

**IN THE COURT OF SUBORDINATE JUDGE AT VANDAVASI**Present: **Tmt.S.Sharanyaa, M.L.,**

Subordinate Judge, Vandavasi.

(2056 Thiruvalluvar Aandu, Vishvavasu Varudam, Panguni Maadham 16th day)

Monday, the 30<sup>th</sup> day of March-2026.**Original Suit No.237/2024****(TNTM23000512/2024)**

V. Vivekanand

...Plaintiff.

//Vs//

S.Venkatesan

... Defendant.

This suit was coming up on 27.03.2026 for final hearing before me in the presence of Thiru. C.S.Arunpandiyan, Advocate for the plaintiff and Thiru. K.Viswanathan, Advocate for the defendant and upon hearing the arguments of both sides and perused the evidence and documents and having stood over till this date for consideration, this Court delivered the following,

**JUDGMENT**

This suit has been filed for the Preliminary Decree based on mortgage against the defendant to direct him to pay the plaintiff a sum of Rs.8,45,000/- together with interest at the rate of 24 % p.a. and for the costs of the suit.

**2. Brief averments of the Plaintiff are follows :**

2.1) The plaintiff has stated that, for full and valid consideration, the defendant approached the plaintiff and borrowed the sum of Rs.2,50,000/- from the plaintiff on 10.10.2013 for his family expenses. In evidence there of, the defendant has executed a registered mortgage deed hypothecating the schedule mentioned property on

10.10.2013 in favour of the plaintiff at Peranamallur Sub-Registrar office with the document No. of 2184/2013, agreeing to repay the mortgage money with interest at the rate of 2% for Rs.100/- i.e Rs.5000/- per month, to the defendant repayable on demand together with interest at the rate of 24% per annum, which was availed by the defendant. As per the deed of mortgage at page no 3 the defendant agreed to pay the interest regularly by every month. The defendant agreed that mortgage amount will be settled in the tenure of 36 months and also agreed that whenever plaintiff requires he will settle the principal amount together with the balance of interest as on the date. The plaintiff further stated that, the defendant after availing the above mortgage amount failed to repay the interest on the principal amount of Rs.2,50,000/- despite repeated demands. The plaintiff thereafter caused a counsel's notice dated 05.05.2023 issued to the defendant demanding payment. The defendant received the same, but did not respond to the legal notice which was sent by the plaintiff. The plaintiff has stated that, the defendant thus committed default in repayment of the mortgage amount and hence the suit.

**3. Brief averments of the defendant are as follows:-**

3.1) The defendant has denied the averments of the plaintiff. The defendant has stated that, for the small loan amounts obtained by him from the plaintiff, the plaintiff had calculated interest at the rate of 36% and he had threatened the defendant and the defendant was compelled to execute the registered mortgage deed on 10.10.2013 for the sum of Rs.2,50,000/-. The defendant never availed the loan of Rs.2,50,000/- from the plaintiff. Hence, the mortgage deed is an invalid document. The defendant had

obtained a loan of Rs.50,000/- from the plaintiff in the year 2012 for the Medical Expenses of his mother.

Thereafter, the defendant had obtained a loan of Rs.1,00,000/- from the plaintiff for his Agricultural Expenses. But the plaintiff had calculated exorbitant interest and had compelled the defendant to execute the mortgage deed for the sum of Rs.2,50,000/- instead of Rs.1,50,000/-. Further, the defendant has also stated that, when he had received the legal notice issued by the plaintiff, he was sick and bedridden. Hence, he could not issue any reply notice for the said legal notice. Further, the defendant has also stated that, he is an agriculturist and hence, the plaintiff cannot demand interest at the rate of 24% p.a., and he can only claim the interest of 9% from the defendant. The defendant had availed the loan of only Rs.1,50,000/- from the plaintiff. Hence, this suit is not maintainable and it is liable to be dismissed.

### **3. Points for consideration :**

- (i) Whether the Plaintiff is entitled to preliminary decree for mortgage as prayed for?
- (ii) To what other reliefs the plaintiff is entitled to ?

