KARC410010812024

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC., MANVI.

Present : Sri. Kanchi Mayanna Goutam, B.A.L.,LL.M.,
Senior Civil Judge & JMFC., Manvi.

Dated : This the 1st day of August 2026.

O.S. No. 86/2024

Plaintiff/s : D. Adhinarayana S/o Sriramalu,
Age : 68 years, R/o Anjineyya
Camp, Ballatagi, Tq: Sirwar,
Dt: Raichur.

(Represented by Sri. KSR., Adv.,)

V/S

Defendant/s : 1. Shri. Y. Abbulu S/o
Y. Veeraraghvalu
Age: 60 years, Occ: Agriculture,
R/o R.G. Camp Manvi
Tq. Manvi, Dist: Raichur.

(Represented by Sri. BKA., Adv.,)

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Date of institution of the suit	: 20.07.2024		
Nature of the suit	: Money Suit		
Date on which the Judgment pronounced	: 01.08.2026		
Total duration	: Year/s	Month/s	Day/s
	02	00	12

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J U D G E M E N T

The plaintiff filed this suit against the defendant seeking direction to the effect that the defendant is entitled to pay sum of Rs.25,65,861/- with future interest and also preliminary decree for sale of mortgaged suit schedule properties and also permission to proceed against the defendant personally in case of the insufficient proceeds by the sale of mortgaged suit schedule properties along with court cost.

2. The brief facts of the plaintiff's case are as follows:

The plaintiff alleged that the defendant is known to him and on that basis the defendant requested the plaintiff lend the sum of Rs.11,00,000/- for his family and legal necessities. By considering the request the plaintiff lent the sum of Rs.11,00,000/- to the bank account of the defendant and also his wife in Account No.PKGBH1719983008 and PKGB720100833151 respectively. On the same day the defendant also executed registered simple mortgage deed without possession in document No.4588/2017-18 on 20.07.2017 by securing the said loan and also agreed to pay the interest at the rate of 2% per month.

3. It is further alleged by the plaintiff that the defendant has agreed that the said mortgage deed will be revoking after repayment of principal amount together with interest within the 3 years from the date of execution of mortgage deed.

4. It is further alleged that after repeated demands made by the plaintiff the defendant fail to repay the loan amount along with interest. The defendant on 10.04.2021 paid Rs.3,00,000/- and on 22.06.2021 has paid is Rs.4,00,000/- as a part payment of the borrowed money. The said amount was kept in suspense. The defendant as assured the plaintiff that entire remaining borrowed

amount along with interest will be repaid within five months.

5. The plaintiff has demanded the defendant to settled the borrowed amount along with interest in the month of February 2024. The details of the payment made by the defendant and amount payable by the defendant is hereby quoted in the bellow mentioned table.

Date	Amount paid by defendant	Rate interest	Calculated up to	Total
10.04.2021	3,00,000/-	@ 2%	29.02.2024	5,07,800.00
22.06.2021	4,00,000/-	@ 2%	29.02.2024	6,57,866.00
			Total	11,65,666.00

Date	Loan Advanced by plaintiff	Rate interest	Calculated up to	Total
20.07.2017	11,00,000/-	@ 2%	29.02.2024	37,31,527.00

6. The total borrowed amount with interest the defendant has to pay Rs.37,31,527/- out of which the payment made by the defendant of Rs.11,65,666/- is

deducted the defendant is liable to pay Rs.25,65,861/- as on 29.02.2024. When the defendant has not repaid the loan amount the plaintiff issued legal notice on 04.03.2024. Upon receipt of legal notice the defendant issued untenable replay. In the replay the defendant admitted the execution of the mortgage deed and requested the plaintiff for the interest at 1% instead of 2%. Hence, the present suit.

7. The suit summons issued to the defendant and the defendant appeared through his counsel and filed detailed written statement.

