandar. The said Alexandar never share his personal life with the defendant in their matrimonial life, and the defendant does not have any knowledge about any transaction nor contacts or any exchange made with other persons. The defendant has no knowledge about the transaction dated 05.08.2020 as alleged in the plaint. Alexandar died on 21.03.2021. The allegation of the plaintiff that, the defendant is liable to clear the debts of Late Alexander is not admissible in law. The defendant is not a beneficiary, the liability will not bind on the defendant. The defendant is doing coolie work, and out of that income the defendant is surviving till this date. Her husband did not support the defendant nor their child's daily needs and necessity. Alexandar spent all his income for his own use only. The defendant did not purchase things or materials or property out of his borrowed loan amount. The defendant deny the loan transaction from the plaintiff. The Promissory Note dated 05.08.2020 is a created one, and it is created by the plaintiff to grab money from the defendant taking advantage of demise of Late Alexandar. The Promissory Note clearly shows that, the document was executed on 05.08.2020 is a created one and it is created by the plaintiff to grab money from the defendant and taking advantage of demise of Late Alexandar. There is no documentary or oral evidence produced by the plaintiff to prove his case. The allegation that, the defendant is acquiring assets of Late Alexandar through intestate is totally false one and no documentary evidence has been filed by the plaintiff to support the allegations. The defendant neither received the legal notice dated 26.05.2022 nor refused it. The document dated

05.08.2020 is a created one, and it will not bind the defendant. Hence, prayed to dismiss the suit.

4. On considering the plaint and written statement, the following issues were framed, they are :-

- 1) Whether the defendant's husband had borrowed loan from the plaintiff and executed Promissory Note on 05.08.2020 ?*
- 2) Whether the plaintiff is entitled to receive a sum of Rs.63,101/- along with interest at the rate of 12% per annum till the date of realization ?*
- 3) To what other reliefs the plaintiff is entitled to ?*
- 4) Whether the plaintiff is entitled for costs over the suit ?*

5. On the side of the plaintiff, PW1 & PW2 were examined and Exhibits A1 to A5 were marked. On the side of Defendant, DW1 was examined and no documents were marked.

6. ISSUE No.1 :

Heard learned counsel for plaintiff. It is observed that the plaintiff has filed the suit against the defendant for paying the principal loan amount with interest as per the Promissory Note to a sum of Rs.63,101/- along with interest at the rate of 12 % p.a. from the date of plaint till the date of realization of the amount and for the costs of this suit.

6. The case of the plaintiff is that the defendant's husband Mr. Alexander had borrowed a sum of Rs.50,000/- from the plaintiff on 29.08.2019 for his family expenses and the said Alexander had executed a Promissory Note in favour of the plaintiff and the Promissory Note is marked is Ex.A1. Upon several demands the said

Alexander had neither paid any interest nor the principal amount to the plaintiff herein. The said Alexander had died on 21.03.2021. Hence the defendant is only liable to pay the loan amount with interest to the plaintiff as the defendant had acknowledged the loan obtained by her husband, the said Alexander from the plaintiff herein. The plaintiff had issued a legal notice to the defendant on 26.05.2022 and the same is marked as Ex.A2, whereas the defendant had not received the same and the returned cover is marked as Ex.A3. The plaintiff's Aadhaar card is marked as Ex.A4. It is also stated by the plaintiff that the Promissory Note was executed and signed by the said Alexander before the attester one Vijayan and the signature of the said Vijayan is marked as Ex.A5.

6.(a) The case of the defendant is that the suit is not maintainable, as the loan was not obtained by her and she had not acknowledged the same.

7. It is observed that the suit is filed for recovery of money based on the Promissory Note executed by one Alexander the Husband of the defendant herein. It is also noted that the defendant is the wife of the said Alexander and the legal heir of the said Alexander. The first point to be determined is whether the suit for recovery of money against the defendant is maintainable and whether the defendant is liable to repay the loan obtained by her husband the said Alexander. To decide the above said issue, it is first pertinent to decide whether the defendant had acknowledged the loan said to have obtained by her husband Alexander from the plaintiff and secondly it is also pertinent to decide whether the defendant had inherited any property or interest in

money from her husband the said Alexander to carry-down the lien over the loan liability of the said Alexander as legal heir of the said Alexander.

