**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE, DINDIGUL**

**Present : S.Ramachandran, B.L.,**
**Principal Subordinate Judge, Dindigul**

**Saturday, the 2nd day of March 2024**
**Original Suit No.633/2023**

**(CNR.No.TNDG04-001208-2023)**

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M/s. Bank of Baroda, KNH Road Branch, Dindigul.
Rep. By it Senior Branch Manager. ... Plaintiff

- Vs -

Mr.M.Selvam
Mr.A.Shanmugam … Defendants

The suit having been taken on file on 22.08.2023 and came before me for final hearing on 20.02.2024 in the presence of Learned Advocates Mr.S.M.Loganathan, Ms.T.Bathmavathy and Mr.M.Manivannan for Plaintiff and summons to the defendants served and the defendants 1 and 2 are called absent set exparte and having stood over under the consideration of this court till this date and this court this day delivered the following:-

**JUDGMENT**

This is a suit for recovery of money on Mortgage of Rs.4,25,086/- with subsequent interest at the contract rate within the time fixed by this court, failing which, permit the plaintiff to obtain a final decree for sale of mortgaged properties, with cost.

**02. Brief contents of the plaint:-**

a) The first defendant approached the Bank formerly known as Vijaya Bank, Dindigu Branch for agricultural term loan facility. For the said loan the second defendant agreed to be the guarantor for the said loan. On 25.07.2017, the first defendant gave loan application to the said bank. Upon receiving the loan application the Vijaya Bank, Dindigul branch sanctioned a sum of Rs.4,00,000/- to the first defendant on 28.09.2017 on the condition that the rate of interest for the said loan is 11.35% p.a. with half yearly rests and in case of default of loan amount the defendants should pay penal interest of 2% p.a. and loan and defendants to repay the loan amount in 7 years half yearly installments of Rs.42,180/- commencing from 30.04.2018 and to be paid on or before 28.09.2024. The defendants accepted the said condition and signed in the sanction letter issued by the said bank. On 28.09.2017, the 1st defendant executed a loan agreement cum Hypothecation deed infavour of Vijaya Bank, Dindigul branch for a sum of Rs.4,00,000/-. On the same date the second defendant executed a Letter of guarantee infavour of the said bank. The first defendant deposited his original title deeds with the said bank and on 08.11.2017, he executed a registered memorandum of deposit of title deeds infavour of the said Bank and thus created an equitable mortgage by deposit of title deeds. On 26.02.2020 and on 14.09.2022, the first defendant acknowledged his liability as on that dated.

b) The Bank previously known as Vijaya Bank, has now amalgamated with Bank of Baroda vide the Gazette publication of India, dated 02.01.2019. Inspite of repeated demands made by the plaintiff bank the defendants have not come forward to repay the loan amount due to the plaintiff bank. As a guarantor the 2nd defendant is also jointly and severally liable to pay the loan amount. The plaintiff bank issued notice to the defendant through its advocate on 04.11.2022. The second defendant received the said notice on 07.11.2022. The notice sent to the first defendant was returned on the ground that “Door Locked”. Hence the said notice was returned on 07.11.2022. The defendants have not adhered to the repayment schedule and committed default. Hence the plaintiff has been forced to file this suit.

03. On receipt of summons served, the defendants did not appear before this court and the defendants were called absent set exparte.

04. On the side of plaintiff, the Branch Manager of the plaintiff's bank was examined as PW1 and marked the documents Ex.A1 to A16. Ex.A1 is the Original Loan Application given by the defendants, Ex.A2 is the Original Sanction letter issued by the plaintiff, Ex.A3 is the Original Loan agreement cum Hypothecation deed executed by the 1st defendant in favour of plaintiff bank, Ex.A4 is the Original Letter of Guarantee executed by the 2nd defendant, Ex.A5 is the Original Memorandum of deposit of title deeds, Ex.A6 is the Original Sale deed executed by Karunamoorthi in favour of 1st defendant, Ex.A7 is the True Copy Patta in the name of 1st defendant, Ex.A8 is the True copy of Adangal Extract in the name of 1st defendant, Ex.A9 is the Original Certificate given by Village Administrative Officer, Ethilodu Village, Ex.A10 is the True Copy of Patta in the name of 1st defendant, Ex.A11 is the True copy of Encumbrance Certificate, Ex.A12 is the Computerized copy of Encumbrance Certificate, Ex.A13 is the Office copy of Advocate Notice, Ex.A14 is the Original Returned cover sent to the 1st defendant, Ex.A15 is the Original Acknowledgment Card received by the 2nd defendant, Ex.A16 is the True Copy of Statement of account. The plaintiff’s side closed the evidence with PW1.