8. In the written statement the defendant denied the case of the plaintiff and submitted that the suit is barred by law of Limitation as the alleged transaction has taken place on 20.07.2017 and the suit is not filed within 3 years. The defendant admitted the ownership and possession over the suit schedule property but contended that the suit property is the joint family property of the defendant and his grandsons. The defendant further admitted the borrowing of loan of Rs.11,00,000/- for his family and agricultural necessities and also admitted the

execution of simple mortgage deed dated 20.07.2017. The defendant has denied the admitted rate of interest of 2%. The defendant admitted the payment of Rs.3,00,000/- on 10.04.2021 and Rs.4,00,000/- on 22.06.2021. Further, by denying the case of the plaintiff the defendant submitted that he has borrowed the loan for agricultural purpose and due to shortage of rain he has sustained the heavy loss. The defendant has already paid an amount of Rs.7,00,000/- towards principal amount and interest on the principal amount may be waved.

9. On the basis of above pleadings and contentions urged by the both parties the following issues are framed.

ISSUES

1. Whether the plaintiff proves that, the defendant has obtained loan of Rs.11,00,000/- for his family legal necessity and for security to repay the loan has executed mortgage deed dated 4585/17-18 dated 20.07.2017 with respect to suit property?

2. Whether the plaintiff proves that, the defendant has failed to repay the loan amount as such he is entitled to sell the suit property for recovery of Rs.25,65,861/- with agreed rate of interest?

3. Whether the defendant proves that, suit is barred by law of Limitation?

4. Whether the plaintiff is entitled to the relief sought for?

5. What order or decree?

10. In order to prove the case of plaintiff, the plaintiff himself has filed affidavit in lieu of chief examination and examined as PW 1 and got marked the documents at Ex.P1 to P4. The plaintiff also examined one witness as PW2 and Ex.P1(a) is marked through PW2. On the other hand, the defendant himself examined as DW1 by filing evidence affidavit in lieu of his chief examination.

11. Heard the arguments. Perused the evidence and the documents placed in the record.

12. My findings to the above points are as under:

Point No. 1 : In the affirmative.

Point No. 2 : In the affirmative.

Point No. 3 : In the affirmative.

Point No. 4 : Partly In the affirmative.

Point No. 5 : As per the final order
for the following reasons.

<u>R E A S O N S</u>

13. ***<u>Issue No. 1 and 2:</u>*** *As these two issues interlinked with each other in respect of borrowing of loan, execution of mortgage deed and in respect of the relief of sale of suit property for recovery of the amount, both are taken together for common discussion.*

14. To support its contentions and to corroborate with the contents of plaint, the plaintiff examined himself as PW 1 and Ex.P1 to P4 were marked. Ex.P1 is Deed of simple mortgage register document. Ex.P2 is RTC. Ex.P3 is Copy of legal notice and Ex.P4 is Copy of replay notice.

15. It is the specific case of the plaintiff that the defendant has borrowed the loan by executing the mortgage deed. The initial burden is on the plaintiff to prove his case. The plaintiff alleges that he has transferred the sum of Rs.11,00,000/- to the bank account of the defendant and also his wife to Account No.PKGBH1719983008 and PKGB720100833151 respectively and also stated on oath that on the same day the defendant also executed registered simple mortgage deed without possession in document No.4588/2017-18 on 20.07.2017 by securing the said loan and also agreed to pay the interest at the rate of 2% per month. The said assertion made by the plaintiff is not denied by the defendant. The defendant in the written statement has admitted the borrowing of loan of Rs.11,00,000/- from the plaintiff and also admitted the execution of registered mortgage deed. Further, in the Ex.P4 replay notice also the defendant admitted the borrowing the loan of Rs.11,00,000/- and execution of the registered mortgaged deed.

16. The defendant admitted the borrowing of loan of Rs.11,00,000/- and execution of the mortgage deed and also at the rate of 2% per month is also admitted by the defendant in the Ex.P4 reply notice given by him. Along with this admissions the plaintiff examined himself as PW1 in support of his case and also examined one Nagaraj as PW2 who is the scribe of the Ex.P1 mortgage deed. The PW2 supported the case of the plaintiff.

