

IN THE COURT OF SUBORDINATE JUDGE, MANAMADURAI

Present: Tmt. R.Geetha, B.A., B.L.,

Subordinate Judge, Manamadurai

Thursday, this is the 2nd day of November 2023

O.S.No.15/2023

(OS.No.143/2021 Transferred from Sub Court, Sivagangai)

Manimaran

Represented by his Power Agent

R. Kannan

....Plaintiff

..Vs..

Karuppaiah

....Defendant

This suit was Originally filed before Subordinate Court, Sivagangai as O.S.No.143/2021 and then transferred to this Court as per order of Subordinate Court Sivagangai in I.A.1/2022 This Court assigned as O.S.No.15/2023 and the suit came up before me on 20.10.2023 for final hearing, in the presence of Mr.C. Kannan., Advocate for the Plaintiff and Mr. Thirugnanam B.A., B.L., Advocate for the Defendant and Written Statement not filed by the Defendant hence Set as Exparte and upon hearing the argument of both sides and upon perusing records, having stood over till this day for consideration of this court today (02.11.2023) this court delivered the following:-

JUDGMENT

This suit has been filed by the Plaintiff, directing the defendant to pay amount due under Suit mortgage Deed dated 27.04.2006 for as sum of Rs.8,20,000/- together with interest on Principal Amount of Rs.2,00,000/- from the date of the Plaint till the date of the realization and with costs, within specified period granted by this court or in default to bring the scheduled mortgage property for sale through Court Auction.

2) The Sum and substance of plaint averments:-

The plaintiff averred that plaintiff and his power agent are brothers and plaintiff is used to go for foreign countries frequent manner. Hence the plaintiff has executed a

Power of Attorney in favour of one Manimaran on 15.02.2008 under document No. 47/2008 in the office of the Sub Registrar, Thiruppuvanam. As per deed of power of attorney, the plaintiff is acting as power agent to file this suit. The plaintiff averred that the defendant approached the plaintiff for availing Financial Assistance to meet out his urgent needs, family expenses. Considering his request, the plaintiff agreed to give the loan amount on security basis. The defendant has also agreed to execute the mortgage deed in favour of the plaintiff for the loan amount. Accordingly the defendant borrowed a sum of Rs. 2,00,000/- from the plaintiff on 27.04.2006 and defendant agreed to pay the interest for the loan amount at the rate of Rs. 2 per Rs. 100/- for one month i.e. 24% per annum. The defendant executed the Register Mortgage deed in favour of the plaintiff on 27.04.2006 for the suit property. The said mortgage deed was registered in the Office of the Sub Registrar, Thiruppuvanam under document No. 1037/2006. The period for redemption was fixed for one year. The plaintiff averred that the mortgage property was obtained by the defendant through Dhanasettlement deed which was executed by his father on 21.01.2004 by virtue of registered deed. After becoming the ownership, the defendant executed the mortgage deed in favour of the plaintiff. The plaintiff averred that the defendant is irregular in payment of interest or principal mortgage amount. The plaintiff requested him on several occasions but he dragged. Then the power of attorney has also requested to repay the amount on several occasions. In spite of request the defendant did not have interest to repay the mortgage money. Hence on 14.03.2019 the plaintiff has issued a legal notice through power agent to the defendant. But on knowing the contents of the notice, he refused to receive the same by saying no such addressee. The contents of the legal notice may be treated as parted and parcel of this plaintiff's averments. The plaintiff submits that the defendant is not agriculturist and he is not entitled any benefit of Debt Relief Act.

The plaintiff averred that in spite of repeated demands and request, the defendant has not chosen to repay the either principal or interest of the mortgage money he is liable to pay the mortgage amount with interest till date. Hence no other

way except to file the present suit against the defendant for recovery of mortgage money along with accrued interest. Hence this suit is filed.

3) The Defendant served with suit summon and entered into appearance through his counsel but later he did n't filed the written statement and failed to defend the claim of Plaintiff and remain set exparte.

4) In order to substantiate his claim, on the side of the Plaintiff his power agent Kannan examined himself as a PW1 and one Palraj examined as a PW2 and Ex.A1 to A7 were marked.

5) Points for Consideration:

1. Whether the Plaintiff is entitled to recover the suit claim amount Rs.8,20,000/- along with interest claimed by him?
2. Whether the Plaintiff is entitled to get Preliminary Decree for Mortgage?
3. Whether the suit is decreed or not?

