

In the Court of I Additional District & Sessions Judge, Cuddalore

Present: Thiru G. SendilKumar, B.A.,B.L.,
I Additional District & Sessions Judge, Cuddalore

Thursday, the 11th day of March, 2021

Original Suit No. 83/2017

1. Padmavathi
2. Rathinavel
3. Karpagavalli
4. Ramanujam
5. Ponniiyselvi

.. Plaintiffs.

/vs/

Ravichandran

.. Defendant.

This Suit came up on 09.03.2021 before me for final hearing in the presence of Thiru V. Loganathan, Counsel for the Plaintiffs and Thiru N. Sivagurunathan, Counsel for the Defendant and upon hearing both sides and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:

JUDGMENT

This is a Suit filed by the Plaintiffs for passing a Preliminary Decree for realization of the accrued Mortgage amount of Rs.17,35,000/- in favour of the Plaintiff and as against the Defendant with subsequent interest at 12% p.a. from the date of Plaint till the date of Decree and at 6% p.a. from the date of Decree till realization by granting specified time to the Defendant to pay the amount and on his failure to pay the amount within the stipulated time then, pass a Final Decree for Sale of the hypotheca for realization of the amount due under the mortgage and award Cost and grant appropriate reliefs in the circumstances of the Case.

2. The averments in the Plaint, in brief, are as follows:

The Plaintiffs state that the Defendant is the Owner of the Property described in the Plaint. He has executed a General Power Deed, dt. 05.03.2009 in favour of One Vijaya under which, the Defendant has authorized his Power Agent to deal with the Property including to execute a Mortgage Deed and Sale Deed and other acts on his behalf. As Power Agent, Vijaya has executed a Registered Mortgage Deed in favour of the husband 1st Plaintiff and father of Plaintiffs 2 to 5 Subramanian since deceased on 03.06.2011 in respect of the Property described thereunder for a sum of Rs.10,00,000/- and agreed to repay the same with interest at 12% p.a. The Plaintiff's father died on 30.11.2016. In spite of repeated demands made by Subramanian and Plaintiffs, the Defendant has not come forward to repay the amount due under the Mortgage. Hence, the 4th Plaintiff has issued a Notice to the Defendant to discharge the Mortgage for which the Defendant has issued a Reply Notice with false and untenable allegations. As the Plaintiffs are the legal heirs of the deceased Subramanian, they are entitled to file the suit for foreclosure of the Mortgage.

3. The averments in the Written Statement filed by the Defendant, in brief, are as follows:-

The Defendant denies the execution of a General Power Deed on 05.03.2009 in favor of One Vijaya; authorizing her to deal with the Suit Property, execute a Mortgage Deed and Sale Deed and other acts on his behalf. He was not in a dire necessity of money on any occasion and thus, there was absolutely no necessity for him to give a General Power to the said Vijaya and her subsequent borrowal of Rs.10,00,000/-. The Defendant does not know even ABC of the said Vijaya. In fact, She is an absolute stranger to the Defendant.

The Plaintiff is bad for non-joinder of necessary Party and on this score, the Suit may be dismissed. While, it is alleged that the said Vijaya, the Power Agent of the Defendant, mortgaged the Suit Property to the Plaintiffs' husband and father concerned and obtained Rs.10,00,000/-, the Plaintiffs have wantonly and conveniently excluded her in the Plaintiff. The said Vijaya is therefore a necessary Party to the Plaintiff and She has to be brought on record forthwith to proceed further and adjudicate justice.

