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A.S. No.12/2023

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THENI

**Present: Thiru.Swarnam J. Natarajan, M.L.,
Principal District Judge, Theni**

Tuesday, this the 07th day of March, 2026

Appeal Suit No. 12/2023

C.N.R. No.TNTH01-007321-2022

Athiyappan ... Appellant/Defendant

/Versus/

Krishnamoorthi ... Respondent/Plaintiff

Appeal against the Judgment and Decree dated 15.10.2022 in O.S.No.131 of 2017 on the file of Subordinate Court, Uthamapalayam.

Between:-

Krishnamoorthi ... Plaintiff

/Versus/

Athiyappan ... Defendant

This Appeal suit was coming up for final hearing on 30.03.2026 in the presence of Thiru. D. Selvakumar, Advocate for the Appellant and of Thiru. B. Jegan, Advocate for the Respondent and upon hearing both sides' arguments, after perusing the documents, the case having stood over for consideration till this date, this Court delivered the following :

J U D G M E N T

The defendant in O.S.No.131/2017 had suffered an decree and judgment from the learned Subordinate Judge, Uthamapalayam, in the suit instituted by the original



plaintiff Krishnamoorthy, seeking for passing of preliminary decree based on the mortgage deed said to be executed by the defendant on 31.12.2012.

Though the trial Court was pleased to disbelieve the execution of the said mortgage deed, by moulding the relief that the defendant had admitted having received Rs.2,00,000/- from the plaintiff and failed to repay the said loan amount. The trial Court was pleased to direct the defendant to repay Rs.2,00,000/- with subsequent interest based on his admission in the pleadings and cross-examination.

Instead of passing a decree of mortgage, relief of recovery of suit claim is ordered by the trial Court. Being aggrieved and dissatisfied with the said judgment dated 15.10.2022, the present appeal is preferred. However, the original plaintiff, against whom the decree of rejection of the mortgage claim was ordered by the learned Subordinate Judge, no appeal was preferred by him.

2. In the plaint averments, the plaintiff had stated that the suit property originally belongs to the mother of the defendant, namely, Pasupathi Ammal. She had executed a registered gift settlement deed dated 17.03.2003 relating to the suit property in favour of the defendant and his brothers. In the said property, the defendant has 1/8th undivided share in the said property executed by his mother Pasupathi Ammal. He had mortgaged the said undivided share in the property and obtained a sum of Rs.2,00,000/- from the plaintiff and executed a registered mortgage deed on 31.12.2012. The document was registered before the Sub-Registrar, Chinnamanur



and the defendant agreed to pay monthly interest at the rate of 2% and the mortgage was for a period of 5 years.

2(ii) The defendant had neither paid the interest nor the mortgage amount and in spite of efforts made by the plaintiff, the defendant failed to repay the loan amount due. Thereby, the plaintiff was constrained to issue a legal notice on 14.08.2015 to the defendant calling upon him to pay the suit claim. However, the defendant, after receiving the said notice had failed to repay the loan amount due with interest. The defendant is due and liable to pay Rs.2,00,000/- with interest. Hence the present suit is filed.

2(iii) The defendant, by way of denying the plaint averments had filed written statement stating that the plaintiff is running a Dairy farm in the name and style as “Centecht” Dairy farm. The defendant was supplying milk by milking his cows to the dairy farm of the plaintiff and had financial transactions with the plaintiff from the year 2006 to 2015. The common practice prevailing between the milking person and the dairy farm is to receive advance amount by the milk suppliers from the dairy farm and execute mortgage deed. The defendant had obtained Rs.50,000/- from the plaintiff in 2006 and repaid the same by way of monthly installments and obtained receipt in September 2012.

2(iv) The plaintiff in a similar manner had obtained further loan of Rs.2,00,000/- from the defendant in order to improve his business and for



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maintaining cows. The plaintiff insisted the defendant to execute a registered mortgage deed and accordingly, on receipt of the said amount of Rs.2,00,000/- as advance, the defendant had executed a registered mortgage deed in favour of the plaintiff.

2(v) The defendant had executed the mortgage deed only for the namesake, and the plaintiff told the defendant to pay monthly Rs.4,000/- for 50 months. The plaintiff had assured that after repayment of the advance amount, he would cancel the mortgage deed. The defendant paid monthly Rs.4,000/- from January 2013, however, his cows died during the month of December 2014. From then onwards, the defendant was not in a position to pay the monthly installments due. The defendant had sold two calves and paid Rs.50,000/- to the plaintiff. The defendant paid monthly Rs.4,000/- from January 2013 to July 2015, which comes around Rs.1,20,000/- and Rs.50,000/- had been paid after selling his two calves and requested the plaintiff that he would pay the remaining Rs.30,000/- in 6 installments.

