IN THE COURT OF I-ADDITIONAL DISTRICT AND SESSIONS JUDGE AT TIRUVALLUR

PRESENT: TMT. S. TASNEEM, M.L.,
I-Additional District and Sessions Judge, Tiruvallur

Thursday, the 09th day of July, 2026

ORIGINAL SUIT. NO. 495 OF 2025

(C. N. R. No. TNTR01-005623-2025)

R. Dillibabu ....**Plaintiff**

-//Vs//-

V. Lakshmipathi ...**Defendant**

This suit came up for final hearing before me on 02.07.2026 in the presence of Thiru. G. Srinivasan, Learned Counsel for the Plaintiff, and Thiru. E. Ezhilarasan filed vakalath for Defendant and not filed written statement hence, the defendant set ex-parte and after standing over for consideration till this day, this Court delivers the following:

JUDGMENT

(a) Pass a decree directing the defendant to pay the plaintiff a sum of Rs.40,00,000/- (Rupees Forty Lakhs Only).

(b) Direct the defendant to pay interest on the principal amount of Rs.15,00,000/- at the rate of 24% per annum from the date of plaint till the date of decree.

(c) Direct the defendant to pay further interest at the rate of 12% per annum from the date of decree till the date of realization.

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(d) In default of payment, pass a final decree for sale of the hypothecated property for realization of the amount due under the preliminary decree.

(e) Award the costs of the suit.

2. <u>GIST OF THE PLAINT :-</u>

2.1. The plaintiff, R. Dillibabu, filed the suit under Order VII Rule 1 of CPC for recovery of money on the basis of a registered simple mortgage deed. The plaintiff states that on 31.07.2018, the defendant V. Lakshmipathi borrowed a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) from the plaintiff and hypothecated the schedule mentioned property by executing a registered simple mortgage deed in favour of the plaintiff, promising to repay the same whenever demanded together with interest at 24% per annum. The plaintiff further states that after the said transaction and passage of reasonable time, he made several oral demands for repayment of the mortgage loan together with accumulated interest, but the defendant failed and neglected to discharge and repay the amount due under the mortgage loan.

2.2. The plaintiff further states that the defendant is due and liable to pay Rs.40,00,000/- as per the memo of calculation, consisting of principal amount of Rs.15,00,000/- and interest at 24% per annum from 31.07.2018 to 10.07.2025, amounting to Rs.24,92,000/-, making the total due amount under the mortgage deed as on the date of suit Rs.40,00,000/-.

2.3. The plaintiff further states that he issued a legal notice dated 24.04.2025 through his counsel demanding repayment of the mortgage loan. Though the

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defendant acknowledged the legal notice on 28.04.2025, he miserably failed to comply with the demand till date. Hence, the plaintiff was constrained to file the present suit for recovery of the principal and interest amount due under the mortgage loan with costs.

2.4. According to the plaintiff, the cause of action arose on 31.07.2018 when the defendant borrowed Rs.15,00,000/- and executed the mortgage deed hypothecating the schedule mentioned property, thereafter on several occasions when oral demands were made, on 24.04.2025 when the legal notice was issued, on 28.04.2025 when the defendant acknowledged the notice, and subsequently when the defendant failed to repay the mortgage debt within the jurisdiction of this Hon'ble Court.

3. The Defendant appeared before this Court through counsel and filed vakalath but failed to file a written statement within the prescribed time. Hence, the defendant was set ex-parte.

4. On the side of the Plaintiff, the 1st Plaintiff was examined as PW1, and Ex.A1 to Ex.A3 were marked through him. The 3rd party witness was examined as PW2, and Ex.A4 was marked through him.

5. <u>POINTS FOR CONSIDERATION:</u>

5.1. Whether the plaintiff proves that the defendant borrowed a sum of Rs.15,00,000/- on 31.07.2018 and executed a registered simple mortgage deed by hypothecating the suit schedule property in favour of the plaintiff?

5.2. Whether the plaintiff proves that the defendant committed default in repayment of the mortgage loan despite repeated demands and the legal notice dated 24.04.2025, thereby becoming liable to pay the suit claim of Rs.40,00,000/-?

5.3. Whether the plaintiff is entitled to a preliminary mortgage decree as prayed for, with interest and costs, and in default of payment, to a final decree for sale of the mortgaged suit schedule property?

6. <u>DISCUSSION:-</u>

6.1. The plaintiff has instituted the present suit for recovery of the mortgage money by seeking a preliminary mortgage decree directing the defendant to pay a sum of Rs.40,00,000/-, together with interest and costs, and in default of payment, for sale of the mortgaged suit schedule property.

