KAKB220001182019

Presented on : 29-01-2019
Registered on : 29-01-2019
Decided on : 03-08-2026
Duration : 7 years, 6 months 5 days

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC AT ALAND

PRESENT

SMT.SUMAN CHITARGI. B.com., LL.M.
PRL. CIVIL JUDGE & JMFC
ALAND

DATED THIS THE 3RD DAY OF AUGUST - 2026

ORIGINAL SUIT NO.15/2019

PLAINTIFFS:-

Chandrashekhar S/o Vishwanath Molkeri, Aged: 30 years, Occ: Agriculture, R/o RC Dhammur, Mahagaon Cross, Tq: and Dist: Kalaburagi.

(By Sri.S.S.C., Advocate)

//Versus//

DEFENDANT:

Tukaram S/o Dhanasingh, Aged: 25 years, Occ: Agriculture, R/o Madki Thanda, Tq: Aland, Dist:Kalaburagi.

(By Sri.P.V.A., Advocate)

Date of institution of suit	29.01.2019		
Nature of suit	Recovery of Mortgage Amount.		
Date of commencement of recording of evidence	31.08.2023		
Date of pronouncement of Judgment	**03.08.2026**		
Total duration	Year/s	Month/s	Day/s
	07	06	05

PRL.CIVIL JUDGE & JMFC
ALAND

<><><>

J U D G M E N T

The plaintiff has filed the present suit seeking relief of recovery of money of Rs.3,50,000/- with interest at 18% from the date of execution of mortgage deed till the date of realization of entire decretal amount.

2. **The brief facts stated in the plaint:**

It is the case of the plaintiff that the plaintiff and defendant are well known since long and defendant along with his sons had approached the plaintiff in the second week of April 2015 requesting to advance the amount of Rs.3,50,000/-. Looking to the family necessity and urgency of defendant, the plaintiff arranged the amount and paid to the defendant on 21.04.2015. On execution of such amount, defendant executed mortgaged deed without possession, mortgaging suit land through document No.4852/15-16 dated: 15.02.2016. Further the defendant agreed to repay said amount within one year from the date of execution of Mortgage deed and get the redeem the mortgage property. After expiry of one year when plaintiff approached defendant requesting to repay the mortgage amount, but the defendant went on postponing payment of mortgage amount are one or other reasons. Lastly on 21.01.2019 the defendant flatly denied to repay the amount. Hence, having no option plaintiff constrained to file present suit.

3. After issuance of suit summons, the defendant has

appeared before the court through his counsel and filed his written statement.

4. In the written statement the defendant has denied the entire contents of plaint as false and contended that he is the owner of land bearing Sy.No.79/2 measuring to an extent of 1 acre 39 guntas of Dammur village and the boundaries furnished by the plaintiff in the schedule are totally wrong and not at all tallying with land of defendant. Further contended that he has not at all executed the mortgage deed has alleged by the plaintiff. The documents got executed by the plaintiff on the advise of his father are Sham and Bogus and obtained by plaintiff by playing fraud saying that they are obtaining their signatures as a witnesses to the transaction made by his son by name Suresh who admitted the claim in respect of document NO.4873/2015-16 as the father of plaintiff has advanced amount of Rs.4,00,000/-. The plaintiff got executed four registered mortgage deeds and after completion of one year without any notice has filed four suits including present suit. Furhter contended that, his son by name Suresh obtained loan from Vishwanat Molkeri who is none other than father of

plaintiff who is in service of Police Head Constable. The father of plaintiff being Government servant requested the Suresh to bring all the family members to Aland Sub-Registrar Office for execution of Mortgage Deed in favour of his son Chandrashekhar who is the plaintiff in this case.

5. It is further contended that, the plaintiff is not at all have any sort of income by any means as he is handicapped person. The claim made by the plaintiff against him being false, forged and obtained the mortgage deed by playing fraud on him and pulled him to the court on false document. Hence, prayed for dismissal of the suit with compensatory cost of Rs.25,000/-.

6. Based upon the above said materials on record, the following Issues have been framed by my predecessor in Office:

ISSUES

1. Whether the plaintiff proves that the defendant has executed suit mortgage deed by receiving Rs.3,50,000/- as loan agreeing to the terms of suit mortgage deed?
2. Whether the plaintiff proves that defendant has failed to repay the loan amount as per the terms of suit mortgage deed?