2(vi) Suppressing the above mentioned real facts, the plaintiff had sent the legal notice. When the defendant approached the plaintiff regarding the legal notice, he replied that it was sent only to make the defendant pay the balance amount of Rs.30,000/-. The defendant had requested the plaintiff for a further 3 months time so that he would repay the loan amount due, which the plaintiff had accepted. Without mentioning the above facts and concealing the true facts with an intention to grab



money from the defendant, the plaintiff had filed the present suit. The plaintiff had approached the Court with unclean hands and there is no valid cause of action to file the present suit. The defendant is ready and willing to pay Rs.30,000/- to the plaintiff and the suit is liable to be dismissed with costs.

3. Based on the above pleadings, the following issues are framed by the trial

Court as follows :-

i.	Whether the suit mortgage deed was executed by passing of consideration?
ii.	Whether the plaintiff is entitled for the preliminary decree based on the mortgage as prayed for?
iii.	To what other relief?

4. The plaintiff, in order to prove his case examined himself as PW1 and marked Ex.A1 to Ex.A3. One Balakrishnan was examined as PW2. The defendant examined himself as DW1, Ex.B2 to Ex.B5 earlier mortgage deed and the receipt were marked on the side of the defendant. DW1's daughter, Suriyapraba was examined as DW2. Ex.B1 was marked during cross-examination of PW1.

5. The findings of the trial Court:

5(i) The trial Court was pleased to give a finding that the plaintiff in his cross-examination had admitted having given advance to the defendant earlier to the present transaction and in the similar manner he had given advance to one



Karuppusamy and Kamaraj and for the amount advanced the plaintiff insisted the defendant to execute a registered mortgage deed as security for the advance amount.

5(ii) The earlier mortgage deed was marked as Ex.B2, which proves that the plaintiff had earlier given an advance amount of Rs.50,000/- and obtained mortgage deed by mentioning the period of mortgage as 10 years, which comes to an end in July 2016. The mortgage deed was relating to 1/8th share of the defendant in the suit property.

5(iii) Whereas the earlier mortgage deed was denied by the plaintiff and the plaintiff had intentionally suppressed the fact relating to the earlier mortgage deed Ex.B2 executed for namesake as security for the advance amount of Rs.50,000/-. The said execution of the mortgage deed was never whispered in the plaintiff's averments, as well as the payments made by the defendant, in which the plaintiff had also issued receipt dated 01.09.2012, Ex.B3, was not indicated by the plaintiff in the plaintiff's averments.

5(iv) The defendant's documents Ex.B2 and Ex.B3 would vividly reveal that the defendant in a similar manner executed Ex.A1 and obtained advance amount of Rs.2,00,000/-. The plaintiff was running Dairy farm and he had given advance amount to his milk suppliers for which obtained mortgage deed.

5(v) The earlier mortgage deed Ex. B2 in the year 2006 was for a period of 10 years, but the defendant had paid advance amount during 2012 itself and after its



repayment had obtained another advance amount for which the registered mortgage deed Ex.A1 was obtained. So, the trial Court was pleased to give a finding that the mortgage deed was not executed for the purpose mentioned in the plaint. The plaintiff had taken advantage of the usual practice being adopted in the area to receive mortgage deed for the advance amount given to the milk suppliers who provide milk to the Dairy farm and Ex.A1 was not executed with an intention to treat it as a mortgage deed and the defendant's 1/8th share in the suit property cannot be mortgaged in favour of the plaintiff. So, the trial Court was pleased to give a finding that Ex.A1 mortgage deed was not executed in real sense and no consideration was passed on the mortgage deed in respect of the suit property. Thereby, the trial Court was pleased to give a finding with respect to issues 1 and 2 that the plaintiff is not entitled for preliminary decree as prayed for.

5(vi) Whereas, the trial Court was pleased to give a finding that the defendant in the written statement had admitted having received Rs.2,00,000/- as advance from the plaintiff and was paying monthly Rs.4,000/- towards repayment of the loan amount till December 2014 and also paid Rs.50,000/- by way of selling his two calves. According to the defendant, the only balance amount to be paid to the plaintiff is Rs.30,000/-.

