

**IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUVALLUR AT POONAMALLEE**

**PRESENT: Thiru.S.Murugesan, M.Sc., B.L.,
II Additional District and Sessions Judge, Tiruvallur at Poonamallee**

On this Friday the 28th day of April 2023

O.S.No.377 /2022

S. Tamilselvan

....Plaintiff.

/ Vs /

B. Jayakumar represented

by his POA Agent Mrs. J. Suseekaram.

.... Defendant.

This suit having been taken on file on 30.03.2022 and it came before me for final hearing on 13.04.2023 in the presence of M/s. M. K. Murali, learned counsel for the Plaintiff and the defendant remained absent and set exparte, and having stood over under this court's consideration till this date and upon perusing the records and hearing plaintiff side arguments, this court passed the following :

JUDGMENT

The plaintiff filed a suit directing the defendant to pay to the plaintiff a

sum of Rs.55,76,000/- with subsequent interest at the rate of 24% p.a. on Rs.41,00,000/- with cost on or before a date to be fixed by this court, due on simple mortgage executed by the defendant's wife who is the Power of Attorney Agent Mrs. J. Suseekaram in favour of the plaintiff , and directing the defendant to pay the cost of the suit.

2. The case of the Plaintiff in brief :

The defendant is the owner of the suit property. The defendant is in abroad and he has executed a Power of Attorney Deed dated 5.12.2019 in favour of his wife Mrs. J. Suseekaram and the said Power of Attorney Deed was adjudicated on the file of SRO Villivakkam as per ADJ No.136/2019. The said power of attorney authorizes the power of attorney agent to mortgage the suit property. The defendant through his Power of Attorney Mrs. J. Suseekaram wife of the defendant borrowed a sum of Rs.25,00,000/- from the plaintiff and executed a registered deed of simple mortgage dated 13.02.2020 in favour of the plaintiff offering the suit property as security for the aforesaid amount. The defendant agreed to pay the said amount with interest at 24% p.a. The defendant, through his Power of Attorney Agent,

further borrowed Rs.11,00,000/- from the plaintiff on 19.08.2020 and executed a registered deed of simple mortgage offering the property as security for the aforesaid loan. The defendant further borrowed Rs.5,00,000/- through his Power of Attorney agent from the plaintiff on 05.12.2020 and executed a registered deed of simple mortgage in favour of the plaintiff offering the property as security for the aforesaid loan. In respect of the aforesaid mortgages, the defendant failed and neglected to pay interest from December 2020 and inspite of several demands made by the plaintiff, the defendant failed and neglected to pay the interest amount to the plaintiff.

3. The plaintiff therefore issued a lawyer's notice dated 22.4.2022 to the power of attorney agent of the defendant calling upon her to pay the entire amount due under the aforesaid three mortgages. The Power of Attorney Agent of the defendant acknowledged the receipt of the said notice and has sent a reply notice dated 02.05.2022 through her lawyer containing false allegations. A suitable rejoinder dated 06.05.2022 was issued by the plaintiff through his lawyer for the reply notice dated 02.05.2022. As the defendant failed to comply with the terms of the legal notice dated 22.04.2022, the plaintiff constrained to file the present suit seeking preliminary decree

directing defendant to pay to the plaintiff a sum of Rs.55,76,000/- with subsequent interest at 24% p.a. on Rs.41,00,000/-, with cost on or before a date to be fixed by this court. Hence the suit.

4. The Defendant remained absent and set exparte on 29.08.2022 and posted the case for exparte evidence on 19.10.2022. On 19.10.2022 the plaintiff present and his counsel also present. The plaintiff was examined as PW.1 and proof affidavit received on oath for chief and Ex.A.1 to A.7 were marked and the case posted to 26.10.2022 for argument. Then the case posted for several adjournments for argument and the case was posted today for judgment.

5. To substantiate the case of the Plaintiff, Tr. S. Tamilselvan, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A.7 were marked on the side of the Plaintiff.