3. Whether the plaintiff is entitled to the recovery of Rs.3,50,000/- with interest of 18% p.a. from defendant?

4. What order or decree?

7. In order to substantiate his case, the plaintiff examined himself as PW1 and got marked 04-documents as Ex.P1 to Ex.P4 and also examined the attesting witnesses to the Mortgage deed as PW2 to 4 and closed his side. On the other other hand, inspite of availing ample opportunity fails to adduce any oral evidence so also to produce documentary evidence. Hence, the defendant evidence taken as nil by this court through order dated: 01.12.2025 and case is posted for arguments.

8. Heard the learned counsel for the plaintiff and learned counsel for defendant and perused the documentary evidence available on record.

9. My answer to the above said issues are as under:

ISSUE NO.1 : In the Affirmative.

ISSUE NO.2 : In the Affirmative

ISSUE NO.3 : Partly in the Affirmative.

ISSUE NO.4 : As per the final order, for the following:

REASONS

10. **ISSUE NO.1 AND 2**- These issues are taken together for discussion in order to avoid repetition of facts as they are inter connected to each other.

11. It is specific case of the plaintiff that the defendant and his sons have approached him and requested to provide hand loan of Rs.3,50,000/-. The plaintiff paid the said amount by considering the urgency of defendant in cash on 21.04.2015 and after receipt of such amount the defendant got executed registered mortgage deed bearing document No.4852/15-16 dated: 15.12.2016 without possession of suit land bearing Sy.No.79/2, Khata No.123, measuring to the extent of 1 acres 39 guntas of Dammur village with the specific boundaries as mentioned in the such deed. At the time of execution of mortgage deed, the defendant agreed to repay the said amount within one year from the date of execution of mortgage deed and get redeem the mortgage property, but the defendant failed

to do so. When plaintiff approached defendant requesting repayment of mortgage amount, defendant went on postponing the payment on one or other reasons. Lastly on 21.01.2019 at his residence defendant flatly denied to repay the amount. Hence, the plaintiff having no other option except to file present suit. Hence, filed present suit and to prays to decree the same.

12. On the other hand, after service of summons the defendant though appeared and filed his written statement, he has failed to step into witness box in order to disprove the claim made by the plaintiff and to prove his defence. Hence, through order dated: 01.12.2025 the evidence of defendant is taken as nil.

13. In order to prove his claim the plaintiff No.1 himself stepped into witness box and got examined as PW.1 by reiterating the contents of plaint averments. Hence, in order to avoid repetition of facts the same has not discussed again. In addition he has also examined three more attesting witnesses to the Mortgage deed executed by the defendant as PW2 to 4 who have also deposed by supporting the version of PW1.

14. In addition to his oral evidence, he led documentary evidence by producing in all 4-documents as Ex.P1 to Ex.P4. Ex.P1 is the registered mortgage deed bearing document No.4852/15-16 dated: 15.02.2016 executed by the defendant in favour of plaintiff. Ex.P2 is the Receipt. Ex.P3 is the Certified copy of ROR of suit property and Ex.P4 is the Original Sale Deed bearing doc.No.4500/14-15 dated: 22.01.2015.

15. On perusal of Ex.P1 the registered mortgage deed bearing document No.4852/15-16 dated: 15.02.2016 executed by the defendant in favour of plaintiff. On perusal of the recitals of the said document clearly speaks that the defendant being the absolute owner and possessor of land Sy.NO.79/2 measuring to the extent of 1 acre 39 of Dammur Village got executed registered mortgage deed in favour of plaintiff by receiving loan of Rs.3,50,000/- before the Sub-Registrar Office, Aland without possession. In order to prove due execution of Ex.P1, the plaintiff also examined its attesting witnesses as PW2 to 4 who have deposed by supporting the version of plaintiff.

16. It is important to note that the registered mortgage deed carries evidentiary value. The evidence of attesting witness also proves the execution of mortgage deed and the production of original document Ex P.1, 2 and 4 also supported the case of the plaintiff and said plaintiffs evidence has remained unchallenged.

