

**IN THE COURT OF THE SUBORDINATE JUDGE,
AT MADURANTAKAM.**

Present: Thiru.N.S.Srivathsan,M.L.,

Subordinate Judge, Madurantakam.

Wednesday the 24th day of January '2018

O.S.No.55/17

.....

V.Namachivayam

...Plaintiff

/Vs/

J.Subramaniyan

...Defendant..

This Suit coming before this court for final disposal on 05.01.2018 in the presence of Thiru.B.Ramnath and Thiru.S.Rajkamal, Counsels for Plaintiff and Defendant being set exparte, having heard the Plaintiff's arguments and having perused the case records and having stood over the same till date, this court delivers the following

JUDGMENT

The Plaintiff has filed above suit against the Defendant praying for preliminary decree for the recovery of suit claim of R.s.7,89,867/- together with subsequent interest at 12% p.a. on Rs.4,00,000/- from the date of plaint till the date of realization and on his failure, to sell the hypotheca and to pay the sale proceeds towards the satisfaction of the decree.

1.The brief facts of the Plaint are as follows:

The defendant in the Second week of April 2009, the defendant approached the plaintiff and requested him to lend Rs.4,00,000/- to meet his domestic and financial problems. He

expressed his inability to arrange for the said amount. Upon the defendant repeated requests, he made arrangements for the amount. On 27.04.2009, the defendant borrowed Rs.4,00,000/- from the plaintiff and executed a equitable mortgage deed dated.27.04.2009 which was registered as Doc.No.2218 of 2009 in the SRO. Acharapakkam, wherein the defendant mortgaged the schedule mentioned property in favour of the plaintiff agreeing to repay the principal amount of Rs.4,00,000/- together with interest @ 12% p.a. The original mortgage deed dated.27.04.2009 is filed herewith and the same may be read as part and parcel hereof. Inspite of several oral reminders, the defendant has not paid any amount either towards interest or principal to the plaintiff. He issued a legal notice dated.21.04.2017 to the defendant demanding him to pay the said loan amount of Rs.4,00,000/- together with interest @ 12% p.a. The office copy of the legal notice dated.21.04.2009 is filed herewith and the same may be read as part and parcel of hereof. The notice sent to the defendant address has been duly received. The Postal Acknowledgement card is filed herewith as proof and the same may be read as part and parcel herewith. Even after the receipt of the legal notice the defendant has not replied nor paid any amount to the plaintiff. The suit debt is mortgage debt. Hence the defendant is entitled to redeem. The suit debt is only for domestic purpose and hence the defendant is liable to pay Rs.4,00,000/- together with subsequent interest @ 12% p.a. The defendant is not entitled for any reliefs under the Debts Relief Act.

The details of the mortgage are as follows

1	Name of the mortgagee	: V.Namachivayam
2.	Name of the mortgagor	: J.Subramaniyan
3.	Principal Amount	: Rs.4,00,000/-
4.	Rate of interest	: 12% p.a.
5.	Amount due now	: Rs.7,89,867/-

Inspite of several demands the defendant did not repay the loan. Therefore the plaintiff sent a legal notice, to the defendant on 21.04.2017 through his counsel. The defendant was given the amount of Rs.4,00,000/-. Hence the plaintiff has filed this suit for recovery of suit claim of Rs.7,89,867/- from the defendant.

2.The point for consideration whether the Plaintiff is entitled to the relief as prayed for in this suit.

The plaintiff was examined as PW.1 and Exhibits A1 to A3 were marked through PW1. Ex.A1 is the Original registered mortgage deed on 27.04.2009 executed by the defendant in favour of the plaintiff. Ex.A2 is the legal notice dated.21.04.2017 issued by the plaintiff to the defendant along with the original postal receipt. Ex.A3 is the Acknowledgement Card. Exhibit A1 reveal that the defendant availed a loan of Rs.4,00,000/- and executed mortgage deed mortgaging his property for securing repayment of the loan of Rs.4,00,000/- with subsequent interest at 12% p.a. On perusal of the entire exhibits marked on behalf of the Plaintiff, this court comes to the conclusion the plaintiff is entitled to the preliminary decree for the recovery of the suit claim with subsequent interest.

As per section 34 of C.P.C. the court can award interest at such rate as the court deems reasonable to be paid on the principal amount from the date of suit till the date of decree. The loan transaction is not commercial transaction. Therefore this court is considers it fit to award interest at 6% p.a from the date of plaint till the date of realization.

In the result suit is decreed with cost. The Plaintiff is entitled to recover the suit claim of Rs.7,89,867/- with interest at 6% per annum on Rs.4,00,000/- from the date of Plaint till the date of realization. Time for payment 6 months. In case of failure of Defendant to pay the suit amount with subsequent interest at the rate above mentioned within 6 months from this date the Plaintiff can apply for final decree as per the order 34 Rule 5 of C.P.C for sale of suit mentioned properties to apply the proceeds of sale to discharge the suit claim and also apply for personal decree against the Defendant in case the proceeds of the sale is not sufficient to settle the suit claim

Dictated to typist, typed by her corrected and pronounced by me in open court this the 24th day of January '2018.

Subordinate Judge,
Madurantakam.

List of witnesses on the side of Plaintiff

PW1.Thiru.V.Namachivayam

List of exhibits marked on the side of Plaintiff

Ex.A1. 27.04.2009 – Original Registered Mortgage deed executed
by the defendant in favour of the plaintiff.

Ex.A2. 21.04.2017 – Copy of legal notice issued by the plaintiff to the defendant along with the original postal receipt.

Ex.A3. -- – Acknowledgement Card.

List of witnesses and documents on the side of Defendant

-Nil-

SJ/MKM

WEB COPY

O.S.No.55/17

24.01.2018

Exparte Judgment Pronounced

In the result suit is decreed with cost. The Plaintiff is entitled to recover the suit claim of Rs.7,89,867/- with interest at 6% per annum on Rs.4,00,000/- from the date of Plaint till the date of realization. Time for payment 6 months. In case of failure of Defendant to pay the suit amount with subsequent interest at the rate above mentioned within 6 months from this date the Plaintiff can apply for final decree as per the order 34 Rule 5 of C.P.C for sale of suit mentioned properties to apply the proceeds of sale to discharge the suit claim and also apply for personal decree against the Defendant in case the proceeds of the sale is not sufficient to settle

the suit claim

Subordinate Judge,
Madurantakam.

WEB COPY