5(vii) On careful perusal of Ex.B1, it is a pocket account notebook to keep the account of supply of the milk. It had not aided the pleadings of the plaintiff to prove



the repayments made by the defendant. No plausible and convincing documentary evidence were adduced to prove repayment of Rs.1,70,000/- by the defendant. Thereby, the trial Court was pleased to give a finding that the defendant, when having admitted receipt of Rs.2,00,000/- from the plaintiff and in this regard, documentary evidence were produced regarding the alleged payment of the same and no repayment receipts were produced with regard to the repayment of Rs.1,70,000/-, the trial Court by moulding the relief, was pleased to grant decree ordering for the defendant to pay Rs.2,00,000/- with subsequent interest based on his admissions in the pleadings and cross-examination. Hence, the trial Court was pleased to decree the suit.

6. Being aggrieved by the same, the present appeal is preferred for the following among other grounds :-

The plaintiff during cross examination before the trial Court had admitted that he did not remember whether he had obtained mortgage deed in the year 2006 and issued receipt for the discharge of the mortgage deed in 2012. The said aspect has not been considered by the trial Court. Though the period of mortgage is for 5 years, without closure of the said period, the present suit has been filed. Why the suit has been filed has not been convincingly established by the plaintiff. The plaintiff had admitted the fact that the defendant had sold his six cows, thereby he was forced to file the present suit. The plaintiff had not convincingly established the cause of action as well as the pleadings he had made and the trial Court erred in decreeing the suit.



7. Based on the above, the following points are arising for consideration in the

appeal :-

i.	Whether the trial Court erred in granting the relief of repayment of the loan amount due by moulding the relief without there being any specific pleadings from the plaintiff in this regard?
ii.	Whether the trial Court erred in decreeing the suit even though there is a findings to that effect that the mortgage deed is not proved and no consideration was passed on as per the mortgage deed Ex.A1?
iii.	Whether the decree and judgment passed by the trial Court is to be set aside in the appeal and whether the appeal is to be allowed with costs?

8. The learned counsel for the appellant filed his written arguments and contended that the original plaintiff had not preferred any appeal against the decree passed by the trial Court and the trial Court having given a finding that the mortgage deed is not valid and no consideration was passed on as per the mortgage deed, erred in decreeing the suit based on the admission by the defendant and the decree passed by the trial Court is to be set aside in the appeal.

9. The learned counsel for the respondent contended that the defendant having admitted in his pleadings that he had received Rs.2,00,000/- from the plaintiff, based on the admission, the trial Court was pleased to decree the suit and no interference is required in the present appeal.



10. I have given my anxious consideration to the submissions made by both the parties. Ex.A1 is the mortgage deed dated 31.12.2012. Along with the said mortgage, no original documents pertaining to the suit property standing in the name of the defendant was filed. It is not a mortgage by deposit of title deed and it is a simple mortgage for loan amount due.

11. The defendant admittedly is entitled only for undivided 1/8th share in the joint family property which belongs to the mother of the defendant, which had been settled in favour of her children. So, the defendant has no specific right or entitlement with respect to independent property and owns only 1/8th undivided share in the joint family property which according to the plaintiff had been mortgaged and loan amount was borrowed. The defendant had taken the plea before the trial Court that earlier to the present transaction, he had borrowed loan from the plaintiff and discharged the same. In this regard, the mortgage receipt Ex.B2 and Ex.B3 were executed by the plaintiff on 01.09.2012.

12. In this regard, there is no specific answer from the plaintiff with respect to the earlier mortgage deed dated 04.07.2006 and mortgage receipt dated 01.09.2012. The trial Court by observing the earlier mortgage deed and the receipt Ex. B2 and Ex.B3 executed by the plaintiff was pleased to give a finding that the plaintiff had not approached the Court with clean hands and the prevailing practice between milking cattle rearing person and the dairy farm owners in the locality is that they would



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receive advance amount for the purpose of rearing the cattles and for maintenance of the same and the advance amount received would be termed as mortgage deeds between the parties in order to have a regular milking by the parties to the dairy farm and accordingly, the defendant had also borrowed loan towards milking cows to the dairy farm of the plaintiff.