It was alleged in the Plaintiff that on 05.03.2009 the Defendant gave General Power to the said Vijaya and on 03.06.2011. She mortgaged the Suit Property by pledging the Title Deed of the Suit Property to the said Subramanian and borrowed from him Rs.10,00,000/-. These allegations are pieces of falsehood. Because, the Defendant was not in possession of the Title Deed of the Suit Property. The Title Deed of the Suit Property was under the custody of Canara Bank, Mines II, Neyveli, as the same was mortgaged by the Defendant for a sum of Rs.2,00,000/-. The Defendant availed a Mortgage Loan from Canara Bank on 12.08.2008 as per the Mortgage Loan No.2809605003548 and the said Loan account was closed on 02.08.2014. As a result, the Bank had handed over the document to the Defendant on 06.08.2014. So, while the Title Deed was in possession of Canara Bank, Mines II, Neyveli, on the above 2 dates; namely, 05.03.2009 and 03.06.2011, on account of Mortgage Loan availed by the Defendant for Rs.2,00,000/-, how could the Defendant have executed a General Power Deed in favor of the said Vijaya on 05.03.2009 in respect of the Suit Property and how could the said Vijaya Mortgaged the Suit Property to the said Subramanian on 03.06.2011 with regard to the Suit Property ?.

The Defendant knew the deceased Subramanian, who happened to be the husband of the 1st Plaintiff and father of other Plaintiffs from whom, he borrowed a Loan of Rs.2,00,000/- at an abnormal rate of interest

(Kandhu Vatti) @ 6% p.a. against law on 05.03.2009 and the said Subramanian obtained the signatures of the Defendant on 2 Blank Stamp Papers – Rs.50/- and Rs.20/- and also a Blank Promissory Note in the Sub Registrar Office in front of the said Subramanian's friendly Scribe and the Defendant had to sign the above Blank Documents, as it was represented by the said Subramanian that these Blank Documents are to be kept as security for the Loan, advanced to him by the said Subramanian and the Defendant regularly paid interest to the said Subramanian from March 2009 to December 2011 at 6% p.a. and due to financial crisis of the Defendant, he could not pay interest to the said Subramanian for 2 months, the Defendant was threatened by the said Subramanian by his musclemen, and the fearing Defendant therefore lodged a Complaint to the Superintendent of Police, Cuddalore and thus an enquiry was Ordered by the SP, Cuddalore. The enquiry went on in Mandarakuppam Police Station and in the course of enquiry, the said Subramanian had assured to return the 2 Blank Stamp Papers together with the Promissory Note to the Defendant in the presence of Police Official but subsequently, he did not keep his promise. He never returned the Promissory notes to the Defendant. The said Subramanian kept the 2 Blank Stamp Papers and Promissory Note with him cunningly as he thought of making use of the same at a later date against the Defendant. Thus, the said Subramanian made use of the Blank Stamp Paper and turned it to be a General Power Deed with his helping Scribe against the Defendant.

4. On the basis of the Pleadings, the following Issues were framed on 07.02.2020.

1. Whether the General Power of Attorney Deed, dt. 05.03.2009, said to be executed in favour of Vijaya by the Defendant is true?
2. Whether the said Vijaya has executed a Mortgage deed on

03.06.2011 in favour of One Subramanian, husband of 1st Plaintiff and father of Plaintiffs 2 to 4, as the Power Agent of the Defendant?

3. Whether the Mortgage Deed, dt. 03.06.2011, said to be executed on behalf of the Defendant by One Vijaya in favour of One Subramanian is valid and true?

4. Whether the Suit is bad for want of necessary Parties?

5. Whether the Suit is bad for want of Cause of Action.

6. Whether the Plaintiffs are entitled for a Preliminary Decree as prayed for?

7. To what reliefs the Parties entitled?

5. On the side of Plaintiffs, the 4th Plaintiff has been examined as P.W.1 and one Deivasigamani, Scribe of the Power Deed and Mortgage Deed has been examined as P.W.2. The Ex.A1 to Ex.A4 have been marked. On the side of Defendant, the Defendant has been examined as DW.1. The Ex.B1 and Ex.B.2 have been marked. (With Objections).

6. Heard the Learned Counsel for Plaintiffs and the Learned Counsel for the Defendant. Records and Exhibits have been carefully perused.

For the sake of Convenience, the Issue Nos. 1, 2 and 3 are taken up together.

