

**IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE ::
ANAKAPALLE**

*Present: Smt. P.Pradeepa,
Principal Junior Civil Judge, Anakapalle*

Tuesday, the 22nd day of August, 2023

O.S.No.319 of 2022

Between:

Vankayala Viswanadham, S/o. Krishna Murthy, aged 45 years, Hindu, business, Residing at D.No. 7-206A, Parawada New colony, Parawada Village, Parawada Mandal, Anakapalle District, Aadhar No.943580685757.

.... Plaintiff

And:

Pothala Mohanarao, S/o.Yerukunaidu, aged 41 years, Hindu, Business, Residing at Kondavanipalem Village, H/o. Cheepurapalle Village, Parawada Village, Parawada Mandal, Anakapalle District.

...Defendant

This Original suit coming on 21.08.2023 for final hearing before me in the presence of Sri G.Nageswara Rao, Learned Counsel for the plaintiff and the defendant is set-exparte and upon hearing the Learned counsel for plaintiff and having stood over for consideration till this day, the court delivered the following:

:: J U D G M E N T ::

01. This suit is filed by the plaintiff against the defendant for recovery of the suit amount of Rs.13,42,000/- by awarding subsequent interest at contract rate and fix a date for redemption by directing the defendant to redeem the plaint schedule property within the period stipulated by the Hon'ble court and in case of the failure by the defendant, and pass a final decree by foreclosing the right of redemption so that the plaintiff can recover the amount by way of sale of plaint schedule property and in case of the sale proceeds do not sufficient for the realization of the amount due to the plaintiff the Hon'ble Court may be pleased to pass a personal decree for the recovery of balance of the amount against the defendant personally and from the personal and joint family properties of the defendant and for costs.

02. The averments of the Plaint in nutshell are that :

The plaintiff submits that the defendant borrowed a sum of Rs.3,00,000/- from the plaintiff on 21.02.2011 agreeing to repay the same with interest at 30 % per annum and agreed to pay interest before 20th of every succeeding month and agreed to obtain a receipt from the plaintiff and the defendant borrowed the said amount for the purpose of his necessities, family expenses and discharge of his sundry debts, if the defendant failed to pay continuously succeeding months the defendant agreed to pay the compound interest at 33 % for default months and the defendant also agreed to pay the principal and accrued interest within three years from the date of borrowing.

The plaintiff further submits that as per the terms of the above said transaction the defendant has created a charge with an intention to secure the borrowing debt from the plaintiff and executed a registered simple mortgage in favour of the plaintiff on 21.02.2011 and registered before Sub registrar of Lankelapalem, Parawada Mandal under document No.440/2010 and creating a charge over landed property situated at Cheepurupalle West Khandam, Parawada Mandal and the said property is devolved to defendant self acquired property and the defendant alone is in possession and enjoyment with absolute rights and that as per the terms of registered simple mortgage the defendant did not pay interest accruing every month and did not repay the principal amount and accrued interest thereon and failed to pay the monthly interest and that the plaintiff demanded orally and also got issued a lawyer's notice to the defendant on 30.08.2022 and the said registered notice returned with an endorsement that the defendant left from the house. Hence, the suit.

03. After this suit is initiated, it is registered as O.S.No.319/2022. Suit summon is issued to the defendant and the same is returned as un-served and hence steps petition filed for service of summons on defendant. Even though, the publication is filed, no representation on defendant side, hence, defendant is set exparte on 21.08.2023.

04. The Plaintiff is filed chief-examination affidavit on his behalf and the plaintiff is examined as PW1 and Ex.A1 to Ex.A4 got marked. One Padmanabhuni Butchiyya Setty who is 2nd attestor to Ex.A1 is examined as PW2.

05. Heard the counsel for plaintiff. Perused the chief affidavits of PW1 and PW2 and Ex.A1 to Ex.A4.

06. Point for consideration is :

Whether the plaintiff is entitled for recovery of suit amount as prayed for ?

Point :

07. To prove the version of plaintiff is examined as PW1. PW1 in his evidence in chief-examination he deposed that he borrowed an amount of Rs.3,00,000/- on 21.02.2011 on the security of the suit schedule property and executed a simple mortgage bond on the same day and registered the same in his favour at Lankelapalem and as per the terms of the mortgage bond the defendant agreed to pay interest at Rs.2.50 per month per hundred, payable on 20th of every month and further agreed that the principal amount should be paid within three years from the date of mortgage i.e. 21.02.2014, in default either principal or interest the defendant agreed to pay compound interest at Rs.2.75 per month and PW1 made several demands orally to pay the amount due under mortgage but he did not pay any amount and that he issued a registered

lawyer's notice on 30.08.2022 and the defendant failed receive notice and the same was returned on 01.09.2022.

P.W2/Padmanabhuni Butchiyya Setty who is the 2nd attester of the Ex.A1 deposed in his chief examination affidavit in similar lines as PW1 and further deposed that after receiving the consideration from the plaintiff the defendant executed simple mortgage bond in the Registrar Office at Lankelapalem.

A perusal of recitals of Ex.A1 wherein it is clearly corroborated with the evidence of PW1. Moreover there is no evidence on behalf of the defendant to disprove the execution of Ex.A1 as he is set exparte. The mortgaged plaint schedule property is in favour of plaintiff under Ex.A1 since the plaintiff filed suit 26.09.2022 and the evidence of PW1 coupled with Ex.A1 to Ex.A4 are remained as unchallenged, on that this Court is of considered opinion that the plaintiff proved his claim that the defendant obtained amount from plaintiff by mortgaging the schedule property at plaintiff hence, the defendant has to pay the suit amount of Rs.13,42,000/- to the plaintiff along with costs. Accordingly this point is answered in favour of the plaintiff and against the defendant.

08. In the result, the suit is preliminary decreed with costs in favour of plaintiff and against the defendants for an amount of Rs.13,42,000/- with subsequent interest at the rate of 9% per annum from the date of filing of the suit, till the date of decree and thereafter, at the rate of 6% per annum from the date of decree till the date of realization on principal amount.

The defendant shall pay amount within 3 months from the date of decree, failing which the plaintiff is at liberty to sell the mortgage property through court of law by filing separate petition and the due amount to the plaintiff may be adjusted out of sale proceeds by following due process of law.

Typed to my dictation by the Stenographer, typed by her directly on computer system, corrected and pronounced by me in open court this the 22nd day of August, 2023.

Sd/- Smt. P.Pradeepa,
**Principal Junior Civil Judge
Anakapalle**

APPENDIX OF EVIDENCE

Witnesses Examined

For Plaintiff :-

PW1 : Vankayala Viswanadham

PW2 : Padmanabhuni Butchiyya Setty

For Defendant:- Exparte

Exhibits Marked For Plaintiff

Ex.A1 : Original simple mortgage bond executed by the defendant in his favour dated:21.02.2011.

Ex.A2 : Office copy of registered lawyer's notice dated:30.08.2022.

Ex.A3 : Postal receipt dated:01.09.2022

Ex.A4 : Unserved registered lawyer's notice cover

Exhibits Marked For Defendant

Exparte

Sd/- Smt. P.Pradeepa,
**Principal Junior Civil Judge
Anakapalle**