

IN THE COURT OF THE SUBORDINATE JUDGE, THIRUVOTTIYUR

**Present: Thiru. M. Vasantha Kumar, M.L.,
Subordinate Judge,
Thiruvottiyur**

Thursday, the 2nd day of March, 2023

O.S. No. 84 / 2022

**(Previously O.S. No. 206/2019 on the file of Sub Court, Ponneri)
(C.N.R. No. TNTR 380005602022)**

R.N. Ramanathan

...Plaintiff

- Vs. -

1. J. Amul

2. J. Vicknesh

3. Sankar @ Vincent

...Defendants

This suit has been originally filed before the Sub Court, Ponneri and taken on file on 08.07.2019 in O.S. No. 206/2017 and the same was transferred to this court as per the Proceedings of the Hon'ble Principal District Judge, Tiruvallur in D. No. 653/SJ/2022 dated 08.02.2022 and taken on file on 10.06.2022 and renumbered as O.S. No. 84 / 2022.

This suit came up before this Court for final hearing on 13.02.2023 in the presence of M/s. G. Babu Rao, R. Jagannathan, Learned Counsels for the Plaintiff and M/s T. Kumar and S. Ponnivalavan, Learned Counsels for the Defendants 1 and 2 and Defendants 1 and 2 called absent and set exparte on 12.02.2020 and 3rd Defendant called absent and set exparte on 01.12.2021 and the suit having stood over under this court's consideration till this date and upon perusing the records and hearing the plaintiff's side arguments, this court delivered the following

JUDGMENT

This Suit has been filed by the Plaintiff seeking for the relief of recovery of

money directing the Defendants to pay a suit claim of Rs. 4,98,000/- along with interest at the rate of 24% per annum from the date of Plaint till the date of realization and for the cost of the Suit.

2. The brief averments of the Plaint is as follows:

i) On 10.07.2016 the 1st and 2nd Defendants jointly borrowed a sum of Rs. 3,00,000/- by virtue of the Power of attorney from the Plaintiff to meet their urgent family expenses and for the needs of the 3rd defendant and in evidence thereof, 1st and 2nd defendants jointly executed unregistered Simple mortgage deed on 10.07.2016 in respect of the property which is situated at Door No. 11/26-D, Srinivasa Perumal Koil 1st Street, Thiruvottiyur Village, Thiruvallur District more fully described in the schedule. The defendants agreed and undertook to repay the said amount of Rs. 3,00,000/- together with interest at the rate of 24/% per annum due thereon demand and also agreed to pay interest every month on or before 12th day of every English Calendar.

ii) It is important to mention before this court that the 3rd defendant executed a registered power of attorney in favour of the 1st defendant on 09.03.2009 vide in Registered Document No. 443/2009 on the file of Sub Registrar Office at Thiruvottiyur in respect of schedule mentioned property in which the 1st defendant is empowered or vested with several rights including to borrow amount from others on the property which is more fully mentioned in the power of attorney deed.

iii) The defendants jointly agreed together to pay interest at the rate of 24% per annum and also agreed to pay interest every month on or before 12th day of every English calendar month. Since the defendants did not pay interest for 31 months and principal. The Plaintiff issued legal notice on 02.02.2019 for calling upon the defendants to pay a sum of Rs. 1,86,000/- as interest and principal. All the defendants received the legal notice, but failed to pay either interest or principal.

iv) The Defendants are not entitled for any provisions of the Tamil Nadu Debt

Relief Act. All the defendants are liable to pay interest from the date of borrowal and principal. The calculation of the amount is as follows.

Principal ... Rs. 3,00,000/-

Interest ... Rs. 6,000/- per month

Total Interest ... 33 months = Rs. 1,98,000/-

(6000 p.m. x 33 months= 198000) as on 06.04.2019

Total amount ...Rs. 4,98,000/-

v) Though the Defendants executed the unregistered mortgage deed, the plaintiff treated the same as Execution of Money bond and therefore the plaintiff is constrained and confined to seek only for recovery of amount from the defendants and the relief is sought under the relevant provisions of Tamil Nadu Court fees and suit valuation Act. Thereby the Plaintiff prayed for recovery of money for Rs. 4,98,000/- along with interest at the rate of 24% per annum from the date of plaint till the date of realization and for the cost.

3. In this case, Thiru. T. Kumar and Thiru. S. Ponnivalavan Learned Counsels appeared for the Defendants 1 and 2. The Defendants 1 and 2 had not filed any written statement and Defendants 1 and 2 called absent and set exparte on 15.09.2022 and there was no representation for the 3rd Defendant and 3rd defendant called absent and set exparte on 01.12.2021.