13. The said fact has been considered by the trial Court and was pleased to give a finding that the earlier mortgage debts were discharged by the defendant in full and subsequently further amount was borrowed towards milking cows to the dairy farm of the plaintiff and the mortgage deed was not a real mortgage deed executed between the parties and the purpose for which the document was executed was not clearly spelled out by the plaintiff. This was the finding by the trial Court. However, the trial Court was pleased to give a finding that there is a clear admission by the defendant that he had borrowed Rs.2,00,000/- from the plaintiff and failed to prove the discharge of the loan amount due. Thereby, the trial Court was pleased to give a finding that the defendant is due and liable to repay the loan amount due.

14. The Court is bound by the pleadings and by the relief sought for by the party and without there being specific prayer in this regard. The court cannot mould the relief and grant the relief to suit the convenience of the parties and only under certain circumstances, the relief can be moulded. In this regard, the recent judgment of the ***Hon'ble Supreme Court 2025 LiveLaw SC 353 between J. Ganapatha and others -***



Vs- M/s. N. Selvarajulu Chetty Trust represented by trust and others. The Hon'ble Supreme Court was pleased to give a finding moulding of relief - "The concept of moulding of relief refers to the ability of the court to mould or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and facts established after a full-fledged trial. The principle enables the Court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the Court or changed circumstances have rendered the relief obsolete".

15. It is further held that the Court aims that justice is served while taking into account the evolving nature of the case. The above road-map is pursued by a court based on the notion of flexibility of relief, equitable jurisdiction and is tempered by judicial discretion. While moulding the relief, the court considers the issue and circumstances established during the full-fledged trial, looks at shortening the litigation and then in its perspective renders complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a routine matter of court. So, only under special circumstances, the Court, in order to avoid the shortening of the litigation and to grant a full-fledged relief to the parties, the court can mould the relief".



16. In the present case, the only relief sought for by the plaintiff is for passing of preliminary decree on the mortgage alleged to be executed by the defendant and for issue number 1 and 2, there was a clear finding by the trial Court that the mortgage deed said to be executed by the defendant in favour of the plaintiff was not the true mortgage deed and it was never intended to be acted upon. Having given a finding on issue number 1 and 2, the trial Court erred in granting the decree based on the admission made by the defendant in the suit.

17. The defendant not only admitted having received Rs.2,00,000/- from the plaintiff and also pleaded that out of Rs.2,00,000/-, Rs.1,70,000/- had been repaid by him. The said fact has not been considered by the trial Court. Having considered a portion of the admission by the defendant, the trial Court cannot ignore the pleadings of the defendant with respect to discharge of the loan amount to the extent of Rs.1,70,000/- and according to the defendant, only Rs.30,000/- is due and liable to pay to the plaintiff. Why the said admission made by the defendant with respect to the discharge plea taken was not convincingly established by the trial Court.

18. Under such circumstances, this Court finds that the trial Court having disbelieved the execution of the promissory note and the mortgage debt due had erred in moulding the relief and granting the decree in favour of the plaintiff and the said finding rendered by the trial Court is liable to be set aside in the present appeal.



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Thereby, the points are answered in favour of the appellant and against the respondent, holding that the alternative relief granted by the trial Court by decreeing the suit in favour of the plaintiff is liable to be set aside in the appeal and the appeal is to be allowed with costs throughout the proceedings by dismissing the suit and the judgment and decree passed by the trial Court in O.S.No.131/2017 granting the relief of recovery of money is set aside in the appeal.

In the result, the Appeal Suit is allowed with cost throughout the proceedings and the judgment and decree passed by the learned Subordinate Judge, Uthamapalayam in O.S. No.131/2017 dated 15.10.2022 is hereby set aside in the appeal.

The suit in O.S.No.131/2017 on the file of the Subordinate Judge, Uthamapalayam is dismissed in the appeal including the alternative relief granted by the trial Court by decreeing the suit in favour of the plaintiff is set aside.

Dictated to the Steno-Typist, taken by him in shorthand, transcribed and typed by him with the help of voice recorder, and Microsoft 365, corrected and pronounced by me, in the open court, this the 07th day of April - 2026.

**Principal District Judge,
Theni.**

07.04.2026

Principal District Judge, Theni



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Appellant side witness and documents :-

-Nil-

Respondent side witness and documents:-

-Nil-

**Principal District Judge,
Theni.**



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The Principal District Court,
Theni.

A.S. No.12/2023

Copy of JUDGMENT

Dated: 07.04.2026

07.04.2026

Principal District Judge, Theni