IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE
PERIYAKULAM, THENI DISTRICT.

Present: Thiru. C.SANKAR, B.A. M.L. PGDCFS.,
Additional District and Sessions Judge,
Periyakulam, Theni District.

Wednesday, the 15th day of April, 2026.

ORIGINAL SUIT No.123/2024
(CNR.No. *TNTH090001452024)*

A.Vijayalakshmi ....Plaintiff

// Vs. //

P.Sivakumar ... Defendant

This suit came up for final hearing before this Court on 07.04.2026, in the presence of Mrs. A. Lalitha, Learned Counsel for the Plaintiff and Defendant called absent set exparte and upon perusing the Plaint, Written statement and Proof Affidavit and Documents and upon hearing the plaintiff side and having stood over for consideration till this day, this Court delivered the following…

JUDGMENT

Suit for Recovery of Money.

Averments made in the Plaint in brief is as follows:

2. Pursuant to the Deed of Release of Partition Rights executed and delivered by the Defendant's father, Palanisamy, on 01.06.2011, the suit property belongs to the Defendant, who has been in possession and enjoyment thereof. Facing an urgent need for funds to meet family expenses, the Defendant borrowed a sum of Rs.6,00,000 from the Plaintiff. In consideration thereof, the Defendant agreed to pay interest at the rate of Rs.1.50 per Rs.100 per month with a stipulation for enhanced interest in the event of a default in installments and, on 22.03.2017, executed and registered a Simple Mortgage Deed for a period of seven years, pledging the said property as security. Although the Defendant was contractually obligated to pay the interest monthly and to redeem the deed by repaying the principal amount along with accrued interest at the expiration of the stipulated period, he failed to pay the interest regularly and continued to procrastinate. Despite repeated demands for payment, the Defendant failed to remit the dues; Consequently, the Plaintiff issued legal notices through counsel on 06.02.2024 and 14.03.2024, yet the Defendant evaded providing a proper response thereto. Furthermore, the Defendant's assertion based on false information that the loan has been fully discharged is contrary to the truth. Therefore, this suit has been filed to recover the outstanding principal and interest amounts due from the Defendant under the mortgage, to realize said sum by selling the mortgaged property through auction, and to claim the costs of this suit.

<u>Averments made in the Written statement in brief is as follows</u>:

3. The suit is not maintainable either in law or on facts and is liable to be dismissed in limine. Save and except the facts expressly admitted herein, all other averments in the plaint are denied as false and the plaintiff is put to strict proof of the same. It is submitted that the suit property belonged to this defendant by virtue of a registered release deed dated 01.06.2011 bearing Doc.No.1399 of 2011. This defendant availed a mortgage loan of Rs.6,00,000/- from the plaintiff and executed a registered mortgage deed dated 22.03.2017 bearing Doc.No.406 of 2017 at SRO, Periyakulam, and at the time of such execution, handed over the original release deed and also signed two blank promissory notes and issued one blank cheque as insisted by the plaintiff. The agreed rate of interest was 18% per annum and though the mortgage deed mentions monthly payment, it was mutually agreed that interest would be paid annually after harvest, and accordingly this defendant has paid interest up to the year 2023, for which the plaintiff failed to issue receipts. The allegations in the plaint regarding default are false and denied. It is further submitted that due to harassment by the plaintiff and her relatives by way of false police complaint, this defendant issued a legal notice dated 29.01.2024, to which the plaintiff sent a reply dated 06.02.2024 with false averments suppressing the true facts. In fact, only two years' interest is pending, but suppressing the same, the plaintiff has filed this false and frivolous suit as if no interest was paid from 2017 to 2024. The plaintiff, being a money lender, used to collect interest promptly and has deliberately suppressed material facts including receipt of interest and custody of original document. There is no valid cause of action for the suit and the alleged cause of action is an imaginary and created for the purpose of filing this suit. The suit is bad in law and the court fee paid is incorrect. The plaintiff has filed the suit with an ulterior motive to usurp the defendant's property and hence is not entitled to any relief.

4. On the side of the plaintiffs, the plaintiff Vijayalakakshmi was examined as **P.W.1** and **Ex.A.1 to Ex.A.8** were also marked and P.W.2 Perumalsamy was examined as P.W.2. The defendant is remained exparte.

5. The following ISSUES are framed for trial:

1. வாதிக்கு, பிரதிவாதி ஈடுகடன் தொகை அசலும், வட்டியும் சேர்த்து ரூ.13,56,900/–ஐ செலுத்தும் படியும், அசல் தொகை ரூ.6,00,000/–த்திற்கு பிராது தாக்கல் செய்யும் தேதி முதல் தீர்ப்பு தேதி வரை ரூ.100/–க்கு மாதம் ரூ.1.50/–க்கு வட்டி சேர்த்து நீதிமன்றம் நிர்ணயிக்கும் காலக்கெடுவிற்குள் செலுத்த வாதி கோரும் முதல்நிலை தீர்ப்பாணை வாதிக்கு கிடைக்கத்தக்கதா ?
2. நீதிமன்றம் நிர்ணயிக்கும் காலக்கெடுவிற்குள் ஈடுகடன் அசல் வட்டியை செலுத்த தவறும்பட்சத்தில் சொத்து விபரத்தில் குறிப்பிட்டுள்ள சொத்தில் நீதிமன்ற நடவடிக்கை மூலம் ஏலத்திற்கு கொண்டு வந்து, விற்பனை செய்வதன் மூலம் அசல் வட்டியை வசூலிக்க வாதி கோரும் பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா ?

