

TNVR13000488  
2019



**In the Court of Subordinate Judge, Aruppukottai**

**Present : Thiru. R. Sathish, M.L.,  
Subordinate Judge, Aruppukottai.**

**Thursday, the 30<sup>th</sup> Day of April 2026**

**O.S. No.96 of 2019**

1. Veluthayammal(Died)
2. Rajendran
3. Rajavalli
4. Alagu

....

Plaintiffs

/ Vs/

1. Indhra
2. Dhannammal

...

Defendants

(2<sup>nd</sup> to 4<sup>th</sup> plaintiffs & 2<sup>nd</sup> defendant are added as legal heirs of deceased 1<sup>st</sup> plaintiff as per order in I.A.No.2/2022 dated 09.11.2022)

(Plaint is amended as per order in I.A.No.3/2023 dated 25.01.2023)

This Original Suit came up before me for final hearing on 29.04.2026, in the presence of Thiru.A.S.Rajeswari, Advocate for the Plaintiff and Thiru.V. Gurusamy Advocate for the 1<sup>st</sup> Defendant and 2<sup>nd</sup> defendant has remained exparte and upon hearing the arguments on both side and upon perusing the records, having stood over till this date for my consideration, this Court passed the following

**JUDGMENT**

**1.** This Original Suit was filed by the Plaintiff with a prayer to pass preliminary decree for Mortgage for a sum of Rs.2,06,553/- with interest at the rate of 12% p.a. on the principal amount of Rs.52,000/- and for costs.

**2. Brief averments of Plaintiff:-**

The suit property is situated at S. Maraikulam village which is within the jurisdiction of this court. The plaintiff and 1<sup>st</sup> defendant are residing at S.Maraikulam

village of Kariapatti Taluk and the 1<sup>st</sup> defendant in S.No.145/2 for getting electricity connection for the borewell , sub immersible motor and other equipments on 10.11.2009 had obtained Rs.52,000/- as loan and has agreed to pay interest at 1% and agreed to repay the loan within 3 years time. For the loan availed, the 1<sup>st</sup> defendant has mortgaged the property on 10.11.2009 in Doc.No.3292/2009. In the above mortgage deed one Ayyavu has signed as first witness and one Rajendran has signed as 2<sup>nd</sup> witness. The 1<sup>st</sup> defendant had deposited the certified copy of title deed pertaining to patta No.2518 in Doc.No.3292/2009 to the 1<sup>st</sup> plaintiff.

The 1<sup>st</sup> defendant had agreed to return the mortgage loan within three years time and to redeem the mortgage . Further in the event of 1<sup>st</sup> defendant failing to pay the interest and the principal, the interest to be calculated at the rate of 2% per Rs.100/- and the amount shall be recovered from the property of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant had not repaid the loan or the interest towards the amount borrowed and the 1<sup>st</sup> plaintiff inspite of seeking a number of times, the 1<sup>st</sup> defendant has not chosen to repay the same and was delaying things. The 1<sup>st</sup> defendant in order to deceive the 1<sup>st</sup> plaintiff had acted and on 02.05.2019 he has issued a legal notice and the same has been received on 03.05.2019 and has not given any reply. For the mortgage loan availed for a sum of Rs.52,000/-, the defendant is bound to pay the interest for the same. Hence the suit has been filed for the mortgage loan availed on 10.11.2009 for Rs.52,000/- and for the above amount a sum of Rs.28,080/- is to be paid as interest at the rate of 1.50% interest and the interest from 11.11.2012 to till the payment of the mortgage loan is at the rate of Rs.2/- per Rs.100/-. The 1<sup>st</sup> defendant is bound to pay the amount failing which the suit property has to be brought to auction and as such to pass a preliminary decree in this regard is to be passed. During the pendency of the suit, the 1<sup>st</sup> plaintiff has died on 22.06.2020 and 2<sup>nd</sup> to 4<sup>th</sup> plaintiff and the 2<sup>nd</sup> defendant are the legal heirs and as such they were impleaded as party to the case proceedings.

