

KAMS200001732025



**THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., H.D.KOTE**

Present: Mahesh.B.T, B.Com,L.L.M.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote.

O.S. NO.58/2025

Dated: On this the 7th March, 2026

Plaintiff/s : Karnataka Gramin Bank
Head Office. No.32,
Sanganakal Road,
Gandhinagar
Bellary-583103,
Regional Rural
The representative as per the
Banking Act-1976 is the
Manager
Karnataka Gramin Bank
Sarguru Branch,
H.D.Kote Taluk,
Mysuru District

(By Sri.N.S.. Advocate)

-V/s-

Defendant/s:

1. Shivarudraiah
S/o. Late. Sannamadaiah
Aged about 52 years.
2. Sannarajaiah
S/o. Late. Sannamadaiah

Aged about 50 years,
Both are R/at Shantipura
Village
Kottegala Post
Saraguru Taluk,
Mysore District.

(Exparte)

Date of institution of the Suit	26.03.2025
Nature of the Suit	Money suit
Date of commencement of recording of evidence	05.11.2025
Date on which the Judgment was pronounced	05.03.2026
Total duration	Years /s Month/s Day/s 00 11 12

Sd/-

(Mahesh.B.T)

**Senior Civil Judge & J.M.F.C
H.D.Kote**

J U D G M E N T

This suit is instituted by the plaintiff bank against the defendants for recovery of Rs.5,08,963/- including interest until the said amount is paid and for costs and other reliefs.

2. The case of the plaintiffs in brief is as under :

The defendants' father, Sannamadaiah S/o Kalamadaiah and the defendants' mother, Devamma W/o Sannamadaiah, have obtained a ATL loan of Rs.90,000/- from the plaintiff's bank on 12.05.2011 through their Account No.42036326001811. The said borrowers have taken the above loan amount by pledging to repay the said loan amount at the rate of interest of 12.50% per annum and the bank's interest rate as may be changed/fixed by the bank from time to time, in accordance with the terms and conditions of the bank, and have mortgaged the Scheduled Property belonging to them to the bank, and have executed the mortgage deed and other documents. Since the said defendants' father Sannamadaiah and mother Devamma are deceased, the defendants, their heirs, are liable to pay the above loan amount, and the defendants have to pay Rs. 4,64,149/- as of the due date of the above loan 30.01.2025.

3. Further it is stated that, the defendants' father, Sannamadaiah S/o Kalamadaiah and the defendants' mother, Devamma W/o Sannamadaiah, also have obtained a KCC loan of Rs.53,000/- from the plaintiff's bank on 12.05.2011 through their Account No.42036354001613. The said borrowers have taken the above loan amount by pledging to repay the said loan amount at the rate of interest of 11.50% per annum and

the bank's interest rate as may be changed/fixed by the bank from time to time, in accordance with the terms and conditions of the bank, and have mortgaged the Scheduled Property belonging to them to the bank, and have executed the mortgage deed and other documents. Since the said defendants' father Sannamadaiah and mother Devamma are deceased, the defendants, their heirs, are liable to pay the above loan amount, and the defendants have to pay Rs. 43,864/- as of the due date of the above loan 31.01.2025.

4. Further it is stated that, after the parents of the defendants had obtained the above loans, they had not yet repaid any of the loan amount or interest to the plaintiff bank as per the terms and conditions of the bank. When the plaintiff bank personally met several of the defendants and asked them to repay the above loan and interest, they agreed to repay the loan and the defendants' father, Sannamadaiah, wrote letters of commitment dated 09.05.2014, 05.05.2017, 07.11.2018, 30.03.2019 and a letter of revival dated 28.03.2022 to the bank.

5. Further it is stated that, the defendants' father Sannamadaiah and mother Devamma had taken a loan of Rs.53,000/- from the plaintiff's bank. The defendants' father Sannamadaiah had also signed a letter of

commitment dated 10.05.2014 and dated 01.02.2026. The letter of commitment was written to the bank on 01.02-2016 and the letter of commitment on 12.10.2018 and the letter of revival on 10.10.2021 and 20.03.2024. However, since the defendants did not pay the loan to the bank, notices were also issued to the defendants by the bank on 23.05.2023 and through the counsel on 13.02.2025. The said notices were served on the defendants and it is known from the notice sent to Sannamadaiah that the defendants' father Sannamadaiah has died. And the defendants have not given any reply to the notice and the defendants have not repaid the loan amount or interest with malicious intent to cheat the bank. Therefore, the plaintiff has brought this suit before the Court for recovery of the debt. Since this transaction took place within the limits of H.D.Kote Taluk and the amount of the above two loans as on 30.01.2025 is Rs.5,08,063/-, notice expenses are Rs.900/-, totaling Rs.5,08,963/-. Hence, the plaintiff preferred the present suit.