17. The defendant examined himself as DW1 and at the time of cross-examination he has categorically admitted the execution of mortgage deed and borrowing of loan by him from the plaintiff. In the chief examination the new version is stated by the DW1 by contending that he was never agreed for the rate of interest at 2% per month. Thereby, the DW1 took contrary stand to the contents of Ex.P4 replay notice given by him.

18. The evidence of the plaintiff is supported with Exhibit P1 registered mortgage deed along with the oral evidence of PW2. The defendant in his oral evidence denied the agreed rate of interest as mentioned in the Ex.P1 registered mortgage deed. But, in the Ex.P1 it is

specifically written at 2% per month. The oral evidence on the contents of documents is not permissible under section 92 of Indian Evidence Act. Even though the oral evidence is admissible on the contents of documents, it has to be under the proviso mentioned in section 92 of Evidence Act. By considering this, if we rely on section 92 of Evidence Act, the Ex.P1 is documentary evidence and on the contents of Ex. P1 document the oral evidence is not admissible. Section 92 of Indian Evidence Act is herewith reproduced:

> Section 92 - Exclusion of evidence of oral agreement When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:
>
> Proviso (1).-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any

contracting party [want or failure] of consideration, or mistake in fact or law:

Proviso (2).-The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:
Proviso (3).-The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.
Proviso (4).-The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).-Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract :

> Proviso (6).-Any fact may be proved which shows in what manner the language of a document is related to existing facts

19. By applying this, the Ex.P1 is the written registered mortgage deed where it discloses that the agreed rate of interest is 2% per month. Thereby, the oral evidence on the contents of documents without probable supporting evidence cannot be accepted.

20. The Ex.P1 is the simple mortgage deed which is registered before Sub registrar Manvi on 20.07.2017. The said execution of simple mortgage deed is also forth coming in Ex.P2 RTC. The Ex.P2 being the RTC of the suit property also establishes that the suit property is mortgaged to the plaintiff. This Ex.P1 and 2 jointly establishes that the defendant mortgaged the suit property to the plaintiff for the loan borrowed by him.

21. Further, by this, it can be concluded that the defendant availed the loan of Rs.11,00,000/- by executing the mortgage deed in favour of plaintiff by agreeing to repay the loan with interest at the rate of 2% per month. As a security for the loan the plaintiff taken the mortgage

deed by getting the mortgage of the property of the defendant. Such being the case, the plaintiff has already established its claim over the defendant. Hence, it is entitled for the relief of sale of the mortgaged suit schedule property. Accordingly, issue **No. 1 and 2 are answered in the affirmative.**

22. ***Point No. 3***:

The defendant has taken the contention that the suit of the plaintiff is barred by law of limitation as the alleged transaction has taken place on 20.07.2017 and the suit is filed after the lapse of 3 years.

23. Thereby, the next point need to verify that whether the plaintiff filed the suit within the limitation period stipulated under the law. The plaintiff has pleaded that the above suit is filed within limitation. The Article 63 of Limitation Act speaks about the suits of foreclose by a mortgagee and the same is hereby quoted for the better appreciation of the point.

Description of suit	**Period of limitation**	**Time from which period begins to run**
Article 63		

By a mortgagee—		
(a) for foreclosure;	Thirty years.	When the money secured by the mortgage becomes due.

24. The Ex.P1 discloses that the loan was borrowed on 20.07.2017 Thereafter, the present suit was filed on 20.07.2024. By considering all this points it can be safely held that the suit is filed within the period of limitation as per Article 63 of Limitation Act. Accordingly, issue No.3 answered in the Negative.