8. It is settled preposition of law that the Plaintiff has to prove his case hence the burden of proof lies upon the plaintiff to prove whether the defendant had inherited any property or interest in money from her husband the said Alexander. It is noted that PW1 had adduced evidence stating that :

”என்னிடம் பெற்ற பணத்தை வைத்து அலெக்ஸாண்டர் மற்றும் அவரது மனைவி ஏதேனும் பொருட்கள் அல்லது நிலம் வாங்கியுள்ளார்களா என்பதனை நிரூபிப்பதற்கு ஆவணங்கள் எதுவும் தாக்கல் செய்துள்ளேனா என்றால் இல்லை. அலெக்ஸாண்டருக்கு சொந்தமான சொத்துக்களை அவரது மனைவி அனுபவித்து வருகிறாரா என்பதை நிரூபிப்பதற்கு ஆவணங்கள் எதுவும் இவ்வழக்கில் தாக்கல் செய்துள்ளேனா என்றால் இல்லை”.

The plaintiff had admitted that he had not proved that the defendant had inherited any property or interest in money from her husband.

It is noted that the said Alexander was working as Conductor in Transport Department, whereas prior to his death the said Alexander was removed from service. Hence it is concluded that the defendant had not received any monitory death benefits from the concerned department.

Upon above observations It is also noted that the plaintiff by oral or documentary evidence had not proved any property available in the name of deceased Alexander and had also failed to proved that the defendant had inherited property from the deceased Alexander.

The second point to be decided is whether the defendant had acknowledged the loan , PW1 in his evidence had adduced that :

”அலெக்ஸாண்டரின் மனைவியை எனக்கு தெரியுமா என்றால் தெரியாது அவரை நான் பார்த்தது கிடையாது”. ”அலெக்ஸாண்டர் கடன் பெற்றார் என்பதை அவரது மனைவி அங்கீகரித்துள்ளார் என்று எனது பிரமாண வாக்குமூலத்தில் கூறியுள்ளேன் அதனை நிரூபிப்பதற்கு அதற்குண்டான ஆவணங்களை இவ்வழக்கில் தாக்கல் செய்துள்ளேனா என்றால் இல்லை”.

Upon above evidences of PW1 it is noted that the defendant is not known to the plaintiff herein and the plaintiff had admitted that the defendant had no acknowledged about the loan of deceased Alexander said to have obtained in this suit from the plaintiff. Upon perusal of Ex.A1 it is also noted that the defendant had no knowledge about the loan and execution od Ex.A1 further the plaintiff had not proved the knowledge of the defendant regarding Ex.A1 Promissory Note said to have executed by the deceased Alexander in favour of the plaintiff herein.

Upon above observations, as it is concluded that the defendant had no acknowledged about the loan said to have obtained by the deceased Alexander, the Husband of the defendant herein from the plaintiff and as it is also concluded that the defendant had not inherited any property from the deceased Alexander and hence it is concluded that the defendant does not have any lien over the loan said to have obtained by the deceased Alexander from the plaintiff herein.

The Defendant counsel had filed (2002) AIR (Madras) 296, Govindammal and Another Vs. Bhuvaneswari Finance Corporation, it is stated that,

“8. Though the appellants / defendants have defended the suit on many grounds, in law and as per the pleadings, unless basically it is proved that these appellants / defendants, though related to the late Ethirajulu Naidu, have inherited the estate of the Ethirajulu Naidu so far as to become liable to repay the debts, the respondent / plaintiff cannot maintain the suit as against the appellants / defendants. Unless this vital legal question is determined, the Court cannot go into the next step whether such borrowing by Ethirajulu Naidu is true, so as to claim the same on proof of such evidence from the defendants.

9. Nothing has been pleaded on the part of the plaintiff to the effect as to what were the estates left by the deceased Ethirajulu Naidu and how these defendants and to what extent they inherited the estate left by Ethirajulu Naidu. Unless these aspects are pleaded and proved by the plaintiff with sufficient evidence, no cause of action would arise for the plaintiff to claim anything from the defendants since the defendants would not be liable to repay the debts of the deceased unless they have inherited the estate of the deceased worth the debts left by the deceased.