7. **ISSUE Nos. 1, 2 and 3:**

The Case of the Plaintiffs is that the Defendant is the Owner of the Property described in the Plaint. He has executed a General Power Deed, dt. 05.03.2009 in favour of One Vijaya under which, the Defendant has authorized his Power Agent to deal with the Property including to execute a Mortgage Deed and Sale Deed and other acts on his behalf. The Power Agent - Vijaya has executed a Registered Mortgage Deed in favour of the

husband of 1st Plaintiff and father of Plaintiffs 2 to 5 Subramanian, for a sum of Rs.10,00,000/-, by mortgaging the Suit Property and agreed to repay the same with interest at 12% p.a.. The Plaintiff's father died on 30.11.2016. In spite of repeated demands made by Subramanian and Plaintiffs, the Defendant has not come forward to repay the amount due under the Mortgage. Hence, the 4th Plaintiff has issued a Notice to the Defendant to discharge the Mortgage and the Defendant has issued a Reply Notice with false and untenable allegations. Hence, this Suit.

8. On the other hand, the Defendant states that he has not executed any General Power of Attorney Deed on 05.03.2009 or on any occasion in favour of One Vijaya. Said Vijaya is a Stranger to him. As the Title Deeds of the Suit Property was in Canara Bank, Mines II, Neyveli, on account of a Mortgage Loan, how he could have executed a General Power of Attorney Deed in favour of said Vijaya ?.

9. The Defendant further states that the Defendant knew the deceased Subramanian, who happened to be the husband of the 1st Plaintiff and father of other Plaintiffs. From him, he borrowed a Loan of Rs.2,00,000/- at an abnormal rate of interest (Kandhu Vatti) @ 6% p.a. against law on 05.03.2009 and the said Subramanian obtained the signatures of the Defendant on 2 Blank Stamp Papers – Rs.50/- and Rs.20/- and also a Blank Promissory Note in the Sub Registrar Office in front of the said Subramanian's friendly Scribe and the Defendant had to sign the above Blank Documents, as it was represented by the said Subramanian that these Blank Documents are to be kept as security for the Loan, advanced to him by the said Subramanian. The Defendant had regularly paid interest to the said Subramanian from March 2009 to December 2011 at 6% .a. and due to financial crisis of the Defendant, he could not pay interest to the said Subramanian for 2 months. The Defendant was threatened by said Subramanian by his musclemen, and the fearing

Defendant, therefore, lodged a Complaint to the Superintendent of Police, Cuddalore and thus, an enquiry was Ordered by the SP, Cuddalore. The enquiry went on in Mandarakuppam Police Station and in the course of enquiry, the said Subramanian had assured to return the 2 Blank Stamp Papers together with the Promissory Note to the Defendant in the presence of Police Official. But, subsequently, he did not keep his promise. He never returned the Promissory notes to the Defendant. The said Subramanian kept the 2 Blank Stamp Papers and Promissory Note with him cunningly as he thought of making use of the same at a later date against the Defendant. Thus, the said Subramanian made use of the Blank Stamp Paper and turned it to be a General Power Deed with his helping Scribe against the Defendant.

10. In Order to prove their Case, the 4th Plaintiff has given evidence as PW.1. The PW.1 has deposed to the effect that he is the 4th Plaintiff in the Suit. 1st Plaintiff is his Mother. The 2nd, 3rd and 5th Plaintiffs are his Brother and Sisters. The Defendant has executed the General Power Deed in favour of One Vijaya on 05.03.2001. The Original Power Deed is Ex.A.1. On the basis of the General Power Deed, Rs. 10,00,000/- was received on 03.06.2011 and executed a Mortgage Deed. The Original Mortgage Deed is Ex.A.2. On 30.11.2016, his Father died, leaving behind them as his Legal Heirs. Till his death, his Father has demanded the Mortgage amount with interest and after his death, they demanded several times. But, the Defendant did not return it. Hence, on 20.03.2017, he has issued a Notice. The Copy of Notice is Ex.A.3. The Reply Notice is Ex.A.4.