6. Summons for settlement of issues were duly issued against the defendants and upon service of summons defendants did not appear before court. Hence, they were placed exparte.

7. To prove its case, the plaintiff bank led ex parte evidence and examined Amith.R, S/o Ramaswamy, Manager, as PW1. and marked documents at Ex.P1 to Ex.P29 and closed his side of evidence. As the defendants have remained absent, the suit of the plaintiff has remained unchallenged.

8. Heard the arguments of the learned Counsel appeared for the plaintiff's Bank. Perused the entire case file.

9. In the absence of written statement, no issues could be framed, but we are framing certain points for determination to decide the matter in hand. The following points that would arise for Court consideration as follows:-

1. Whether the plaintiff Bank is entitled to recover a sum of Rs.5,08,063/- as prayed for?
2. Whether the plaintiff Bank is entitled for decree of foreclosure of mortgaged property, as prayed for?
3. Whether plaintiff is entitled to interest? If so, at what rate and for which period?

4. What decree or order?

10. My findings to the above points are as follows:-

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Partly Affirmative
Point No.4 : As per final order
for the following:-

REASONS

11. POINT No.1 AND 2:- Since these points are co related each other, and as such, for convenience, taken together for discussion. The onus to prove Point No.1 and 2 was upon the plaintiff. To prove its contention, the Manager of plaintiff Bank/Amir.R, filed affidavit evidence reiterating the plaint averments. he specifically stated that, the defendants borrowed a term loan of Rs.90,000/- on 12.05.2011 and as a security, they have executed registered mortgage deed in respect of suit property promising to pay the same with interest @ 12.50% per annum.

12. In support of ocular version the plaintiff Bank placed reliance on 29 documents viz., Ex.P1 is loan application dated 12.05.2011. Ex.P2 is Hypothecation deed. Ex.P3 is the Mortgage Agreement dated 12.05.2011, Ex.P4 is the

Registered Mortgage, Ex.P5 is the Acknowledgment of Liability, Ex.P6 and 7 are the Acknowledgment of Liabilities, Ex.P8 is the Letter of Commitment, Ex.P9 is the Acknowledgment of Liability. Ex.P10 is the Letter of Revival Dated:28-03-2023. Ex.P11 is the Bank Notice dated: 13-05-20234. Ex.P12 is the Bank Statement, Ex.P13 is the loan application, Ex.P14 is the Terms and Conditions, Ex.P15 is the Mortgage Agreement. Ex.P16 is the Letter of Commitment. Ex.P17 is the Acknowledgment of Liability, Ex.P18 is the letter of Commitment, Ex.P19 and 20 are the Revival of letters, Ex.P21 is the Legal Notice dated:13-02-2025, Ex.P22 is the Postal Receipts, Ex.P23 and 24 are the Returned RPAD Covers, Ex.P25 is the postal Acknowledgment, Ex.P26 is the Bank Statement of account, Ex.P27 is the RTC Extract in Sy.No.11, Ex.P28 is the Encumbrance Certificate. Ex.P29 is the MR Extract bearing MR.No.7/1998-99.

13. It is a settled law that, where the suit proceeds exparte or without any written statement from the side of the defendants, the burden of proof upon the plaintiff is not so heavy although the plaintiff is required to prove its prima-facie case so as to entitle it to the reliefs admissible under the law. In the case at hand, the plaintiff Bank has been able to do this. PW1/Amith.R,

appearing on behalf of the plaintiff Bank has categorically averred that, plaintiff had sanctioned a term loan of Rs.90,000/- to the defendants father and mother vide loan application dated 12.05.2011 and they have executed various documents in favour of plaintiff Bank i.e. Mortgage Deed, agreement of Hypothecation, letter of terms and conditions, letter of revival and acknowledgment of liability. I have gone through the above said documents produced and relied by the plaintiff. The documents exhibited by the plaintiff are duly proved, which proves that, the defendants father and mother have borrowed loan from the plaintiff Bank and later they had executed Registered Mortgage Deed in respect of the suit schedule property in favour of the plaintiff in the presence of witnesses, has clearly reflected in Ex.P4.

14. This Court observes and finds that, the plaintiff Bank has preferred a foreclosure suit against the defendants and hence sought a decree not only for the sum of amount due but also in case the defendants fail to pay the amount due alongwith interest, a preliminary decree for foreclosure be passed against the defendants. At the outset, this Court observes that the signing, execution and registration of mortgage deed marked as Ex.P4 has not been disputed by the defendant. It is also

observed that the defendants have not denied the mortgage deed since they remained absent before the Court and did not dispute the claim of plaintiff.