6.2. The records disclose that summons was duly served on the defendant. Pursuant thereto, the defendant entered appearance through his learned counsel by filing vakalat. However, despite sufficient opportunities afforded by this Court, the defendant failed to file the written statement within the time prescribed under Order VIII Rule 1 of the Code of Civil Procedure. Consequently, the defendant forfeited his right to file the written statement and was set ex-parte. Thereafter, the suit was posted for the plaintiff's evidence.

6.3. It is trite law that an ex-parte decree cannot be granted merely because the defendant remained absent. The Court is duty-bound to examine whether the plaintiff has established his case by acceptable legal evidence. ***In Ramesh Chand Ardawatiya ..vs.. Anil Panjwani, (2003) 7 SCC 350, the Hon'ble Supreme Court***

has held that even in an ex-parte proceeding, the Court must scrutinize the pleadings and evidence and satisfy itself that the plaintiff has proved a legally enforceable claim.

6.4. To substantiate the case, the plaintiff examined himself as PW1 and filed his proof affidavit reiterating the averments contained in the plaint. Through PW1, Ex.A1 to Ex.A3 were marked.

6.5. Ex.A1 is the Original Registered Mortgage Deed dated 31.07.2018 bearing Document No.1592 of 2018. A careful reading of the recitals contained therein discloses that the defendant borrowed a sum of Rs.15,00,000/- from the plaintiff and, as security for repayment of the said amount, executed a registered simple mortgage by mortgaging the suit schedule property.

"திருவள்ளூர் மாவட்டம், திருவள்ளூர் வட்டம், பிளேஸ்பாளையம் கிராமம் மற்றும் அஞ்சல், ராமர் கோவில் தெரு, எண் 99 என்ற முகவரியில் வசிக்கும் காலஞ்சென்ற திரு. நாரப்பராஜா அவர்களின் குமாரர் சுமார் 36 வயதுள்ள திரு.V. லட்சுமிபதி ஆகிய நான் சம்மதித்து எழுதிக் கொடுத்த ஈடுகாட்டிய அடமானக் கடன் என்னவென்றால், சொத்து விவரத்தில் கண்டுள்ள சொத்தானது என்னுடைய குடும்ப உறுப்பினர்கள் சேர்ந்து என் பெயருக்கு 11.01.2013 ஆம் தேதியில் அக்கு விடுதலை பத்திரம் எழுதி அம்பத்திரமானது திருவாலங்காடு சார்-பதிவாளர் அலுவலகத்தில், 1 புத்தகம், 2013 ஆம் ஆண்டின் 154/2013 எண்ணாக என் பெயரில் பதிவு செய்யப்பட்டு <u>என் சுவாதீன அனுபவத்தில் இருந்து வரும் சொத்தை என் குடும்ப செலவிற்காக பணம் வேண்டி இன்று உம்மிடம் ஈடுகாட்டிய அடமானம் வைத்து ரூ. 15,00,000/- (எழுத்தால் ரூபாய் பதினைந்து இலட்சம்) உம்மிடம் ரொக்கமாக பெற்றுக்கொண்டேன்.</u> சொத்தை அடமானம் வைத்து என்னுடைய சுவாதீன அனுபவத்தில்

வைத்துக்கொள்கிறேன். மேற்படி தேதி முதல், மாதம் ஒன்றுக்கு ரூ.100/– க்கு வட்டி ரூ. 2.00/–வீதம் தொகைக்கு வட்டி கொடுக்கிறேன்."

The document further evidences the contractual stipulation that the defendant agreed to repay the mortgage money together with interest at the rate of 24% per annum. Being a registered document, Ex.A1 carries substantial evidentiary value and there is absolutely no material available to doubt its genuineness.

6.6. Ex.A2 is the Office Copy of the Legal Notice dated 24.04.2025 together with the postal acknowledgment card. The said document establishes that before approaching this Court, the plaintiff called upon the defendant to discharge the mortgage liability. Though the defendant received the notice, he neither complied with the demand nor issued any reply denying the mortgage transaction. Such conduct lends further support to the plaintiff's case.

6.7. Ex.A3 is the Encumbrance Certificate relating to the suit schedule property for the period from 31.07.1978 to 07.07.2025. The Encumbrance Certificate reflects the registration of the mortgage transaction under Document No.1592 of 2018, thereby corroborating the execution and subsistence of the mortgage created in favour of the plaintiff.

