

**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 Tuesday the 31st day of October 2023

O.S.No.483 /2022

Mr. O. Gopalakrishnan

....Plaintiff.

/ Vs /

- 1) Mr. A. Arockiasamy
- 2) Mr. A. Paulraj
- 3) Mr. A. Anthonisamy
- 4) Mr. A. Jebastian
- 5) Mr. A.Gnanaprakasam.

.... Defendants.

This suit having been taken on file on 02.09.2022 and it came before me for final hearing on 17.10.2023, Mr. M. Sudhakar and Mr. T. Thanikar Arasu, learned counsel for the Plaintiff and M/s. R. Suresh Kumar, S. Guna and S.Asha, learned counsel for defendants 1 to 5, subsequently the defendnats 1 to 5 called 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 for preliminary decree directing the defendants to pay the plaintiff a sum of Rs.17,67,000/- due on simple mortgage deed executed by the defendant's father Mr. Alphonse on 09.07.2013 for a sum of Rs.7,00,000/- and directing the defendant to pay interest on Rs.7,00,00/- at 24% p.a. from the date of plaint till the date of realization, directing the defendants to deposit into court the entire amount within the time granted by this court ; failing to comply the demand, this court may be passed to pass final decree for sale of the hypothecated property for realization of the amount due under the final decree and to pay the cost of this suit.

2. The case of the Plaintiff in brief are as follows :

The plaintiff submitted that the defendants' father Mr.Alphonse had borrowed from the plaintiff a sum of Rs.7,00,000/- on 09.07.2013 at Thirumazhisai village of Poonamallee taluk and the said Mr. Alphonse had hypothecated the schedule mentioned property by executing a registered simple file of SRO Poonamallee in favour of the plaintiff for the said amount promising to repay the

said amount together with interest thereon at 24% p.a.

3. Mr. Alphonse paid interest from the date of the borrowing till February 2015 regularly. Subsequently he failed to pay the principal and interest.

4. The plaintiff had made several demand for repayment of the principal amount and interest. On such demand Mr.Alphonse and the defendants made several payments on various dates towards the interest a total sum of Rs.1,65,000.00. Subsequently Mr. Aplhonse and the defendants have failed and neglected to discharge the balance interest amount and principal due under the suit simple mortgage deed.

5. That being the case Mr.Alphonse died on 30.03.2020 interest survived by his sons who are the defendants herein. The defendants are liable to discharge the amount due under the suit the defendants, initially the defendants agreed to discharge the debt, but failed to comply the demand.

6. On 11.01.2022 sent an advocate notice calling upon the defendants to pay the money due under the simple mortgage deed. The defendants acknowledged the notice but failed to comply the demand. The plaintiff on 25.0.2022 sent 2nd time notice calling upon the defendants acknowledged the notice but failed to comply the demand. Hence the plaintiff filed the suit.

7. The particulars required under the act are

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|-----|-------------------------------|----------------------|
| a). | Date of Mortgagor | 09.07.2013 |
| b). | Name of the Mortgagor | Mr. Alphonse |
| C). | Name of the Mortgagor | Mr. O.Gopalakrishnan |
| d). | Amount secured under the deed | Rs. 7,00,000/- |
| e). | Rate of interest | 24% p.a. |

8. The defendant is due and liable to pay a total sum of Rs.17,67,000/- as per memo of calculation and valuation appended to the plaint. Hence the suit.

9. To substantiate the case of the Plaintiff, Tr. Gopalakrishnan, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A.4 were marked on the side of the Plaintiff.

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

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

12. The plaintiff filed a suit for preliminary decree directing the defendants to pay the plaintiff a sum of Rs.17,67,000/- due on simple mortgage deed executed by the defendant's father Mr. Alphonse on

09.07.2013 for a sum of Rs.7,00,000/- and directing the defendant to pay interest on Rs.7,00,00/- at 24% p.a. from the date of plaint till the date of realization, directing the defendants to deposit into court the entire amount within the time granted by this court ; failing to comply the demand, this court may be passed to pass final decree for sale of the hypothecated property for realization of the amount due under the final decree and to pay the cost of this suit.

13. On the side of the plaintiff, one Thiru. Gopalakrishnan, was examined as PW.1 and he filed the proof affidavit. In his proof affidavit, he stated that the defendant's father Mr. Alphonse had borrowed from the plaintiff a sum of Rs.7,00,000/- on 09.07.2013 at Thirumazhisai Village of Poonamallee taluk and the said Mr. Alphonse had hypothecated the schedule mentioned property by executing a registered simple mortgage deed dated 09.07.2013 registerd as Doc. No.2549/2013 on the file of SRO Poonamallee in favour of the plaintiff for the said amount promising to repay the said amount together with interest at 24% p.a. The said mortgage deed was marked as Ex.A.1. Mr. Alphonse paid interest from the date of borrowing till February 2015 regularly. Subsequently he failed to pay the principal and

interest. The plaintiff had made several demand for repayment of the principal amount and interest. On such demand Mr. Alphonse and the defendants have failed and neglected to discharge the balance interest amount and principal due under the suit simple mortgage deed.

14. That being the case Mr. Alphonse died on 30.03.2020 interest survived by his sons who are the defendants herein. The defendants are liable to discharge the amount due under the suit the defendants, initially the defendants agreed to discharge the debt, but failed to comply the demand.

15. On 11.01.2022 sent an advocate notice calling upon the defendants to pay the money due under the simple mortgage deed. The said notice was marked as Ex.A.2. The defendants acknowledged the notice but failed to comply the demand. The plaintiff on 25.0.2022 sent 2nd time notice calling upon the defendants acknowledged the notice but failed to comply the demand. The said 2nd notice was marked as Ex.A.3. Tracking report of the notice delivered to the defendants 5 Nos. is marked as Ex.A.4. Hence, the plaintiff is filing the present suit, seeking recovery of money from the defendants due on simple mortgage and for cost.

16. The defendants 1 to 5 appeared through their counsel. But they have not filed any written statement on their side. The defendant has not

let in any evidence to controvert or repudiate the contentions raised by the plaintiff and that they 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.17,67,000/- along with interest at the rate of 24% per annum on Rs.7,00,000/- 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 the 31st day of October 2023.

sd/- S. Murugesan

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

Plaintiff Side witness:-

PW1 - Mr. Gopalakrishnan

Plaintiff side Exhibits:-

Ex.A.1 -	Original registered mortgage deed dated 09.07.2013 for a sum of Rs.7,00,000/- executed by Mr. Alphonse in favour of the plaintiff.
Ex.A.2	Copy of legal notice issued by the plaintiff to defendants with postal receipt dated 11.01.2022.
Ex.A.3	Copy of second legal notice issued by the plaintiff to defendants with postal receipt dated 25.04.2022.
Ex.A.4	Tracking report of the notice delivered to the defendants 5 Nos.

Defendant's side witnesses :- NIL

Defendant's side Exhibits :- NIL

sd/- S. Murugesan

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

Draft / Fair Judgment

O.S. No.483 of 2022

Date : 31.10.2023.

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