3. நீதிமன்ற நடவடிக்கையின் மூலம் பிராது சொத்தை விற்பனை செய்து வாதிக்கு வசூலாக வேண்டிய தொகையில் பாக்கி ஏற்பட்டால் பாக்கி தொகையை வசூலிக்க பிரதிவாதியின் மீதும், பிரதிவாதியின் வேறு சொத்துக்களின் பேரில் வசூல் செய்ய அனுமதிக்கும் படி வாதி கோரும் பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா ?
4. இவ்வழக்கின் பிரதிவாதி 2023 ஆம் வருடம் வரை வாதிக்கு வட்டி செலுத்தியதாக கூறுவது உண்மையா ?
5. இவ்வழக்கின் செலவுத் தொகை பிரதிவாதியிடமிருந்து வாதிக்கு கிடைக்கத்தக்கதா ?
6. வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரங்கள் என்ன ?

ISSUE No.1 to 4:-

6. The suit property is a property that belongs to the Defendant herein having been acquired by him through a Registered Release Deed executed in his favour on 01.06.2011, by his father, Palanisamy and is currently in the possession and enjoyment of the Defendant. The Defendant, citing urgent necessities and family expenses, requested a loan from the Plaintiff; the Plaintiff consented to grant the loan, and the Defendant received a sum of Rs. 6,00,000/- as a loan. Although the clauses of the mortgage deed stipulated that interest on the principal loan amount would be payable at the rate of Rs. 1.50 per Rs. 100 per month, and that interest on any defaulted principal or interest would be payable at the rate of Rs. 1.75 per Rs. 100 per month, the Defendant executed and registered a Mortgage Deed in favour of the Plaintiff on 22.03.2017, with the suit property as collateral, With the specific understanding that payment of interest at the rate of Rs. 1.50 per Rs. 100 per month would suffice. It is submitted that the Mortgage Deed contains clauses stipulating that the Defendant shall pay the accrued interest on the principal loan amount of Rs. 6,00,000/- calculated at the rate of Rs. 1.50 per Rs. 100 per month in cash to the Plaintiff at the end of each month obtaining a receipt for such payment and that, upon the expiration of the seven-year tenure of the loan, the Defendant shall repay the outstanding principal and interest to the Plaintiff and redeem the Mortgage Deed as null and void. In support of this submission, the Plaintiff has filed documents marked as Ex. A1 and Ex.A2. Through the document marked as Ex. A1, the Plaintiff has successfully established that the suit property belongs to the Defendant herein, having been acquired by him through a Registered Release Deed. Through the aforementioned document Ex. A.1, the defendant executed and registered a mortgage deed Ex. A.2 to the plaintiff in respect of the property claimed under the said Ex. A1. The aforementioned documents, Ex. A1 and Ex. A2, are reflected in the Encumbrance Certificate, Ex. A3. Furthermore, on behalf of the defendant and consistent with the averments made in the plaintiff's plaint it has been expressly acknowledged and stated that the facts pertaining to the conveyance regarding documents Ex. A1 and Ex.A2 are admitted to be true.

7. Furthermore, in the plaint filed on behalf of the Plaintiff, it is stated that although the Plaintiff repeatedly requested the Defendant both in person and through intermediaries to pay the monthly interest and obtain a receipt for the same. The Defendant merely procrastinated, making evasive promises such as "now" or "later." It is further alleged that upon the expiration of the stipulated period for the mortgage the Plaintiff demanded the repayment of both the principal and the accrued interest; However, the Defendant continued to stall with dilatory tactics and failed to come forward to discharge the aforementioned mortgage debt comprising both principal and interest due to the Plaintiff. It is stated that when the Defendant issued a notice citing several false particulars claiming to have paid the interest on the mortgage amount up to a specific date and requesting the cancellation of the mortgage deed upon repayment of the principal, the Plaintiff, through his counsel, issued a reply notice on 06-02-2024 setting forth the true facts. Additionally, it is stated that on 14-03-2024, the Plaintiff, through his counsel, issued a further notice calling upon the Defendant to repay the principal and interest and redeem the mortgage deed, although the Defendant duly received this notice, he failed to furnish any reply thereto. In support of these averments, documents marked as Ex.A4 to Ex.A8 have been filed on behalf of the Plaintiff.