6) **Point No.1 to 3:**

According to the Plaintiff, on 27.04.2006 the defendant borrowed a sum of Rs.2,00,000/- from him and agreed to repay the loan amount at the rate of interest Rs.24% Per annum and as a security for the said loan the defendant created mortgage over the plaint scheduled property and executed a registered mortgage deed dated 27.04.2006 in favour of the Plaintiff and the period of redemption is 1 year. The Defendant failed to repay neither Principal Amount nor interest. The Mortgagee manimaran the plaintiff herein executed a registered Power of Attorney in favour of his brother Kannan on 15.02.2008. Despite repeated demands made by the Plaintiff the defendant has not paid any amount. Therefore the Plaintiff caused legal notice

dated 14.03.2019 to the defendant and the same was returned as no such addressee. The Defendant is liable to pay a sum of Rs.8,20,000/- amount due under suit mortgage deed dated 27.04.2006 together with interest. Hence suit is to be decreed.

7) To substantiate and to prove his case, the Power Agent of the Plaintiff namely Kannan examined as a PW1. In his evidence he reiterated the plaint averments. It is pertinent to note that the Plaint was presented through the power agent Kannan the PW1 herein and he filed the separate application along with power of attorney deed dated 15.02.2008 to recognize him to sue on behalf of his principal and the same was allowed. Though in PW1 evidence he deposed about the facts that the defendant borrowed loan amount Rs.2,00,000/- on 27.04.2006 and agreed to repay the same along with interest at rate of 24% Per annum and create mortgage over the Plaint Schedule Property for the loan transaction. He does not know the above facts directly. Though the PW1 Kannan the power agent was brother of Plaintiff Manimaran (Mortgagee), it is not averred in plaint or in his evidence, that he had participated in entire loan transaction between his principal and the Defendant. So the PW1 evidence is inadmissible.

8) In order to substantiate and to support the plaintiff claim the attesting witness of Ex.A1 mortgage deed dated 27.04.2006 namely Palraj examined as PW2. PW2 in his evidence he deposed that the defendant executed the Ex.A1 – registered mortgage deed and he was witnessed to the identify of the defendant at Sub Registrar Office. It is pertinent to note that on perusal of the Ex.A1 in the mortgage deed PW2 was not the witnessed to the execution of document. He was only a witness who signed at the Sub Registrar Office at the time of the Registration. So this Court is of view that PW2 evidence is admissible only to the extent that he was witnessed and identified the defendant at the time of registration of mortgage deed of Ex.A1 only. The Plaintiff could not take steps to examine the witness who signed in Ex.A1, in order to prove the due execution of Ex.A1. Therefore this Court is of view that the evidence of PW1, PW2 could not pave way to support the case of Plaintiff.

9) Ex.A1 is the registered mortgage deed and as per the law this Court presume that it was duly registered after following the rules for registration of instrument as per act. From the undisputed and unrebutted Ex.A1, this Court is of view that the Defendant is liable to pay a mortgage amount under Ex.A1. Therefore this Court comes to conclusion the Plaintiff is entitled to recover the suit claim amount Rs.8,20,000/- from the defendant together with interest

Accordingly this Court answering the Point No.1 to 3. in favour of the Plaintiff.

In the result the Suit is decreed with cost as follows:

Declaring that the Mortgage amount Rs.8,20,000/- was due under suit Mortgage deed Dated 27.04.2006 pertaining to suit scheduled property and directing the defendant to pay above said sum of Rs.8,20,000/- to the Plaintiff together with interest at rate of 6% Per annum on the Principal Amount of Rs.2,00,000/- from the date of the Plaint to till the date of realization with costs within two months of this Judgment and in case of default the Plaintiff is permitted to proceed in accordance with law.

Dictated to the typist and typed by her in computer, corrected and pronounced by me in the open court, this is the 2nd day of November 2023.

Sd. R. Geetha, 02.11.2023
Subordinate Judge
Manamadurai

Witnesses examined by the Plaintiff:

PW1 – Kannan

PW2 - Palraj

Exhibits marked by the Plaintiff:-

Ex.A1 – 27.04.2006 - Mortgage Deed - Original

Ex.A2 – 15.02.2008 – Power Deed – Original

Ex.A3 - 21.01.2008 – Settlement Deed - Original

Ex.A4 – 14.03.2019 – Advocate Notice – Office Copy

Ex.A5 – 16.03.2019 – Returned Cover – Original

Ex.A6 – Encumbrance Certificate – Original

Ex.A7 - Aadhar Card of 2nd Plaintiff – Xerox Copy (Compared with Original)

Witnesses, Documents on side of the Defendants: Nil

Sd. R. Geetha, 02.11.2023
Subordinate Judge
Manamadurai