4. Now the Point for Consideration is Whether the Plaintiff is entitled for the relief of recovery of money or not?

5. In order to prove the case of the Plaintiff, the Plaintiff Tr. R.N. Ramanathan himself was examined as P.W. 1 and through him Ex. A-1 to Ex. A-4 were marked. The Defendants 1 and 2 was represented by their Counsels. But the Defendants 1 and 2 had not filed any written statement and Defendants 1 and 2 called absent and set

exparte on 15.09.2022 and there was no representation for the 3rd Defendant and the 3rd defendant called absent and set exparte on 01.12.2021. Original unregistered Simple Mortgage deed in favour of Plaintiff dated 10.07.2016 is marked as Ex. A-1, Copy of the Legal Notice sent to the Defendants dated 02.02.2019 is marked as Ex. A-2, Postal acknowledgments of the Defendants -3 numbers is marked as Ex. A-3 and the Copy of Aadhar card of Plaintiff Tr. R.N. Ramanathan is marked as Ex. A-4. The defendants remained exparte, hence there was no oral and documentary evidence adduced by the defendants.

6. This is a suit filed by the Plaintiff seeking for the relief of recovery of Rs. 4,98,000/- from the Defendants along with interest at the rate of 24% per annum from the date of plaintiff till the date of realization.

7. The Defendants 1 and 2 had approached the Plaintiff on 10.07.2016 for a sum of Rs. 3,00,000/- to meet their urgent family expenses and for the needs of the 3rd defendant. The 1st and 2nd defendants had jointly executed unregistered simple mortgage deed dated 10.07.2016 in respect of property situated at Door No.11/26-D, Srinivasa Perumal Koil 1st Street, Thiruvottiyur Village, Thiruvallur District more fully described in the schedule and the Simple Mortgage deed is marked as Ex. A-1. The Defendants had agreed and undertook to repay the said amount together with interest at the rate of 24% per annum and agreed to pay interest every month on or before 12th day of every English Calendar month. As per the promise made by the Defendants, the Defendants had not repaid the principal along with interest. Hence the plaintiff sent Legal notice to the defendants on 02.02.2019 calling upon the defendant to pay the interest and the principal and the said Legal Notice is marked as Ex. A-2. The Defendants received the said Ex. A-2 Legal notice and acknowledged the same and the postal acknowledgment is marked as Ex. A-3. But the Defendants had failed to repay either interest or the principal. The Defendants evaded the

payment of the said amount as per the promise made by him.

8. By perusing the records, it found that the Defendants had availed the amount from the Plaintiff for Rs. 3,00,000/- for their family expenses and for the needs of the 3rd defendant and thereafter the Defendants have not repaid the said amount along with interest to the Plaintiff. The Defendants undertook to repay the said amount with interest at the rate of 24% per annum. The Defendants had acknowledged the debt and liability and the Defendants evaded the payment of amount along with interest and the same was established by the Plaintiff by producing the Documents Ex. A-1 to Ex. A-3. The Defendants after availing the amount from the Plaintiff has to be legally bound to repay the same along with interest as per the promise made by the defendant. Sufficient time was given to the Defendants to repay the amount. But the Defendants were neither chosen to give any reply to the legal notice nor failed to repay the entire amount along with interest. The Defendants evaded to pay the amount to the Plaintiff which shows the attitude of the Defendants and the intention to evade the repayment of amount. As on date of filing of the suit, as per Ex. A-1 unregistered Simple Mortgage deed which found that the Defendants are liable to pay the entire amount together with interest. For all the above reasons, this Court comes to the conclusion that the Plaintiff is entitled to the relief of recovery of Rs. 4,98,000/- as claimed by the plaintiff. The plaintiff has satisfactorily established through oral and documentary evidence that the defendants are jointly and severally liable to pay the suit claim.

In the result, this Suit is decreed with costs. The Defendants are directed to pay a sum of Rs. 4,98,000/- (Rupees Four Lakhs and Ninety Eight Thousand only) along with interest at the rate of 6% per annum on the principal amount of Rs.3,00,000/- (Rupees Three Lakhs only) to the Plaintiff from the date of Plaint till the date of realization.

Dictated by me to the stenographer, transcribed by her, corrected and pronounced by me in the open court on this the 2nd day of March, 2023.

**sd/- M. Vasantha Kumar
Subordinate Judge,
Thiruvottiyur.**

PLAINTIFF SIDE EVIDENCE :-

P.W. - 1 - Tr. R.N. Ramanathan (Plaintiff)

PLAINTIFF SIDE EXHIBITS :-

Ex. A-1	10.07.2016	Original unregistered Simple Mortgage deed in favour of the Plaintiff
Ex. A-2	02.02.2019	Copy of Legal Notice sent to the Defendants
Ex. A-3	--	Postal acknowledgments of the defendants 3 numbers
Ex. A-4	--	Copy of Aadhar card of the Plaintiff Tr. R.N. Ramanathan.

DEFENDANT SIDE EVIDENCE AND EXHIBITS :- – NIL –

**sd/- M. Vasantha Kumar
Subordinate Judge,
Thiruvottiyur.**

Draft / Fair Judgment

O.S. No. 84 / 2022

(Previously O.S. No. 206/2019 on
the file of Sub Court, Ponneri)

Dt.02.03.2023

Sub Court,

Thiruvottiyur