During Cross Examination, he has deposed that it is correct to say that Vijaya has received money, as the Power Agent of the Defendant. His Father told that the value of the House and the Vacant site in Ex.A.2 is Rs. 10,00,000/-. It is not correct to say that no value for the property found

in Ex.A.2 and his Father did not pay Rs. 10,00,000/-. He does not know that the Defendant has borrowed money from his Father and paid interest. He does not know that the Defendant has given Complaint against his Father in Mandarakuppam Police Station and he was enquired. It is not correct to say that the recitals in Ex.A1 are false. It is not correct to say that his Father Subramanian has given Rs. 3,00,000/- to the Defendant and Ex.A1 was given as Security. It is not correct to say that Ex.A.2 - Mortgage Deed was fabricated. It is not correct to say there is no connection between the Ex.A.2 - Mortgage Deed and the Defendant.

11. The Plaintiffs have examined the Scribe in Ex.A1 – General Power of Attorney Deed and Ex.A2 – the Mortgage Deed. The PW.2 has deposed to the effect that he knows the Plaintiffs and the Defendant. He is a Document Writer in the Office of Sub - Registrar, Vadalur. The Defendant has executed a General Power Deed in favour of One Vijaya on 05.03.2009. He has prepared the General Power Deed at the instruction of the Defendant. It was typed by One Rani. He has read over it to the Defendant and Vijaya and then, the Defendant has read it and signed. One Suresh Kumar and Jothi Ramalingam have signed as witnesses in the Document. As the Power Agent of Defendant, Vijaya has executed a Mortgage Deed for Rs.10,00,000/- on 03.06.2011, in favour of the Husband of 1st Plaintiff and the Father of Other Plaintiffs. He has prepared the Mortgage Deed. He knows directly about the Money transaction as found in the Mortgage Deed. It is a true document. One Kala and Jambulingam have signed as witnesses in the Mortgage Deed. The Defendant has executed the General Power Deed in favour of Vijaya, signed in his presence and then, got it registered with the Sub-Registrar Office. It is a true document.

During Cross examination, he has deposed that it is not correct to say that no money transaction was held as per the Mortgage Deed, prepared by him.

12. The Defendant as DW.1 has deposed to the effect that the General Power Deed, said to be executed by him on 05.03.2009, in favour of One Vijaya is forged one. The General Power Deed is not true. There is no need for him to get Rs. 10,00,000/- by mortgaging the Suit Property through a Power Deed in favour of Vijaya. He never seen Vijaya. He has not executed any document in favour of Vijaya on 05.03.2009. The deceased Subramanian, illegally created a Mortgage Deed in respect of the Poramboke Property, where he resides, through One Vijaya. He availed a mortgage loan from Canara Bank loan on 12.08.2008 as per the mortgage loan No. 2809605003548 and the said loan account was closed on 08.02.2014, as a result, the bank had handed over the document to him on 06.08.2014. So, he has not executed a General Power Deed in favour of Vijaya on 05.03.2009. On 05.03.2009, he has borrowed only Rs. 2,00,000/- from Subramanian (deceased). When, Subramanian has obtained his Signature in Rs.50/- and Rs.20/- blank Stamp Papers and unfilled Promissory Note. He has paid interest at the rate of 6% from March 2009 to December 2011. He has given Complaint against Subramanian, as he threatened for not paying interest, with the District Superintendent of Police on 17.05.2011. On that basis, the Mandarakuppam Police enquired and asked to return the blank Stamp papers and unfilled Promissory Note. But, he did not return. By using the blank Pronote, he has created the Power Deed and Mortgage Deed through a Document Writer. The Guideline value of the Suit Property is Zero.

During cross examination, he has deposed that it is correct to say he has obtained loan of Rs.5,00,000/- as per Ex.B.1. It is correct to say that the Photograph, on the back side of First Sheet in Ex.A.1, is of him. He does not know the signature, near the Photograph, is of him. The other signatures in found in Ex.A.1 are not of him. The Thumb Impression, found near the Photograph on the backside of First page in Ex.A.1, is of him. He has not taken any legal action against Vijaya.