10. Nothing is pleaded regarding this vital aspect on the part of the plaintiff nor any issue framed to the said effect for determining this issue as a preliminary issue prior to settling the other issues nor had these suit been decided on the basis of this issue. In the absence of such pleadings and proof on the part of the plaintiff so as to establish that the deceased Ethirajulu Naidu left the estate and that estate, had been inherited by the defendants and therefore, the defendants who inherited the estates of the deceased would also become liable to clear the liabilities of the deceased,

the other ques questions regarding which issues have been framed by the lower Court to the proof of the borrowing of Ethirajulu Naidu under Ex.A1 Pronote, would not arise. But the lower Court thoughtless of the fact that this vital aspect should be pleaded, proved and established on the part of the plaintiff prior to going into proof of the pronote and other aspects involved in the case, has erroneously decided the suit against the defendants under the wrong impression that they are liable to clear the debits of the deceased Ethirajulu Naidu which cannot be sustained in law and on facts.

11. It is hereby made clear that even if the plaintiff had proved that the defendants wee related to the late Ethirajulu Naidu so as to become the heres of the deceased, it would not be sufficient unless they were able to further prove that the said Ethirajulu Naidu left a valuable estate and that estate has been inherited by these defendants and that estate was work the money that is sought to be recovered and only in proof of all these aspects, the next step of lodging the claim against these appellants / defendants would be arrived at. Since the plaintiff has miserably failed to prove this vital aspect which is quite legal and pre-requisite condition, the other question of the borrowing of Ethirajulu Naidu is quite irrelevant to the issue with which the defendants have absolutely no nexus or bearing.

12. In the above circumstances, the lower Court is wrong in having not gone into the vital legal aspect that should have been fundamentally proved on the part of the plaintiff in a case of such nature but barely on facts put forth by the plaintiff, it has passed the decree against the defendants without showing any nexus for these defendants to have inherited the debts of the deceased Ethirajulu Naidu along with his estate worth effecting payment of the debts and therefore, the judgment and decree passed by the lower court becomes only liable to be dismissed and th same is dismissed

accordingly, both the points are answered accordingly in favour of the appellants”.

As per the above mentioned citation, applying the same to the facts of this case hence as it is hereby concluded that the defendant had not obtained any monetary interest, property belonging to the deceased Alexander by inheritance and that the defendant had not borrowed any money from the plaintiff and the defendant had neither executed Promissory Note nor acknowledged the the loan said to be obtained by the said Alexander from the plaintiff herein. Hence this court hereby concludes that the issue whether the Promissory Note Ex.A1 was executed by the said Alexander or not need not be discussed.

Upon above observations, it is concluded that the defendant had not acknowledged Ex.A1 and no lien arise against the defendant herein. Further, the execution of Ex.A1 is concluded as not necessary to be discussed. Issue No.1 is answered accordingly.

9. ISSUE No.2 :

As already discussed in Issue No.1, it is hereby concluded that the plaintiff is not entitled to receive Rs.78,602/- from the defendant along with interest at the rate of 12% per annum as claimed. Issue No.2 is answered accordingly.

10. ISSUE No.3 & 4 :

It is hereby decided that the plaintiff is not entitled for any other relief in this suit. It is also decided that the plaintiff is not entitled for costs over the suit.

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

Dictated to Steno Typist, and computerized by him directly, corrected and pronounced by me in open Court, this the 21st day of December 2023.

S Sd/- G. Priya
Principal District Munsif
Tiruvallur

List of Plaintiff side witnesses :

PW1	--	P. Murugan
PW2	—	Vijayan

List of Plaintiff side documents :

Ex.A1	05.08.20	Promissory Note given by the D. Alexander to plaintiff - original
Ex.A2	26.05.22	Legal Notice sent by the plaintiff to the defendant
Ex.A3	—	Returned cover – 1 No.
Ex.A4	—	Aadhaar Card of plaintiff – xerox copy
Ex.A5	05.08.20	Signature of Vijayan in the Promissory Note marked through PW2

List of Defendant side witnesses

DW1	—	Laila
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List of Defendant side documents : N I L

Sd/- G. Priya
Principal District Munsif
Tiruvallur