### **4. Points Nos.1 & 2 :**

This suit has been filed for the Preliminary Decree based on mortgage against the defendant to direct him to pay the plaintiff a sum of Rs.8,45,000/- together with interest at the rate of 24 % p.a. and for the costs of the suit. The plaintiff has stated that, the defendant had availed the loan of Rs.2,50,000/- from the plaintiff for his

family expenses and to discharge his hand loans on 10.10.2013 and he had executed the registered mortgage deed in favour of the plaintiff. The defendant had not repaid the principal amount along with interest and hence the plaintiff had issued a legal notice to the defendant on 05.05.2023. The defendant had not issued any reply notice and thereafter the plaintiff has come forward with this suit.

5.) On the other hand, the defendant has denied the averments of the plaintiff and he has stated that, the defendant had availed only a loan of Rs.1,50,000/-, but the plaintiff had computed exorbitant interest and he had threatened the defendant and the defendant was compelled to execute the mortgage deed for the sum of Rs.2,50,000/- in favour of the plaintiff. The defendant has also stated that, he is only an agriculturist and hence the defendant cannot claim the interest of 24% p.a and he can only claim interest at the rate of 9% p.a from the defendant. Hence, the defendant has stated that, the suit is liable to be dismissed.

6.) On the plaintiff's side, the plaintiff was examined as Pw1 and through him Ex.A1 to Ex.A5 have been marked. Ex.A1 is the Certified copy of the settlement deed executed by the defendant's grand father Munirathinam in favour of the plaintiff with regard to the suit properties. Hence, the plaintiff has established through Ex.A1 that, the defendant is the owner of the suit properties. Ex.A2 is the registered mortgage deed executed by the defendant in favour of the plaintiff on 10.10.2013 with regard to the suit properties. As per Ex.A2 mortgage deed, the defendant had agreed to repay the principal amount along with interest at the rate of 24 % p.a.,

within a period of three years. Ex.A3 is the legal notice issued by the plaintiff to the defendant on 05.05.2023 calling upon the defendant to repay the mortgage loan amount along with interest. Ex.A4 is the Postal Acknowledgment Card for the receipt of legal notice by the defendant. Ex.A5 is the Encumbrance Certificate for the suit properties, which contains the entry with regard to the mortgage deed dated 10.10.2013. Therefore, the plaintiff has prime facie established that the defendant had executed the registered mortgage deed with regard to the suit properties in favour of the plaintiff.

7.) The main contention raised by the learned counsel for the defendant in his arguments is that, the plaintiff has not denied the averments of the defendant contained in the written statement in the chief affidavit filed by the plaintiff. The learned counsel also pointed out that, during cross examination of Pw1 he has admitted that, “**இந்த வழக்கில் வெங்கடேசன் தாக்கல் செய்துள்ள பதிலுரையை**

**நான் படித்து பார்த்துள்ளேன். அந்த பதிலுரையில் உள்ள சங்கதிகளை நான் மறுத்து**

**எனது முதல் விசாரணை வாக்குமூலத்தில் சொல்லவில்லை என்றால் சரிதான்.”**

Hence, the learned counsel for the defendant vehemently argued that, the plaintiff has failed to deny the averments contained in the written statement filed by the defendant and hence, it must be deemed to be the admission of the averments of the defendant by the plaintiff. In this regard the learned counsel had also mentioned that, “**Similar to how a defendant must deny plaintiff allegations, a plaintiff must deny new facts**

*raised in the written statement. Failure to do so means the court may accept the defendant's version of facts as true."*

8.) Therefore, the learned counsel for the defendant argued that the plaintiff had impliedly admitted the averments of the defendant and hence, the defendant is not liable to pay the mortgage loan amount along with interest.

However, such arguments of the learned counsel for the defendant has no force as the learned counsel for the plaintiff had questioned Dw1 as follows “ **நான் ரூ.2,50,000/- கடன் வாங்கி கொண்டு அந்த பத்திரத்தை எழுதிக்கொடுத்தேனா என்றால் இல்லை. முதலில் ரூ.50,000/- கடன் வாங்கினேன். அதன் பின்னிட்டு ரூ.1,00,000/- கடன் வாங்கினேன். அவர்கள் ரூ.2,50,000/- எழுதிக்கொடுக்க வேண்டும் என்று சொன்னதால் எழுதிக்கொடுத்தேன்.**” Such question put forth by the learned counsel for the plaintiff during the cross-examination of P.W.1 by itself amounts to the denial of the averments of the defendant.