13. The Crux of defence are that the Defendant has not executed any General Power of Attorney Deed on 05.03.2009 or on any occasion in favour of One Vijaya. Said Vijaya is a Stranger to him. As the Title Deeds of the Suit Property was in Canara Bank, Mines II, Neyveli, on account of a Mortgage Loan, how he could have executed a General Power of Attorney Deed in favour of said Vijaya ?.

14. Besides, the Learned Counsel for Defendant has argued that Burden of Proof is on the Plaintiffs. One Vijaya, who said to have executed the Ex.A2 – Mortgage Deed, has to be impleaded. The reaching of consideration to the Defendant is doubtful and the Suit Mortgaged Property is a Free Land. It can not be Mortgaged. He relied upon Ex.B1 and Ex.B2 (which were marked with Objections).

15. The Learned Counsel for the Plaintiffs has argued that the Defendant is the Owner of the Property described in the Plaint. He has executed a General Power Deed, dt. 05.03.2009 in favour of One Vijaya. Thereby, the Defendant has authorized Vijaya to deal with the Property including to execute a Mortgage Deed and Sale Deed and other acts on his behalf. The Power Agent Vijaya has executed a Registered Mortgage Deed in favour of the husband of 1st Plaintiff and father of Plaintiffs 2 to 5

Subramanian for a sum of Rs.10,00,000/- by mortgaging the Suit Property and agreed to repay the same with interest at 12% p.a.. The Plaintiff's father died on 30.11.2016. Despite repeated demands made by Subramanian and Plaintiffs, the Defendant has not come forward to repay the amount due under the Mortgage. Hence, the 4th Plaintiff has issued a Notice to the Defendant to discharge the Mortgage and the Defendant has issued a Reply Notice with false and untenable allegations. By Ex.A1 to Ex.A4, the Plaintiffs have established their Case. Further, the impleadment of One Vijaya is not necessary as the Suit filed against the Principal himself. There is no proof to show that the Mortgaged Property under Ex.A2 is a Free Land. The Defendant himself admits that the Mortgaged / Suit Property had been Mortgaged in Canara Bank, Mines II, Neyveli, while availing Loan. By the evidence of PW.1 and PW.2 and Ex.A1 to Ex.A4, the Plaintiffs have discharged their burden.

16. The Case Records have been perused. The evidence of PW.1 as to the execution of the General Power of Attorney in Ex.A1 by the Defendant in favour of One Vijaya on 05.03.2009, the receipt of Rs.10,00,000/- from P. Subramanian by said vijaya on 03.06.2011 and execution of the Mortgage Deed in Ex.A2 by said Vijaya in favour of P. Subramanian on 03.06.2011 are cogent. There is no dispute as to the Legal Status of Plaintiffs with the deceased P. Subramanian. As per Ex.A1- General Power of Attorney, one Vijaya has been authorised to mortgage the Property, mentioned thereunder, also. Further, the Defendant/DW1, during Cross examination, has admitted that the Photograph, on the back side of First Sheet in Ex.A.1 is of him and the Thumb Impression, found near the Photograph on the backside of First page in Ex.A.1, is of him.

The evidence of Scribe of the Ex.A1- General Power of Attorney Deed and the Ex.A2 – Mortgage is well supporting the Case of Plaintiffs.

Further, the General Power of Attorney Deed in Ex.A1 and the Mortgage Deed in Ex.A2 are Registered Documents. So, under Section 114(e) of the Indian Evidence Act, the Court may presume that the Judicial and Official acts have been regularly performed. The Suit is within Limitation.

Thus, the Plaintiffs have discharged their burden.

In **MD. IHTISHAN ALI VS. JAMNA PRASAD, AIR 1922, P.C.56**, it is held that, “As observed by the Privy Council in MD.Ihtishan V. Jamna Prasad, registration is a solemn act and if no other evidence is available, the Court can and presume that the Registrar performed his duty of satisfying himself that the document presented to him for registration, was duly executed by the executant and he executant was duly and properly identified before him.”

In **PREM SINGH VS. BIRBAL AND OTHERS, (2006) 5 SCC 353**, it is held :

"There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant Case, Respondent 1 has not been able to rebut the said presumption."