6.7. To prove the due execution and attestation of the mortgage deed, the plaintiff further examined Thiru R. Anthony as PW2, who is the first attesting witness to the mortgage deed. PW2 has deposed that the defendant executed the registered mortgage deed in favour of the plaintiff after receiving the loan amount of Rs.15,00,000/- and that he attested the said document in the presence of the executant. Through PW2, Ex.A4, namely the First Attestation Signature of the Mortgage Deed, was marked. The testimony of PW2 inspires confidence and fully corroborates the evidence of PW1 regarding the due execution and attestation of Ex.A1.

6.8. The oral evidence of PW1 and PW2 is consistent, natural and trustworthy. The documentary evidence marked as Ex.A1 to Ex.A4 completely corroborates the oral testimony. The defendant, though having entered appearance through counsel, failed to file the written statement and allowed the matter to proceed ex-parte. Therefore, the evidence adduced by the plaintiff remains unchallenged, unrebutted and uncontroverted.

6.9. ***In Vidhyadhar ..vs.. Manikrao and another, (1999) 3 SCC 573, the Hon'ble Supreme Court held that where a party abstains from entering the witness box or fails to contest the proceedings, an adverse inference is liable to be drawn against such party. Likewise, in R.V.E. Venkatachala Gounder ..vs.. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752, the Hon'ble Supreme Court held that reliable evidence which remains unchallenged can safely be accepted by the Court.***

6.10. The mortgage evidenced under Ex.A1 satisfies the ingredients of a simple mortgage as contemplated under Section 58(b) of the Transfer of Property Act, 1882. The plaintiff has proved the borrowing of Rs.15,00,000/-, the execution of the registered mortgage deed, the creation of the mortgage over the suit schedule property, the agreed rate of interest and the defendant's default in repayment. Ex.A2 establishes the demand made by the plaintiff prior to institution of the suit. Ex.A3 corroborates the existence of the mortgage by reflecting the encumbrance over the suit property. The evidence of PW2, coupled with Ex.A4, conclusively proves the due attestation of the mortgage deed.

6.11. This Court finds no discrepancy or inconsistency in the oral and documentary evidence adduced by the plaintiff. The evidence adduced is cogent, convincing and sufficient to establish the mortgage transaction and the liability of the defendant. There is absolutely no legal or factual impediment to accept the plaintiff's case.

6.12. Accordingly, this Court holds that the plaintiff has successfully established that the defendant borrowed Rs.15,00,000/-, executed the registered simple mortgage deed dated 31.07.2018, committed default in repayment of the mortgage debt despite demand and is liable to discharge the mortgage liability. Hence, the plaintiff is entitled to a preliminary mortgage decree under Order XXXIV Rules 2 and 4 of the Code of Civil Procedure, with liberty to apply for a final decree in the event of default.

7. IN THE RESULT,

71. The suit is decreed Ex-parte with costs.

7.2. Accordingly, a preliminary mortgage decree is hereby passed directing the defendant to pay to the plaintiff a sum of Rs.40,00,000/- (Rupees Forty Lakhs only), together with interest at the rate of 24% per annum on the principal amount of Rs.15,00,000/- from the date of presentation of the plaint till the date of decree,

and further interest at the rate of 12% per annum on the principal amount from the date of decree till the date of realization, besides the costs of the suit.

7.3. The defendant is granted three (3) months' time from the date of this judgment to deposit the entire decretal amount together with accrued interest and costs.

7.4. In default of such payment within the time stipulated above, the plaintiff shall be at liberty to apply for passing of a final decree under Order XXXIV Rules 5 and 6 of the Code of Civil Procedure, for sale of the mortgaged suit schedule property and for appropriation of the sale proceeds towards satisfaction of the decretal amount, together with interest, costs and other incidental expenses, in accordance with law.

7.5. Accordingly, a preliminary mortgage decree shall be drawn.

-//Dictated by me to the Steno-Typist, directly typed by him in computer, corrected and pronounced by me in the Open Court on the 09th day of July 2026//-.

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Digitally signed by S TASNEEM

I-Additional District and Sessions Judge
Tiruvallur.

Plaintiff's side Witness -

PW1 – Thiru. R. Dillibabu - Plaintiff

PW2 – Thiru. R. Anthony - 3rd party

Plaintiff's side Exhibits -

Ex.A1	31.07.2018	Registered Mortgage Deed vide Doc.No.1592/2018 (Original)
Ex.A2	24.04.2025	Office Copy of the Legal Notice and Acknowledgment Card
Ex.A3	31.07.1978 to 07.07.2025.	Encumbrance certificate in respect of the Suit property
Ex.A4	--	First Attestation Signature of the Mortgage Deed

<u>DEFENDANT'S SIDE WITNESSES AND EXHIBITS : NIL</u>

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I- Additional District and Sessions Judge
Tiruvallur