15. According to Section 58 of the Transfer of Property Act, 1882, a mortgage is the transfer of an interest in some specific immovable property for the purpose of securing - (i) payment of money advanced or to be advanced by way of loan, (ii) an existing or future debt, or (iii) the performance of an engagement, which may give rise to a pecuniary liability.

Mortgage is the transfer of an interest in some immovable property and it is given by way of security for a loan. A person who takes a loan and gives some security for repayment of the loan in the form of transfer of some interest in any immovable property, it is called a mortgage of property. The ownership of the property remains in the debtor but some of his interest in the property are transferred to the creditor who has given loan. In case the advance money could not be recovered by the creditor i.e., person who has advanced the money, he can recover his money on the basis of his interest in that property. In short, it may be said that the mortgage is for the security of the creditor.

16. In a mortgage, the right in the property created by the transfer is accessory to the right to recover the debt. The debt subsist in a mortgage, but the transaction by which the debt is extinguished is not a mortgage but a sale. The hypothecation of a property does not create any bar in execution of an agreement to sell the same because in hypothecation the title of the property is not transferred to the mortgagee.

17. The elements to constitute a mortgage in a transaction are as under:-

- (a) There must be a transfer of an interest;
- (b) The interest transferred must be in specific immovable property, and
- (c) The transfer must be made to secure a loan of money, debt or performance of an engagement which may give rise to a pecuniary liability.

18. The instrument by which transfer is effected in a mortgage is known as mortgage deed. No particular form of words is necessary for the creation of a mortgage. The transfer should be originally intended as security for debt. The court will ascertain the intention of the parties by looking into the substance of the deed.

19. In the case at hand, a registered mortgage deed has been signed and executed between the plaintiff and the

father and mother of the defendants. It is observed that, the mortgagor (defendants herein) bound themselves personally to pay the mortgage money to the mortgagee (plaintiff herein) and further agreed expressly and impliedly that in the event of their failing to pay according to the contract, the plaintiff shall have a right to cause the mortgage property to be sold and the proceeds of a sale be applied in payment of the mortgage money.

20. The mortgage in question is a simple mortgage, as the defendants without delivering the possession of the mortgaged property bound themselves personally to pay the mortgage money and further agreed that in the event of their failure to pay according to the contract, the mortgagee (plaintiff herein) shall have a right to cause the mortgage property to be sold and the proceeds of sale be applied in payment of the mortgage money. In simple mortgage, the possession of the property remains with the mortgagor and the mortgagor personally covenants to pay the mortgage money. The mortgagor agrees that in case of his default by non payment, the property may be sold by the mortgagor under the order of the court.

21. In the case of simple mortgage, the mortgagee has two fold security. Firstly, the mortgagor takes personal

obligation, and secondly, the property which may be sold in case of failure of the mortgagor to pay. The remedy of the mortgagee is that when the mortgagor fails to pay back the money, the mortgagee would move to the court for a decree to sell the property, and as soon as the decree is awarded he may proceed to sell the property. The proceeds of the sale will be used to pay of his debt alongwith the interest and the balance amount, if any, will have to be paid back to the mortgagee.

22. On bare perusal of Clauses of the mortgage deed ie Ex.P4 it is apparent that in case failure to pay the amount due by the defendants to the plaintiff, the mortgaged property can be sold and the sale proceeds be appropriated towards the satisfaction of the outstanding amount.

23. This Court finds that, the defendants by virtue of a registered mortgaged deed, to secure the loan, the defendants mortgaged the property with the plaintiff. It is also observed that the defendants has time and again confirmed the balance outstanding amount of the loan. It is also observed that, the loan availed by the defendants along with interest remains unpaid. It is held that the mortgagee (plaintiff bank herein) is entitled for a decree of foreclosure in accordance with law.

24. On the contrary, the evidence given by the PW.1 is supported with documentary evidence and PW.1 has further stated that, as the defendants have failed to repay the loan amount despite knowledge about taking loan. It indicates that the defendants are interested in avoiding the payment of loan dues to the plaintiff. But the evidence given by the PW.1 is convincing and satisfactory. As such, it is held that the plaintiff successfully discharged its onus that defendants father and mother have executed Registered Mortgage deed.

25. The plaintiff's claim is within the prescribed period of limitation. It is observed that, there is no legal impediment, which would disentitle the plaintiff bank to recover the outstanding amount from the defendants.