### **3. Brief averments of written statement filed by defendant:-**

The defendant has denied the averments stated in the plaint except those that

are specifically admitted. The defendant would contend that the suit property has been purchased by him by availing TAHDCO loan . The defendant belongs to Paraiyar community and in the TAHDCO Scheme loan has been availed. The defendant cannot encumber the suit property and the loan is yet to be paid by the defendant towards TAHDCO and at this juncture the plaintiff's husband had sought to sell the suit property to the defendant and the defendant had replied that the suit property has been purchased by availing TAHDCO loan and as such sale could not be made. Meanwhile the plaintiff's husband in November 2009 had stated to the defendant that he will get drought relief loan from the Government and stating so has got executed a mortgage deed in the name of his wife who is the plaintiff herein. The defendant is an illiterate and the defendant believing the words of the plaintiff's husband that relief will be given from the Government had signed in the Sub Registrar Office. The defendant came to know about the mortgage made in the name of the plaintiff only on the receipt of the summons. The defendant has not obtained any mortgage loan from the plaintiff and the defendant has not executed any mortgage deed. The plaintiff's husband by deception has got executed the mortgage deed and plaintiff is bound to prove the mortgage through witnesses and the mortgage deed is not valid and as such the relief sought by the plaintiff cannot be granted.

4. On the basis of Plaint and Written Statement the following Issues were settled for trial:

1. Whether the Plaintiff is entitled for the relief sought for?
2. Is there any other relief to plaintiff?

5. Both side arguments heard and perused the records. On the side of the Plaintiff, Plaintiff has been examined as P.W.1 and Ex.A1 to Ex.A.5 have been marked. On the side of the Defendant, Defendant has been examined as D.W.1 and One Manjula, Assistant Manager of TAHDCO has been examined as D.W.2 and Ex.B.1 & Ex.X1 to Ex.X.4 have been marked.

**6. Issue No.1:-**

The case of the plaintiff is that the suit property is situated at S.Maraikulam, Kariapatti Taluk which is within the jurisdiction of this court. The 1<sup>st</sup> defendant is residing at S.Maraikulam and the suit property in S.No.145/2 belongs to him, for which borewell, electricity connection, sub immersible motor and other equipments has to be purchased. Hence, for the same a sum of Rs.52,000/- has been availed as loan. The defendant had agreed to pay interest for the loan availed and the 1<sup>st</sup> defendant had mortgaged the suit property on 10.11.2009 for the loan availed in Doc.No.3292/2009 and has also undertaken to redeem the mortgage after payment of loan availed. Further for the above mortgage loan one Ayyavu and one Rajendran had signed as witnesses and the 1<sup>st</sup> defendant had deposited the certified copy of title deeds bearing patta No.2518 in Doc.No.3292/2009 to the 1<sup>st</sup> plaintiff.

7. The plaintiff would contend that the defendant has not chosen to repay the loan availed within 3 years time and at that juncture, the plaintiff had contacted him but the defendant was delaying things. The plaintiff had caused legal notice to the defendant seeking to repay the loan and inspite of receiving the the legal notice, the defendant has not paid the loan availed and as such the plaintiff has come forward with the present suit for passing preliminary decree on the basis of the mortgage.

8. The 1<sup>st</sup> defendant has denied the averments stated in the plaint and would contend that the suit property has been purchased through TAHDCO and the same is purchased under Adi Dravidar Welfare Scheme. Further the defendant cannot encumber or alienate the suit property and the loan availed from TAHDCO has not been settled so far and at this juncture the plaintiff cannot seek for preliminary decree. Moreover the mortgage deed alleged by the plaintiff is not executed by the defendant and the plaintiff's husband in November 2009 claiming to get the drought relief fund for her had got the mortgage deed registered in the name of his wife and signature has been affixed in the Sub Registrar Office. The above aspect came to the knowledge of the defendant only of late and as such has sought to dismiss the suit.

9. The plaintiff advanced her arguments on the basis that she has put forth the case through valid oral and documentary evidence in line with the pleadings and has marked Ex.A.1 to Ex.A.5 and would contend that having proved her case has sought to decree the suit. The plaintiff would contend that the defendant had admitted the execution of mortgage deed and the existence of suit property at S.Maraikulam village. The plaintiff has placed reliance upon the pleadings of the 1<sup>st</sup> defendant.

10. A go through of the pleadings of the 1<sup>st</sup> defendant would reveal that the suit property is situated at S.Maraikulam Village and it is the specific case of the defendant that purported mortgage deed which is marked as Ex.A.1 has been executed by the defendant but under the guise that the plaintiff's husband has promised to get drought relief for the defendant and as such the mortgage deed has been executed. Admittedly there is no dispute as to the lie & location of the suit property and execution of mortgage deed that has been marked as Ex.A.1 on the side of plaintiff.