6. The point for consideration is whether the plaintiff is entitled Preliminary Decree as prayed for ?

7. Heard. Plaintiff's side argument and Records perused.

8. The plaintiff filed a suit directing the defendant to pay to the plaintiff a sum of Rs.55,76,000/- with subsequent interest at the rate of 24% p.a. on Rs.41,00,000/- with cost on or before a date to be fixed by this court, due on simple mortgages executed by the defendant's wife who is the Power of Attorney Agent Mrs. J. Suseekaram. The plaintiff was examined as PW1, it is seen that the defendant is the owner of the property and he is in abroad and he has executed a power of attorney deed dated 05.12.2019 in favour of his wife Mrs. J. Suseekaran and the said Power of Attorney deed was adjudicated on the file of SRO Villivakkam as per ADJ No.136/2019. The defendant, through his power of attorney agent Mrs. J. Suseekaram who is the wife of the defendant borrowed Rs.25,00,000/- from the plaintiff and executed deed of simple mortgage dated 13.02.2020 in favour of the plaintiff. Again the defendant, through his power of attorney agent borrowed Rs.11,00,000/- from the plaintiff and executed deed of simple mortgage dated 19.08.2020 in favour of the plaintiff. Further the defendant, through his power of attorney agent borrowed Rs.5,00,000/- from the plaintiff and executed deed of simple mortgage dated 05.12.2020 in favour of the plaintiff. Thus the defendant

borrowed total sum of Rs.41,00,000/-. Ex.A.1 is Original Simple Mortgage Deed dated 13.02.2020 executed by the defendant through his Power of Attorney agent in favour of the plaintiff for a sum of Rs.25,00,000/-. Ex.A.2 is Original Simple Mortgage Deed dated 19.08.2020 executed by the defendant through his Power of Attorney agent in favour of the plaintiff for a sum of Rs.11,00,000/-. Ex.A.3 is Original Simple Mortgage Deed dated 05.12.2020 executed by the defendant through his Power of Attorney agent in favour of the plaintiff for a sum of Rs.5,00,000/-.

9. After receiving the loan amount of Rs.41,00,000/-, the defendant failed and neglected to pay interest from December 2020 and inspite of several demands made by the plaintiff, the defendant failed and neglected to pay the interest amount to the plaintiff.

10. The plaintiff therefore issued a lawyer's notice dated 22.4.2022 to the power of attorney agent of the defendant calling upon her to pay the entire amount due under the aforesaid three mortgages. Ex.A.4 is the copy of the notice sent to the defendant on 22.04.2022. The Power of Attorney Agent of the defendant acknowledged the receipt of the said notice and has sent a reply notice dated 02.05.2022 through her lawyer containing

false allegations. The reply notice is marked as Ex.A.5. A suitable rejoinder dated 06.05.2022 was issued by the plaintiff through his lawyer for the reply notice dated 02.05.2022. The said rejoinder is marked as Ex.A.6. The postal acknowledgment card is marked as Ex.A.7. As the defendant failed to comply with the terms of the legal notice dated 22.04.2022, the plaintiff constrained to file the present suit seeking preliminary decree. Hence the plaintiff filed this suit for recovery of money.

11. The defendant has not let in any evidence to controvert or repudiate the contentions raised by the plaintiff and that he remained exparte. The plaintiff has proved his case with sufficient oral and documentary evidence. Therefore, it can be safely concluded that the plaintiff is entitled for the relief as prayed for.

In the result, the suit is decreed with cost and the Preliminary Decree is passed, directing the defendant to pay to the plaintiff a sum of Rs.55,76,000/- along with interest at the rate of 24% per annum on Rs.41,00,000/- from the date of plaint till the date of decree and thereafter at

6% per annum till the date of realization of the amount. Time for payment 3 months.

Dictated by me to the stenographer, typed by him, corrected and pronounced by me in the open court on this, 28th day of April 2023.

**II Additional District and Sessions Judge,
Thiruvallur at Poonamallee**

Plaintiff Side witness:-

PW1 - Mr. S. Tamilselvam

Plaintiff side Exhibits:-

Ex.A.1 -	Original Simple Mortgage Deed dated 13.02.2020 executed by the defendant through his Power of Attorney agent in favour of the plaintiff for a sum of Rs.25,00,000/-.
Ex.A.2 -	Original Simple Mortgage Deed dated 19.08.2020 executed by the defendant through his Power of Attorney agent in favour of the plaintiff for a sum of Rs.11,00,000/-.
Ex.A.3	Original Simple Mortgage Deed dated 05.12.2020 executed by the defendant through his Power of Attorney agent in favour of the plaintiff for a sum of Rs.5,00,000/-.
Ex.A.4	Copy of legal notice issued by the plaintiff to the defendant dated 22.04.2022.

Ex.A.5 -	Reply by the defendant's counsel to the plaintiff's counsel dated 02.05.2022.
Ex.A.6 -	Rejoinder by plaintiff's counsel to the defendant's counsel dated 06.05.2022.
Ex.A.7	Postal Acknowledgement card of the defendant.

Defendant's side witnesses :- NIL

Defendant's side Exhibits :- NIL

**II Additional District and Sessions Judge,
Thiruvallur at Poonamallee**

Draft / Fair Judgment

O.S. No.377 of 2022

Date : 28.04.2023.

II A.D.S.C., Poonamallee.