Further, it is also to be noted that, Ex.A2 mortgage deed is a registered document and as per Law there is a presumption regarding the validity of the registered document. This has also been pointed out by *the Hon'ble Supreme Court of India* in the case of *Prem singh and others v. Birbal and others* dated 02.05.2006, that,

*“There is a presumption that a registered document is validly executed. A registered document therefore, prima facie would be valid in law. The onus of*

***proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent I has not been able to rebut the said presumption.”***

Therefore, as per the above said precedent of the Hon’ble Supreme Court of India, there is a strong presumption in favour of a registered document and the burden of proof is on the defendant to rebut such presumption. But in the case at hand, the defendant has not adduced any evidence to show that the registered mortgage deed was obtained from him under coercion. Further, Dw1 himself has stated during his cross examination that, “***என்னை மிரட்டி வாங்கியதாக நான் காவல்நிலையத்திலோ மாவட்ட ஆட்சியர் அலுவலகத்திலோ புகார் கொடுத்தேனா என்றால் இல்லை***”. The alleged mortgage deed is of the year 2013. This suit has been filed in the year 2024. Even though, the defendant has stated that, the said mortgage deed was obtained from him under compulsion, the defendant had not taken any steps regarding the said mortgage deed. Further, the defendant has also admitted that, “***எனக்கு வழக்கறிஞர் அறிவிப்பு வந்த விவரம் தெரியும்.***” But the defendant had not sent any reply notice for the said legal notice. Even though the defendant has stated in his written statement that, he was bedridden and only because of that he could not issue any reply notice, he has not adduced any evidence regarding his health condition at that time. Therefore, the only argument put forth by the learned counsel for the defendant that, the plaintiff has not denied the averments of the defendant in the written statement, in

the chief affidavit filed by him is not sufficient to rebut the strong presumption raised in favour of the registered document.

9.) The defendant has claimed that he is an agriculturist and hence, the plaintiff is not entitled to claim interest at the rate of 24 % p.a., However during the cross examination of Dw1, he himself has admitted that “ **நான் கட்டிட கூலி வேலை செய்து வருகிறேன். அந்த வேலை மட்டும் தான் செய்கிறேன்**”. Therefore, the defendant cannot claim that he is an agriculturist and therefore, his contention against the interest rate claimed is also not tenable.

10.) In view of the above discussions, this Court comes to the inevitable conclusion that, the defendant has not been able to rebut the presumption raised in favour of the registered mortgage deed Ex.A2. Therefore, the defendant is liable to pay the mortgage loan amount along with interest. Therefore, the plaintiff is entitled to the preliminary decree for mortgage as prayed for by him. **Hence, issue No.1 is answered in favour of the plaintiff.**

#### **11. Issue No.2:-**

The plaintiff is also entitled to the costs of the suit. **Therefore, Issue No.2 is also answered accordingly.**

**In the result, the suit is decreed with costs.**

(i) **The defendant shall pay a sum of Rs.8,45,000/- (Rupees Eight Lakhs Forty Five Thousand only) to the Plaintiff with subsequent interest at the rate of 9% per annum on the principal amount of Rs.2,50,000/- from the date of filing of the suit till**

the date of decree and thereafter at the rate of 6% per annum till the date of realization.

(ii) The defendant is directed to pay the costs of the suit to Plaintiff.

(iii) That the defendant do pay into Court on or before 29.06.2026 or on a later date up to which time for payment may be extended by the Court, the said sum of Rs.2,50,000/- with subsequent interest and costs.

(iv) That, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgage property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all encumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required deliver up to the defendant quiet and peaceable possession of the said property.

(v) And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale

**the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.**

Dictated to the Steno-Typist, directly typed by her in computer, corrected and pronounced by me in Open Court, this the 30th day of March- 2026.

Subordinate Judge,  
Vandavasi.

**Plaintiff side Witness :**

P.W.1 - Tr. Vivekanand (Plaintiff)

**Plaintiff's side Exhibits:**

<b>Exhibits</b>	<b>Date</b>	<b>Description</b>	<b>Remarks</b>
Ex.A.1	07.10.2009	Settlement deed	Certified Copy
Ex.A2	10.10.2013	Mortgage Deed	Original
Ex.A3	05.05.2023	Legal Notice	Office Copy
Ex.A4	–	Acknowledgment Card	Original
Ex.A5	–	Encumbrance Certificate	Online Copy

**Defendant side Witness:**

Dw1- Venkatesan

**Defendant's side Exhibits: NIL**

Subordinate Judge,  
Vandavasi.