IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.
PRESENT : Thiru. G.SRI RAMA JEYAM, B.L.,
III Additional District Judge,
Salem
Monday, the 13th day of March 2023
ORIGINAL SUIT No: 80/2021
CNR No: TNSA010010472021

C.N.K.A.Periasamy ….. Plaintiff

/ Versus /

C.Kumar …... Defendant

The above original Suit came up on 28.02.2023 for hearing before me in the presence of Thiru.D.M.Senthilkumar, Advocate for the Plaintiff and the Defendant remains Exparte and upon hearing the arguments of the Learned Counsel appearing for the Plaintiff and perusing the records and having stood over for consideration till this day, this Court delivers the following

JUDGMENT

Suit on Mortgage.

The averments contained in the Plaintiff are as follows;

2) That on 01.12.2021, the Defendant had borrowed a sum of Rs.10,00,000/- from the Plaintiff, in order to meet his urgent family expenses, and executed a Demand Promissory Note, which is typed on a 20 Rupees Stamp Paper, agreeing to repay the Principal with the interest at 18% per annum.

3) Subsequently, that on 03.10.2012, the Defendant has deposited the Original Sale Deed dated 10.05.2010, in respect of the Suit property which was purchased by him vide the above document, with the Plaintiff with an intention to create an equitable mortgage in favour of the Plaintiff with regard to the above borrowal.

4) Thereafter, despite repeated oral demands as well as the issuance of a legal notice dated 22.10.2017, the Defendant has not repaid any amount. However, on 07.02.2017, the Defendant had written a letter to the Plaintiff acknowledging the aforesaid borrowal and requested for 6 months further time for repayment. Since, in

the aforesaid legal notice dated 22.10.2017, the date of deposit of Title Deed was mistakenly stated as 03.10.2014, instead of the correct date 03.10.2012, a rejoinder notice dated 10.02.2021 was issued to the Defendant and the same also did not yield any fruitful result. Thus, the Suit.

5) Though, the Defendant has entered appearance in the above Suit through his Advocate, he has not filed his Written Statement and as such, by order dated 28.10.2021, he was Set Exparte.

6) In order to prove his Case, the Plaintiff examined himself as PW1 and exhibited as many as 8 documents.

7) Heard the Learned Counsel appearing for the Plaintiff and perused the records.

8) Ex.A1 appears to be the Promissory Note dated 01.12.2011 executed by the Defendant in favour of the Plaintiff and perusal of the said document would show that on 01.12.2011, the Defendant has borrowed a sum of Rs.10,00,000/- from the Plaintiff in order to meet the urgent business needs and the Defendant has agreed to repay the said amount with interest at the rate of 18% per annum on demand.

9) Ex.A4 is the Original Sale Deed dated 10.05.2010 which was executed by one Devakkannan in favour of the Defendant relating to the Suit Property.

10) From Ex.A2, it appears that on 03.10.2012, the Defendant herein has given the said letter to the Plaintiff wherein it is stated that on 01.12.2011, he had borrowed Rs.10,00,000/- from the Plaintiff and with an intention to create a Security (ஜாமீன்), he delivers the Original Sale Deed dated 10.05.2010, which is relating to the Property in S.No.56/8 of Udaiyapatty Village, Salem Taluk with an extent of 4335 Sq. Ft., to the Plaintiff.

11) In view of the Judgment of the Hon'ble High Court rendered in the Case R.Thimmaiyyan Versus M/s. SMT Chits & Finance Corporation, CDJ 2017 Madras High Court 5985, which is relied upon by the Learned Counsel appearing for the Plaintiff, it is to be taken that there is an implied contract between the Plaintiff and

the Defendant to create a Mortgage in respect of the Suit Property relating to the aforesaid debt under Ex.A1 and no Registered instrument is required u/s 59 of the Transfer of the Property Act. Thus, the Plaintiff had established the creation of an equitable mortgage, relating to the Suit Property, through Ex.A2 and A4.

12) Thus, the Plaintiff, through the above materials, has established that on 01.12.2011, the Defendant had borrowed Rs.10,00,000/- from the Plaintiff and agreed to repay the said amount with interest at 18% per annum and failed to discharge the said loan amount. It is also proved that by depositing Ex.A4, the Defendant has created an equitable mortgage, in respect of the Suit Property, with reference to the aforesaid debt. Therefore, the Suit instituted by the Plaintiff claiming a Preliminary Decree for mortgage is liable to be decreed.

In result, the Suit is decreed for Rs.26,63,298/- together with interest at the rate of 9% per annum ***on the Principal amount** from the date of institution of the Suit till the date of decree and thereafter at the rate of 6% per annum till realisation. The Plaintiff is entitled to cost. ***Time for depositing the decree amount is granted till 31.08.2023**.
*Amended as per Order dated 04.07.2023.

Dictated to the Steno-Typist, transcribed by her, corrected and pronounced by me in open court, this the 13th day of March, 2023.

Sd/- G.Sri Rama Jeyam
III Additional Sessions Judge,
Salem.

Plaintiff side witness:

P.W.1 Thiru.C.N.K.A.Periyasamy (Plaintiff)

Plaintiff side documents:

Ex.A1	01.12.2011	Suit Promissory Note	Original
Ex.A2	03.10.2012	Letter evidencing Deposit of Title Deed	Original

Ex.A3	07.02.2017	Letter written by the Defendant acknowledging the debt	Original
Ex.A4	10.05.2010	Sale Deed stands in the name of the Defendant	Original
Ex.A5	22.10.2017	Legal Notice Issued by the Plaintiff to the Defendant	Office copy
Ex.A6	25.10.2017	Acknowledgement Card	Original
Ex.A7	10.02.2021	Rejoinder Notice issued by the Plaintiff to the Defendant	Office copy
Ex.A8	19.02.2021	Returned Postal Cover	Original

Defendant side witnesses: NIL

Defendant side documents: NIL

Sd/- G.Sri Rama Jeyam
III Additional District Judge,
Salem.