25. ***Issue No.4***:

As discussed in issue No. 1 and 2, the defendant borrowed the loan of Rs.11,00,000/- from the plaintiff by agreeing to pay the interest at the rate of 2% p.m. and also executed the mortgage deed by mortgaging the suit schedule property to the plaintiff. The defendant mortgaged the suit schedule property by depositing the title deed and also by executing the simple mortgage deed as per Ex.P1.

26. In respect of rate of interest and the recovery amount the learned counsel for the defendant relied on the

Judgment of Hon'ble High Court of Karnataka wherein it is held as follows;

1. The Hon'ble High Court of Karnataka in RFA No.478 of 2012 between M/s Bawa Enterprises and others Vs. G.R. Shet and another dated 01.12.2015 it is held as follows;

> 17. Relying on this provision, it was contended by learned counsel for the respondents that the plaintiff admittedly is a money lender; he possessed valid money lending licence, but the loan is advanced to a trader and therefore, the Money Lenders Act is not attracted and that being the case, question of applying Section 26 of the Act too would not arise.
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> 27. What follows from the judgment is, when a money lender advanced loan to a trader, the object of advancing loan was not to earn interest thereon. Therefore, it was said, person lending money cannot be considered as 'money lender' and he need not possess a valid money lending

licence for advancing the loan. The object is to ensure money advanced to the businessman is invested in the business and the person who lends money gets promptly his share of profit by way of interest. If that is the object of keeping the loan transaction to a trader outside the purview of Money Lenders Act, it is unthinkable that when he commits default, the interest payable could be more than the principal amount. Precisely, that is why the Legislature has introduced Sections 26 and 28 of the Money Lenders Act which is made applicable to money transactions that fall within the definition of "loan" under the Act and also the loan which is outside the scope of loan by a money lender.

28. In the instant case, the plaintiff is money lender. Whether he lends money to a trader or to any other person, he is

not entitled to interest more than what is contemplated under Section 26 of the Act and no court shall pass a decree in contravention of Section 26, where it is expressly stated that the interest payable should not exceed more than the principal amount.

20. By relying on the above-quoted judgment, the learned counsel for the defendant vehemently argues that as the suit claim of the plaintiff is more than the principal amount borrowed by the defendant, the relief cannot be granted as it is against Section 6. 26 and 26 of Karnataka Money Lender Act, 1961.

On the other hand, the learned counsel for the plaintiff relied on the very same judgment as quoted above and contented that the above judgment is not applicable to the individual transactions and it is applicable to the loan transactions which were made by the licensed money lenders. By considering the same, as rightly argued by the learned counsel for the defendant in the above-quoted judgment, it was held by relying on Section 26 of Karnataka Moneylenders Act that the moneylenders are governed by the provisions of the Moneylenders Act and they cannot claim their interest more than The principal amount. The above quoted judgment is specifically applicable to the transactions or loan transactions of the money lenders. In this case at the time of cross examination of PW1 or in the written statement no such contentions were taken by alleging that the present plaintiff is also the owner. Doing the money lending business by taking license. Under no such suggestions it cannot be held that the plaintiff is a licensed money lender. No minimum suggestions were put to show that put to the PW1 by showing that the PW1/petitioner is doing money lending business. Thereby nothing is available before this court to hold that the plaintiff is doing money lending business. In the plaint it is pleaded that due to the acquaintance between the plaintiff and defendant, the defendant came and borrowed the loan from the plaintiff. Thereby no evidence is available before this court to consider that the defendant has Plaintiff is a money lender. Hence, the above-quoted judgment is not applicable to the case on hand.

27. In this case, the plaintiff is claiming future interest but specifically the rate of interest is not prayed in the prayer of the suit. The suit is filed for recovery of Rs.25,65,861/- with future interest. Such being the case, the interest for these two periods in the present case it

governs by Order XXXIV Rule 11 of C.P.C.

