

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
RAMANATHAPURAM**

**Present: Thiru.S.SRINIVASAN, B.Sc.,M.L.,
Additional District Judge,
Ramanathapuram.**

Saturday this the 18th day of February 2023

**Original Suit No.61/2022
(CNR No.TNRM01 003180 2022)**

M.Balu

...Plaintiff

/Vs/

T.Sathya

... Defendant

This suit is coming before me for final hearing on 15.02.2023 in the presence of Thiru.J.Uduman, Counsel for the plaintiff, and the Defendant was remained exparte and upon hearing plaintiff side arguments, perusal of all connected material records and having stood over for consideration till this date, this court passed the following

JUDGMENT

Suit is to pass a preliminary decree for Mortgage to recover the plaint amount from the defendant with interest and cost.

2. Brief averments of Plaintiff:

The plaintiff and the defendant are family friends. The defendant had borrowed a sum of Rs.25,00,000/- from the plaintiff on 12.10.2020 for the development of her business and to meet out family necessary expenses and executed the registered Mortgage Deed in favour of plaintiff in respect of

suit property on 12.10.2020 and the Mortgage Deed was registered at SRO Velipattinam, Ramanathapuram. The defendant had purchased the suit property on 08.10.2018 and the defendant has handed over the original sale deed dated 08.10.2018 to the plaintiff. After the execution of Mortgage Deed, the defendant did not pay any amount either towards principal or interest amount to the plaintiff even after making so many demands by the plaintiff to the defendant. Hence, the plaintiff had sent a legal notice the defendant on 21.07.2022 demanding to loan amount with interest from the defendant. The defendant did not send any reply notice to the plaintiff even after it was received by the defendant on 22.07.2022. Hence, this suit is filed to pass a preliminary decree for mortgage to recover the plaint amount with interest from the defendant.

3. The defendant was remained exparte.

4. Points for consideration:

1. Whether the Plaintiff is entitled to get the preliminary decree for Mortgage to recover the plaint amount from the defendant with interest as prayed for?
2. To what other relief and cost, the plaintiff is entitled for?

5. The Plaintiff was examined as PW1 and Ex.A1 to A4 were marked through PW1.

6. Point No.1:

The plaintiff has filed the suit to pass a preliminary decree for Mortgage to recover the plaint amount from the defendant with interest. The

case of the plaintiff is that, the defendant had borrowed a sum of Rs.25,00,000/- from the plaintiff on 12.10.2020 for the development of her business and to meet out family necessary expenses and executed the registered Mortgage Deed in favour of plaintiff in respect of suit property on 12.10.2020 and the Mortgage Deed was registered at SRO Velipattinam, Ramanathapuram and the defendant had purchased the suit property on 08.10.2018 and the defendant has handed over the original sale deed dated 08.10.2018 to the plaintiff and after the execution of Mortgage Deed, the defendant did not pay any amount either towards principal or interest amount to the plaintiff even after making so many demands by the plaintiff to the defendant and hence, the plaintiff had sent a legal notice the defendant on 21.07.2022 demanding to loan amount with interest from the defendant and the defendant did not send any reply notice to the plaintiff even after it was received by the defendant on 22.07.2022.

7. The plaintiff namely M.Balu was examined as PW1. ExA1 to A4 were marked through PW1. The original registered Mortgage Deed dated 12.10.2020 executed by the defendant in favour of plaintiff for Rs.25,00,000/- in respect of suit property was marked as Ex.A1. The original Sale Deed dated 08.10.2018 obtained by the defendant in respect of suit property was marked as Ex.A2. The copy of legal notice with postal receipt sent to the defendant on 21.07.2022 was marked as Ex.A3. The Acknowledgement card of defendant dated 22.07.2022 was marked as Ex.A4. After receiving the reply notice by the defendant, she did not send any reply to the plaintiff and she did not pay any amount towards the principal or interest amount.

8. PW1 has clearly deposed that the defendant had borrowed a sum of Rs.25,00,000/- from the plaintiff on 12.10.2020 for the development of her business and to meet out family necessary expenses and executed the registered Mortgage Deed in favour of plaintiff in respect of suit property on 12.10.2020 and the Mortgage Deed was registered at SRO Velipattinam, Ramanathapuram and the defendant had purchased the suit property on 08.10.2018 and the defendant has handed over the original sale deed dated 08.10.2018 to the plaintiff and after the execution of Mortgage Deed, the defendant did not pay any amount either towards principal or interest amount to the plaintiff even after making so many demands by the plaintiff to the defendant and hence, he filed the suit.

9. On perusal of Ex.A1 Mortgage Deed, it is very clear that, the defendant had borrowed a sum of Rs.25,00,000/- from the plaintiff on 12.10.2020 and executed the Mortgage Deed in favour of plaintiff in respect of suit property. On perusal of Ex.A2 Sale Deed, it finds that, the defendant is the absolute owner of suit property and she handed over the original Sale Deed Ex.A2 to the plaintiff. On perusal of Ex.A3, it finds that, the defendant did not pay any amount either towards principal or towards interest amount to the plaintiff after the execution of Ex.A1 Mortgage Deed. The defendant did not contest the suit and she did not file any Written Statement in this suit.

10. This Court viewed that, the evidence of PW1 is very much sufficient to prove the execution and validity of Ex.A1 Mortgage Deed. No other evidence is required to prove the execution and validity of Ex.A1 Mortgage Deed as this Court viewed. The production of original Sale Deed

Ex.A2 along with the execution of Mortgage Deed Ex.A1 by the defendant will clinchingly, unequivocally and categorically prove the genuineness, execution and validity of Ex.A1 Mortgage Deed. From considering the evidence of PW1 and from the perusal of Ex.A1 to A4, this Court came to the conclusion that, the plaintiff has clearly proved his Case and hence, it is held that, the plaintiff is entitled to get the relief of preliminary decree for Mortgage to recover the plaint amount from the defendant with interest as prayed for. Accordingly, this point is answered.

11. Point No.2 :

As decided above, it is held that, the preliminary decree for Mortgage is liable to passed in favour of plaintiff to recover Rs.35,82,880/- with interest @ 6 % p.a., for the principal amount of Rs.25,00,000/- from the date of suit till the date of realization with cost as prayed for. Accordingly, this point is answered.

12. In the result, the preliminary decree for Mortgage is passed in favour of plaintiff to recover Rs.35,82,880/- with interest @ 6 % p.a., for the principal amount of Rs.25,00,000/- from the date of suit till the date of realization with cost. Time for payment is 2 months.

This Judgment is directly dictated to the Typist and typed by him in the Computer, corrected and pronounced by me in the open Court this the 18th day of February 2023.

**Additional District Judge,
Ramanathapuram.**

Witness Examined on the side of the Plaintiff:

PW1 – Thiru.M.Balu (Plaintiff)

Exhibits marked on the side of the Plaintiff:

- | | | |
|-------|------------|---|
| Ex.A1 | 12.10.2020 | Original Mortgage Deed executed by the defendant in favour of plaintiff |
| Ex.A2 | 08.10.2018 | Original Sale Deed of defendant |
| Ex.A3 | 21.07.2022 | Copy of Legal Notice with postal receipt |
| Ex.A4 | 22.07.2022 | Acknowledgment Card |

**ADJ.,
Ramanathapuram.**