05. Heard the plaintiff’s side. Documents perused. The point for consideration in this suit is:

> Whether the defendants are liable to pay a sum of Rs.4,25,086/- to the plaintiff bank as per the bank accounts?

06. This is a suit for recovery of money on mortgage. The plaintiff Bank filed the above suit against the defendants herein to recover a sum of Rs.4,25,086/- with subsequent interest from the date of suit to till the date of realisation. The documents relied upon by the plaintiff in ExA1 to A16 are found to be maintained in the regular course of business and that they stand proved as per Bankers Book Evidence Act. The above documents prove that the plaintiff Bank is entitled for recovery of money as

per the Loan application, Hypothecation agreement and Letter of guarantee and Account statement. The suit is filed within the limitation period. There is no contra evidence to the plaintiff in this suit. The claim of the plaintiff is proved. The defendants jointly and severally liable to repay the suit claim. Hence, this suit deserves to be decreed.

**07. In the result, this suit is decreed and the preliminary decree is passed with cost as follows:-**

i) the defendants 1 and 2 are directed to pay a sum of Rs.4,25,086/- to the plaintiff jointly and severally with interest at the rate of 6% per annum on the principal sum from the date of suit till the date of realization; and

ii) the defendants are directed to pay the said sum within 2 months hereof failing which the plaintiff shall bring the mortgaged property for selling in Court Auction to realize the decree amount.

iii) the defendants are directed to bear the cost of the suit.

Directly dictated by me to the Typist, typed by her, corrected and pronounced by me in the open court, this the 2nd day of March 2024.

S RAMACHANDRAN

Digitally signed by S RAMACHANDRAN
Date: 2024.05.29 15:59:17 +0530

Principal Subordinate Judge,
Dindigul.

**APPENDIX**

**Plaintiff's side witnesses:**

1. PW1- Tr.Amarnath Dharsan (Plaintiff)
Branch Manager,
Bank of Baroda,
K.N.H.Road Branch,
Dindigul.

**Plaintiffs' side Exhibits:**

| Sl. No. | Exhibits | Date | Particulars | Nature |
|---|---|---|---|---|
| 1 | Ex.A1 | 25.09.2017 | Loan Application given by the defendants | Original |
| 2 | Ex.A2 | 28.09.2017 | Sanction letter issued by the plaintiff | Original |
| 3 | Ex.A3 | 28.09.2017 | Loan agreement cum Hypothecation deed executed by the 1st defendant in favour of plaintiff bank | Original |
| 4 | Ex.A4 | 28.09.2017 | Letter of Guarantee executed by the 2nd defendant | |
| 5 | Ex.A5 | 08.11.2017 | Memorandum of deposit of title deeds | Original |
| 6 | Ex.A6 | 05.06.2008 | Sale deed executed by Karunamoorthi in favour of 1st defendant | True Copy |
| 7 | Ex.A7 | *** | Patta in the name of 1st defendant | True Copy |
| 8 | Ex.A8 | *** | Adangal Extract in the name of 1st defendant | Original |
| 9 | Ex.A9 | *** | Certificate given by Village Administrative Officer, Ethilodu Village | Original |
| 10 | Ex.A10 | 23.09.2017 | Patta in the name of 1st defendant | True Copy |
| 11 | Ex.A11 | 18.02.2013 | Encumbrance Certificate | True Copy |
| 12 | Ex.A12 | 20.09.2017 | Encumbrance Certificate | Computer Copy |

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| 13 | Ex.A13 | 04.11.2022 | Advocate Notice | Office copy |
| 14 | Ex.A14 | *** | Returned cover sent to the 1st defendant | Original |
| 15 | Ex.A15 | *** | Acknowledgment Card received by the 2nd defendant | Original |
| 16 | Ex.A16 | *** | Account Statement along with Indian evidence act u/s.65b(4) Certificate | True Copy |

**<u>Defendants side Witness & Exhibits:</u>** NIL

S RAMACHANDRAN

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Principal Subordinate Judge,
Dindigul.

Principal Sub Court, Dindigul.
O.S.No.633/2023
Draft / Fair JUDGMENT
D.D. 02.03.2024