So, there is presumption that Ex.A1 – General Power of Attorney and Ex.A2 – Mortgage Deed are executed validly. The Registered Documents, therefore, Prima facie would be valid in law. As such, the onus of proof is on the Defendant, who desires the execution of Ex.A1 – General Power of Attorney and Ex.A2 – Mortgage Deed are not true and valid, to lead rebuttal evidence on the presumption. Here, the Defendant

has given a mere evidence, denying the execution of Ex.A1 – General Power of Attorney and Ex.A2 – Mortgage deed. It is not sufficient. No other evidence is available to dispute the Case of Plaintiffs. Hence, it is considered that the Defendant has not rebutted the presumption under Ex.A1 – General Power of Attorney and Ex.A2 – Mortgage Deed, made in favour of the Plaintiffs.

Consequently, it is held that Plaintiffs have proved their claim in the Suit by Oral evidence and under Ex.A1 – General Power of Attorney and Ex.A2- Mortgage Deed.

17. With regard to the argument of the Learned Counsel for Defendant that the mortgaged Property / Suit Property is a Free Land and it can not be mortgaged. It is to state that there is no evidence that the Mortgaged / Suit Property is a Free Land. It is also not pleaded. The Copy of Guideline under Ex.B2 is not enough to say that the Mortgaged / Suit Property is a Free Land and its value is Zero. The Revenue Officials concerned, who have issued Ex.B.1, should have been examined to prove the contents in Ex.B.1. But, here it is not done. Further, the Defendant himself states that the mortgaged / Suit Property had been mortgaged in Canara Bank, Mines II, Neyveli and to prove the same, he filed Ex.B2. Further, if the Suit Property is a Free Land/Poramboke Land and its value is Zero, how it was mortgaged in Canara Bank, Mines II, Neyveli, as per Ex.B.1. Further, if the Suit Property is a Free Land/Poramboke Land, and its value is Zero, the Registrar concerned would not have registered it. Here, the General Power of Attorney in respect of the Suit Property has been registered under Ex.A.1 and the Mortgage Deed in respect of the Suit Property has been registered under Ex.A.2. Under these circumstances, the plea that the value of the mortgaged / Suit Property is 'Zero' is not accepted as unproved.

18. The argument the Learned Counsel for the Defendant that the reaching of consideration to the Defendant is doubtful, can not be considered, as it is the burden of the Defendant to prove the non-passing of consideration, when the execution of the Ex.A2 Mortgage Deed, is proved.

19. The Defendant denies the execution of General Power Deed on 05.03.2009 in favour of One Vijaya, authorizing her to deal with the Suit Property, to execute a Mortgage Deed and Sale Deed and other acts on his behalf. However, during cross examination, he has deposed that it is correct to say that the Photograph on the back side of First Sheet in Ex.A.1 is of him. The Thumb Impression, found near the Photograph on the backside of First page in Ex.A.1, is of him. Further, he has not taken any legal action against Vijaya. So, presumption could be inferred in favour the Plaintiffs as per Section 114 (e) of the Indian Evidence Act.

20. The Learned Counsel for the Defendant has argued that the Defendant has lodged a Complaint with the Superintendent of Police, Cuddalore and an enquiry was Ordered by the SP, Cuddalore. The enquiry went on in Mandarakuppam Police Station and in the course of enquiry, the said Subramanian had assured to return the 2 Blank Stamp Papers together with the Promissory Note to the Defendant in the presence of Police Official. But, subsequently, he did not keep his promise. Though, the Defendant has stated in his Written Statement that he has filed the Copy of Complaint, no Complaint was produced or marked by the Defendant. Even assuming that there was a Police Complaint, it will not nullify the Registered Documents. In this regard, the Observation made in **CHANDRAMA SINGH Vs. MIRZA ANIS AHMED, AIR 2011 ALL. 114**. Wherein, it is held that " A registered document can not be nullified by actions such as of filing Police Complaints. When there is a requirement of registration of a document that intense to cancel a previous registered

document dealing with the rights to immovable property then the previous registered document where from rights flowed and were created can not be annulled except through the proper procedure".