ORDER XXXIV-SUITS RELATING TO MORTGAGES OF IMMOVABLE PROPERTY

11 . Payment of interest— In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(i) on the principal amount found or declared due on the mortgage,—at the rate payable on the principal, or, where such rate at the Court deems reasonable and,

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgagee-

> security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties, or, failing such rate, at such rate not exceeding six per cent, per annum as the Court deems reasonable; and
>
> (b) subsequent interest up to the date of realization or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at the such rate as the Court deems reasonable.

Thereby, the Order XXXIV Rule 11 speaks about two types of interest i.e. interest for the period of pendent-lite and subsequent interest.

Interest Pendente-lite : Which shall be for the period commencing from date on which the transaction was entered into and continuous till the date when the suit was decreed and the same shall be awarded at the rate agreed and accepted by the parties to the transaction.

<u>Subsequent interest :</u> Which is for the amount due as on the date of decree till realization of entire decreetal amount.

28. In this case, as discussed in point No. 1 and 2 the defendant is liable to pay the interest as per the Ex.P1 mortgage deed. In this case, till the filing of suit the defendant is liable to pay the agreed rate of interest as per Order XXXIV Rule 11 of C.P.C. Further, from the date of filing of this case till realization of the entire amount, it is as per the rate going to be imposed by the court, which the court deems thinks fit reasonable. In this case, as the defendant submitted that he has invested the loan amount on the agricultural activities, for which, he has faced financial loss due to scanty rainfall. By considering all these facts, this court feels that the the rate of interest during the course of trail and future interest shall be 6% p.a. from the date of suit till the realization of entire amount. Hence, **point No. 4 is answered in the partly affirmative.**

29. ***Point No. 5*** : by considering the all this reasons discussed in point No.1 to 6, proceed to pass the following order.

ORDER

The suit of the plaintiff is hereby partly decreed with cost.

It is hereby declared that the defendant is liable to pay a sum Rs.25,65,861/- to the plaintiff.

Further, the defendant also directed to pay the interest at the rate of 6% p.a. on the decreetal amount of Rs. 25,65,861/- from the date of filing of this suit on 20.07.2024 till the recovery of entire decreetal amount.

The defendant directed to pay the decreetal amount with interest within six months from the date of this judgment.

The defendant is hereby directed to make good payment of the decreetal amount along with the interest to the plaintiff or deposit the same before this court within six months from the date of this judgment. Upon which, the plaintiff shall deliver all the documents pertaining to the mortgaged property which is in its possession to the defendant or any person so appointed by the defendant.

In default, the plaintiff shall be entitled to seek final decree directing the mortgaged property i.e. Sy No.334/9 measuring 2 acres 00 guntas situated at Manvi, Tq: Manvi, District: Raichur, bounded as per the survey sketch shall be sold and the proceeds of the sale (after the deduction therefrom of the expenses of the sale) be paid into court and applied in payment of the said decreetal amount along with the current and future interest as per the judgment and thereby debarring the defendant from all the right to redeeming the property. The balance if any after fully satisfying the claim of the plaintiff to be paid to the defendant or other persons duly appointed by them or other persons entitled to receive the same.

It is further clarified that in case the sale proceeds of mortgaged property is failed to fully satisfy the claim of the plaintiff, the defendant is liable to pay the remaining decreetal amount along with interest.

Draw preliminary decree accordingly.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 1st day of August 2026)

(Kanchi Mayanna Goutam)
Senior Civil Judge & JMFC.,
Manvi.

A N N E X U R E

List of witnesses examined for the plaintiff:

PW 1 : D. Adhinarayana

PW 2 : A Nagaraj Baligar

List of witnesses examined for the defendant:

- NIL -

List of documents marked for the plaintiff:

Ex.P1 : Deed of simple mortgage register document
Ex.P2 : RTC

Ex.P3	: Copy of legal notice
Ex.P4	: Copy of reply notice

List of documents marked for the defendant:

- NIL -

(Kanchi Mayanna Goutam)
Senior Civil Judge & JMFC.,
Manvi.

Digitally signed by
K M GOUTAM
Location: Senior
Civil Judge &
JMFC, Manvi