

IN THE COURT OF THE SUBORDINATE JUDGE, GINGEE.

Present: Thiru.A. Kadhiravan, B.A., L.L.M.,
Subordinate Judge, Gingee.

Wednesday 15th day of April 2026

O.S.NO.87/2024

CNR No.TNVP -19000-516-2024

Chinnathambu

...Plaintiff

/Vs./

1. Chinnaraji Reddiyar
2. Mani
3. Chitra
4. Vasuki
5. Magalakshmi

...Defendants

The original suit is coming before me for final hearing on 16.03.2026 in the presence of Thiru.V.Sakthirajan, Learned Counsel for the Plaintiff and Tmt.M.J.Manjula Thanikatchalam, Learned Counsel for 3 to 5 defendants and 1, 2 defendants remained exparte and after perusing the plaint, written statement, evidence and also after hearing the arguments of both sides, and having stood over for consideration till this day this court pronounces the following.....

JUDGMENT

This is a suit for mortgage to pass a preliminary decree directing the defendant to pay a sum of Rs.9,76,267/- with subsequent interest on Principal amount of Rs.4,00,000/- from the date of plaint till date of realization and to pass a final decree by bringing the suit properties in public auction sale and to collect the suit amount with the accrued interest and for costs of the suit.

2. Plaint in brief:

That on 01.06.2012, the 1st defendant who was in urgent need of money, by mortgaging the suit property, had secured the sum of Rs.4,00,000/- from the plaintiff and executed the registered mortgage deed whereby he agreed to repay the above amount with the interest at the rate of 12% per annum. That the 1st defendant has not re-paid the principal amount or the interest till date. That meanwhile 3 to 5 defendants have filed a suit for partition in O.S.37/2012 before the Sub Court, Gingee in which by Judgment dated 09.11.2021 the Sub Court, Gingee has decreed the said suit and observed that the present suit mentioned mortgage deed dated 01.06.2012 executed by 1st defendant in favour this plaintiff who was the 5th defendant in said suit was held as executed for the welfare of joint family interest and hence the present defendants are liable to repay the mortgage amount to the present plaintiff. But, despite the plaintiff made repeated request to pay the debt and the interest, the defendants did not heed the same. Hence this suit.

3) The case of the 3 to 5 defendants:-

The defendants in their written statement eventhough denied the plaint averments, have admitted that in O.S.37/2012 it was decided as these defendants have to repay the present suit mortgage, but the filing of the suit is not proper instead of filing an execution petition. Hence prays for dismissal.

4) On the basis of pleadings of the respective parties of this suit, this court on 16.03.2026 framed the following Preliminary issue .

Preliminary Issue:-

1. Whether the suit is hit by Section 11 as per the Judgment in O.S.37/2012 of Sub court, Gingee.?

5) No oral evidence on Plaintiff side and during arguments Judgment in O.S.37/2012 marked as Ex.A1 and no oral or documentary evidence on Defendants side.

6). **Preliminary issue:-**

6.1. Both side arguments heard. While considering the above submissions on both sides, it is admitted on both sides that, vide Judgment in O.S.37/2012 the Sub Court, Gingee has already decided that the 1 to 5 defendants in this suit are liable to repay the amount due under suit mortgage deed dated 01.06.2012. On perusal of Judgment in O.S.37/2012 dated 09.11.2021 in Issue No.3 it was clearly decided that the amount borrowed under the present suit mortgage deed dated 01.06.2012, which was marked as Ex.B8 in said suit, was for the welfare of joint family and hence the present defendants who are the plaintiff's and 1, 2 defendants in said suit are liable to repay the same. While considering this as per section 11 of Civil procedure code,

" No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under which they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such Court."

6.2. As the issue regarding execution of present suit mortgage deed dated 01.06.2012 was been the Issue No.3 in above suit in O.S.37/2012, which was already decided finally in above suit, this court holds that the present suit is hit by Principle of Res Judicata under section 11 of code of civil procedure, in view of Sub Court, Gingee.

Judgment dated 09.11.2021 in O.S.37/2012. Preliminary Issue is answered accordingly.

7). In the result this suit is dismissed as hit by Principle of Res Judicata under section 11 of code of civil procedure, in view of Judgment dated 09.11.2021 in O.S.37/2012. No Costs.

Dictated to the Steno-typist and typed by her directly on the computer, edited, print out was taken and pronounced by me in the open court, on this the 15th day of April 2026.

Subordinate Judge,
Gingee.

List of Plaintiff's Witnesses: Nil

List of Plaintiff's Exhibits:

Ex.A1 - Copy of Judgment dated 09.11.2021 in O.S.37/2012.

List of defendant's Witnesses & Exhibits: Nil

Subordinate Judge,
Gingee.