The Defence Theory has not been proved.

21. Hence, it is held that the General Power of Attorney, dt. 05.03.2009 under Ex.A1, executed in favour of Vijaya by the Defendant is true, said Vijaya has executed a Mortgage Deed on 03.06.2011 in favour of One Subramanian, husband of 1st Plaintiff and father of Plaintiffs 2 to 4, as the Power Agent of the Defendant and the Mortgage Deed, dt. 03.06.2011, under Ex.A2, executed on behalf of the Defendant by One Vijaya in favour of One Subramanian is valid and true.

These Issues are answered accordingly.

22. ISSUE No. 4 :

Said Vijaya is only a Power Agent. The Suit is filed by the LRs of P. Subramanian against the Principal/Defendant. There is no dispute as to the Legal Status of the Plaintiffs with the deceased P. Subramanian. The 'Lis' can be decided effectively, effectually and completely by the available Parties in the Suit. Hence, the Suit is not bad for want of necessary Party.

This Issue is answered accordingly.

23. ISSUE NO. 5 :

The Plaintiffs have clearly pleaded that the cause of action for the Suit arose on 25.03.2009, when the Defendant has executed the General Power Deed, on 03.06.2011 when the mortgage deed was executed in favour of Subramanian and on 30.11.2016, when Subramanian died and the Plaintiffs became entitled to realise the amount and on 20.03.2017, when a Notice of demand was issued to the Defendant to discharge the mortgage in respect of the Suit Property. The plaintiffs have given cogent

evidence in this regard. Hence, the Suit is not bad for want of Cause of Auction.

This Issue is answered accordingly.

24. ISSUE NO. 6 :

In view of the Observations made in Issue Nos. 1 to 5, the Plaintiffs are entitled for a Preliminary decree as prayed for with Costs.

25. ISSUE No. 7:

In view of the Observations made in Issue Nos. 1 to 6, the Suit is decreed with Costs by passing a Preliminary decree; directing the Defendant to pay the mortgage amount of Rs. 17,35,000/- to the Plaintiffs with subsequent interest at the rate of 12% per annum from the date of Plaint, till the date of decree and at 6 % per annum from the date of decree, till realization. Four months time is granted for payment.

In the result, the Suit is decreed with Costs by passing a Preliminary decree; directing the Defendant to pay the mortgage amount of Rs. 17,35,000/- to the Plaintiffs with subsequent interest at the rate of 12% per annum from the date of Plaint, till the date of decree and at 6 % per annum from the date of decree, till realization. Four months time is granted for payment.

Dictated to Steno-Typist, typed by her corrected and pronounced by me in open Court, this the 11th day of March, 2021.

Sd/- G. Sendil Kumar, B.A., B.L.,
I Additional District and District Judge,
Cuddalore.

List of Exhibits and List of Witnesses

Plaintiff side documents:

- Ex.A1 05.03.2009 Original General Power of Attorney Deed executed by Defendant in favour of Vijaya.
- Ex.A2 03.06.2011 Original Mortgage Power of Attorney Deed executed by Vijaya in favor of Subramanian
- Ex.A3 20.03.2017 Office copy of Legal Notice issued by Plaintiffs Advocate to the Defendant
- Ex.A4 06.04.2017 Office copy of Reply Notice issued by Defendant's Advocate to the Plaintiffs Advocate.

Defendant's side documents:

- Ex.B1 - Copy of Letter issued by Canara Bank, Mines II, Neyveli.
- Ex.B2 - Xerox copy of Guideline.

LIST OF WITNESSES:-

PLAINTIFF'S SIDE:-

- P.W.1. Thiru Ramanujam (the Plaintiff)
- P.W.2 Thiru Deivasigamani

DEFENDANT'S SIDE:

- D.W.1. Thiru Ravichandran (the Defendant)

Sd/- G. Sendil Kumar, B.A., B.L.,
I AD&S.J,
Cuddalore.