17. It is further important to note that the fraud is the serious allegation which must be specifically pleaded and proved by the party asserting it. A mere allegation without any evidence is not sufficient to disprove the case of the plaintiff which is based on registered mortgage deed. Therefore, the defendant failed to prove plaintiff got his signature on the Ex.P1 mortgage deed fraudulently.

18. Further, the defendant also not cross-examined the plaintiff and not led his evidence. Therefore under these circumstances, it is necessary to rely on the decision reported in **AIR 1999 Supreme Court 1441 (Vidhyadhar Vs. Manikrao and another)**, **where in it is held that:**

> "*where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.*"

It is further held that if the party abstains from entering the witness box, it would give rise to an interference adverse against him.

19. Therefore when the defendant specifically contended that he has not availed any loan amount from the plaintiff and plaintiff obtained his signature fraudulently then it is his bounden duty to prove the said aspect before the court but he failed to do so therefore from the above mentioned decision the conduct of the defendant give rise to an interference adverse against him accordingly plaintiff has proved that he advanced a loan of Rs.3,50,000/- to defendant on 21.04.2015 and defendant had executed a mortagage deed dated 15.02.2016 and failed to repay the mortgage amount as per the terms of mortgage deed. ***Hence, I answer Issues No.1 and 2 in the Affirmative.***

20. **ISSUE NO 3 :**-The plaintiff sought 18% of interest from date of execution till realization, but on perusal of the Ex.P.1, it reveals that there is no clause for payment of interest but by considering the facts and circumstances of this case and as the document is of the year 2019, it is necessary to compensate the plaintiff for delay in receiving it but imposing 18% interest will also not reasonable when the document is silent on the payment of interest. Therefore, this court is of the opinion that if 6% interest from the date of suit is imposed then it will not cause any harm to both parties. Hence, plaintiff is entitled for interest @ 6% per annum from the date of suit till its realization. Accordingly he is entitled for the relief as prayed in part. ***Hence, I answer Issue No.3 in Partly Affirmative.***

21. **ISSUE NO.4 :-** In view of the above said findings on issues No.1 to 3, the court proceeds to pass the following:

O R D E R

The suit of the plaintiff is hereby partly decreed.

It is hereby decreed that, the plaintiff is entitled to recover the mortgage amount of Rs.3,50,000/- from the defendant at the *rate of 6% p.a. from the defendant, from the date of suit till entire realization of the decretal amount.*

No order as to cost.

Draw preliminary decree accordingly.

(Dictated to the Stenographer on Computer directly, typed by him, Judgment is corrected and signed by me, then pronounced by me in the Open Court on this the ***3rd day of August - 2026****)*

(SUMAN CHITARGI)
PRL. CIVIL JUDGE & JMFC
ALAND

ANNEXURES

Witness examined for the plaintiff:

PW1 : Chandrashekhar S/o Vishwanath Molkei.

PW2 : Suresh S/o Basawaraj Mulage.

PW3 : Pandit S/o Babu Rathod.

PW4 : Sanjeevkumar S/o Gangaram Rathod.

Ex.documents marked for the plaintiff:

Ex.P1 : Original Mortgage Deed(Without Possession) bearing doc.No.4852/2015-16.

Ex.P1(a) : Signature of Tukaram.

Ex.P1(b) : Signature of Suresh.

Ex.P1(c) : Signature of Sanjeev Kumar.

Ex.P1(d) : Signature of Pandit.

Ex.P1(e) : Signature of Chandrashekhar.V.Molkeri.

Ex.P2 : Receipt.

Ex.P3 : CC of ROR.

Ex.P4 : Original Sale Deed bearing doc.No.4500/14-15.

Witness/Ex.documents marked for the defendants:-

-Nil-

Date : 03-08-2026.

(SUMAN CHITARGI)
PRL.CIVIL JUDGE & JMFC
ALAND

Dictated on : 03-08-2026.
Checked on : 03-08-2026.
Signed on : 03-08-2026.

(SUMAN CHITARGI)
PRL.CIVIL JUDGE & JMFC
ALAND

Visit **ecourts.gov.in** for updates or download mobile app "**eCourts Services**" from Android or iOS

(Judgment pronounced in open court vide separate order)

<u>O R D E R</u>

PRL. CIVIL JUDGE & JMFC
ALAND