8. In light of the fact that the written-statement filed on behalf of this defendant admits and acknowledges that the registered mortgage deed Ex.A2 was executed and registered by this defendant. This Court holds that the plaintiff has successfully proved the averments set forth in the plaint through appropriate oral and documentary evidence. To substantiate that the mortgage deed Ex.A2 was indeed executed and registered by this defendant, the plaintiff examined Mr. Perumalsamy who signed as an attesting witness on the said mortgage deed as PW2. The defendant did not subject the witnesses P.W.1 and P.W.2 to any cross-examination. Furthermore, regarding the specific averment made in this defendant's written-statement claiming that interest was paid to the plaintiff until the year 2023, and that the plaintiff failed to issue any receipts for such payments. The defendant has failed to substantiate this claim through appropriate oral or documentary evidence. Moreover, the burden of proving the aforementioned averment set forth in the written-statement rested squarely upon this defendant. Under these circumstances given that this defendant appeared before the Court but refrained from cross-examining witnesses P.W.1 and P.W.2, and further failed to tender any oral evidence personally. This Court holds that the defendant's assertion of having paid interest to the plaintiff until the year 2023 is devoid of truth.

9. Further, the learned counsel for the plaintiff during his argument submitted **"Witness not entering into the witness box; Hence, an adverse inference can be drawn against the party"** The authoritative decision rendered by the Hon'ble High Court of Madras. as The aforementioned decision is found to be highly applicable to the facts and circumstances of the present suit. Therefore, based on the arguments advanced hereinabove, this Court holds and accordingly answers Issues 1 to 4 as follows: that the

Plaintiff is entitled to a preliminary decree directing the Defendant to pay the Plaintiff a total sum of Rs. 13,56,900/-, comprising both the principal loan amount and accrued interest; that this payment specifically the principal sum of Rs. 6,00,000/-, together with interest calculated at the rate of 9% from the date of decree and 6% from the decree till realisation must be effected within 2 months stipulated by this Court; that, in the event of a failure to pay the principal loan amount and interest within the stipulated time frame, the Plaintiff is entitled to the relief of recovering said principal and interest through court-ordered proceedings, specifically by bringing the property described in the schedule of properties to auction and effecting its sale; and that, should the proceeds from the court-ordered sale of the suit property prove insufficient to fully discharge the amount due to the Plaintiff, the Plaintiff is entitled to the relief of recovering the remaining balance from the Defendant personally, as well as from any other assets belonging to the Defendant. Furthermore, this Court holds that the Defendant's contention that interest was paid to the Plaintiff up until the year 2023 is factually incorrect.

ISSUE No.5:

Issues No. 1 to 4 have been answered in favour of the plaintiff, Hence, the defendant is directed to pay costs of the suit to the plaintiff. Hence, this **Issue No.5** is answered accordingly.

<u>ISSUE No.6:</u>

Issue No.1 to 5 are answered in favour of the plaintiff. Hence, the plaintiff has not entitled to any other relief and issue No.6 is answered accordingly.

In the result, this suit is decreed with cost and preliminary decree is passed against the defendant directing the Rs.13,56,900/-, to the plaintiff with interest at the rate of 9% per annum from the date of this suit to till the date of decree and also with interest at the rate of 6% per annum from the date of decree till realisation of entire amount for the principal amount of Rs.6,00,000/- within a period of two month.

Dictated by me, directly typed Stenographer into computer, corrected and pronounced be in the in the open Court, this the **15th day of April, 2026**.

SANKAR Digitally signed by SANKAR Date: 2026.04.15 09:59:52 +0530

Additional District and Sessions Judge,
Periyakulam.

<u>**List of Plaintiff side Witnesses:**</u>:

P.W.1. **-** Vijayalakakshmi

P.W.2 **-** Perumalsamy

<u>List of Plaintiff side Documents:</u>

Ex.A.1.	01.06.2011	Deed of Release of Share of Inheritance Executed by the Defendant's Father in Favour of the Defendant	-	Certified Copy
Ex.A.2.	22.03.2017	The Mortgage Deed Executed by the Defendant in Favour of the Plaintiff	-	Certified Copy
Ex.A.3.	23.06.2024	Encumbrance Certificate	-	Computer Copy
Ex.A.4.	29.01.2024	Notice sent by the Defendant to the Plaintiff through their Advocate	-	Office Copy
Ex.A.5.	06.02.2024	Reply Notice Sent by the Plaintiff to the Defendant Through Their Advocate	-	Office Copy
Ex.A.6.	07.02.2024	Postal Receipt for the Reply Notice Sent by the Plaintiff to the Defendant	-	Xerox copy
Ex.A7.	14.03.2024	Notice Sent by the Plaintiff to the Defendant		Office Copy
Ex.A8.	14.03.2024	Online postal receipt for the notice sent by the Plaintiff to the Defendant through their counsel.		Computer Copy

List of Defendant side Witnesses and Documents: Nil.

SANKAR Digitally signed by SANKAR Date: 2026.04.15 10:00:11 +0530

Additional District and Sessions Judge,
Periyakulam.

Additional District &
Sessions Court,
Periyakulam, Theni
District.
OS.No.123/2024
Fair/Draft : Judgment.
Dated 15.04.2026.