26. The conduct of the defendants in non-appearing before the court show that, they were not defence to rebut the claim of PW.1. On carefully examination of oral and documentary evidence, I do not find any reason either to doubt or disbelieve the same. Wherefore, this Court hold that, the defendants have borrowed a sum of Rs.90,000/- and Rs.53,000/- from the plaintiff by executing a Deed of Mortgage. It indicates that, the defendants are interested in avoiding the payment of loan dues to the plaintiff. But, the evidence given by the

plaintiff is convincing and satisfactory. As such, it is held that, the plaintiff successfully discharged its onus.

27. In view of above discussion, it can be said that, the defendants did not turn up and did not contest the suit by filing written statement and testimony of PW.1 is remained unchallenged and intact. The defendants have neither disputed nor challenged both oral and documentary evidence adduced by PW.1. Under such circumstances, the above said presumption comes to the aid of the plaintiff. The documentary evidence substantially proves the case of the plaintiff and strengthens the testimony of PW.1. Hence, I have no reasons to discard his evidence. Consequently, this Court hold that the case of the plaintiff is established and accordingly Points No.1 and 2 are answered in the Affirmative.

28. POINT No.3:- In the instant case, plaintiff has claimed interest totally 11% per annum towards term loan. The immovable property of the defendants is sought to be sold on their failure to pay the decretal amount. It would mean that the present suit is for foreclosure. So, award of interest in mortgage suit like this is governed by Order XXXIV Rule 11 and not Section 34 of C.P.C. In support of this view, the decisions reported in (1987) 3

SCC 597 and AIR 2005 Kant. 5 are relied upon. Besides, the Hon'ble Supreme Court in a decision reported in (1998) 2 SCC 317 has held that the courts have discretion to award interest from the date of suit till realization at 6% per annum. The interest for the period prior to the date of suit has already been added and the same is seen from the plaint. The defendants are agriculturists, if the contractual rate of interest is awarded from the date of suit till realization, they will be put to hardship. Therefore, in view of supra decision, this court think it is just and proper to award current and future interest at 6% per annum only towards cash credit and term loan. With this observation this court hold that plaintiff is entitled to the suit claim with interest at 6% per annum and not 11% and accordingly the point No.3 is answered in the Partly Affirmative.

29. POINT No.4:- In the right of the above discussions, this Court proceed to pass the following:-

ORDER

The suit of the plaintiff is decreed in part with costs.

The defendants jointly is liable to pay to the plaintiff bank the suit

loan amount of Rs.5,08,963/-
(Rupees Five Lakhs Eight Thousand
Nine Hundred Sixty three Only)
with current and future interest at
the rate of 6% per annum from the
date of suit till realization within
three months from the date of this
order.

In default, the plaintiff bank is
at liberty to recover the said
amount by the sale of the claim by
seizure and sale of suit schedule
property.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by her, the
same is corrected, revised, signed and then pronounced by me in the
open Court, the 7th day of March, 2026).

Sd/-

(Mahesh.B.T)

Senior Civil Judge & JMFC.,
H.D.Kote

ANNEXURE

1. List of witnesses examined for the Plaintiff :

PW1 : Sri.Amith.R

2. List of documents exhibited for the Plaintiff:

Ex.P1	:	Loan application dated 12.05.2011
Ex.P2	:	Hypothecation deed
Ex.P3	:	Mortgage Agreement
Ex.P4	:	Registered Mortgage
Ex.P5	:	Acknowledgment of Liability
Ex.P6 & 7	:	Acknowledgment of Liabilities
Ex.P8	:	Letter of Commitment
Ex.P9	:	Acknowledgment of Liability
Ex.P10	:	Letter of Revival
Ex.P11	:	Bank Notice
Ex.P12	:	Bank Statement
Ex.P13	:	Loan application
Ex.P14	:	Terms and Conditions
Ex.P15	:	Mortgage Agreement
Ex.P16	:	Letter of Commitment
Ex.P17	:	Acknowledgment of Liability
Ex.P18	:	Letter of Commitment
Ex.P19 & 20	:	Revival of letters
Ex.P21	:	Legal Notice
Ex.P22	:	Postal Receipts
Ex.P23 & 24	:	Returned RPAD Covers
Ex.P25	:	Postal Acknowledgment
Ex.P26	:	Bank Statement of account
Ex.P27	:	RTC Extract in Sy.No.11
Ex.P28	:	Encumbrance Certificate
Ex.P29	:	MR Extract No.7/1998-99

3. List of witnesses examined for the Defendant:

- Nil -

4. List of documents exhibited for the Defendant

- Nil -

Sd/-

(Mahesh.B.T)
Senior Civil Judge & JMFC.,
H.D.Kote