11. The 1<sup>st</sup> defendant advanced her arguments on the basis that the plaintiff's husband had taken the defendant in the pretext of getting drought relief loan to the defendant. But somehow by deception got executed the mortgage deed in favour of his wife who is the plaintiff herein. The 1<sup>st</sup> defendant has placed reliance upon the evidence of P.W.1 & D.W.1

P.W.1s evidence

"என் தந்தை தான் உடனிருந்து பிரதிவாதியிடம் வறட்சி நிவாரண தொகை வாங்கி தருவதாக கூறி அழைத்து சென்று மோசடியாக வா.சா.ஆ.1 ஆவணத்தை ஏற்படுத்தி விட்டார் என்றால் சரியல்ல"

D.W.1s evidence

"வா.சா.ஆ.1 வறட்சி நிவாரண திட்டத்தின்கீழ் பணம் பெறுவதாக கூறி 1 ம் வாதியின் கணவரால் ஏற்படுத்தப்பட்டது என்றால் சரிதான்"

A go through of the above evidence reveals that it is the case of 1<sup>st</sup> defendant that Ex A1 has been got executed by plaintiff by way of deception.

12. The plaintiff advanced her arguments on the basis that the defendant has categorically admitted that the mortgage deed has been got executed by the plaintiff by deception and at this juncture the defendant making out a specific case , it is for the defendant to establish the above aspect. The onus is on the part of the defendant as she has admitted the execution of mortgage deed.

13. The records would reveal that the defendant had claimed that the plaintiff's husband got executed a mortgage deed in favour of his wife stating that for the purpose of getting drought relief the defendant was taken along with her and got executed the mortgage deed in favour of the plaintiff. As rightly pointed out by the plaintiff the onus is on the part of the defendant to discharge that the mortgage deed has been executed by the defendant by way of deception.

14. The plaintiff advanced her arguments on the basis that no criminal complaint or other legal action has been preferred as against the plaintiff or her husband for obtaining the mortgage deed in their favour by way of deception. Moreover no such police complaint or action were taken by the defendant to substantiate her bonafide as to the mortgage deed that has been executed. The plaintiff has placed reliance upon the evidence of D.W.1 which is as follows

"வா.சா.ஆ.1 ஆவணம் மோசடியாக ஏற்படுத்தினார் என்று நான் காவல் துறையில் புகார் ஏதும் கொடுத்துள்ளேனா என்றால் இல்லை. வா.சா.ஆ-1 ஆவணம் வறட்சி நிவாரண திட்டத்தின்கீழ் பணம் பெறுவதற்காக மோசடியாக ஏற்படுத்தப்பட்டது என்றும், அதை ரத்து செய்ய வேண்டும் என்றும் பத்திர பதிவு அலுவலகத்தில் நான் மனு ஏதும் கொடுத்துள்ளேனா என்றால் இல்லை"

The above evidence reveals that no proceedings has been initiated as against the plaintiff for getting executed the mortgage deed in plaintiffs favour which would mean that an adverse inference has to be drawn against the 1<sup>st</sup> defendant .

15. The defendant advanced her arguments on the basis that the suit property has been purchased by the 1<sup>st</sup> defendant from TAHDCO for the welfare of Adi Dravidar Welfare Scheme and there is a specific clause barring anyone from

encumbering or alienating the suit property for the period of 10 years and the suit property alleged to have been mortgaged will not confer any right or premium to the plaintiff as the property could not be brought for sale as the said required period has not lapsed so far. The defendant has placed reliance upon the evidence of D.W.2 in support of her contention which is as follows:-

D.W.2's evidence

"19.12.2007 ல் தாட் கோ மேலாளர் கடன் பெறுபவர்களுக்கு நிபந்தனையுடன் கூடிய செயல்முறை ஆணை பிரதிவாதிக்கு பிறப்பித்துள்ளார். அது சா.சா.ஆ.2. சா.சா.ஆ.2 ல் 6 வது காலத்தில் சொல்லப்பட்டுள்ள நிபந்தனையின்படி பிரதிவாதி கிரையம் பெற்ற அசல் பத்திரத்தை எங்கள் அலுவலகத்தில் ஒப்படைக்க வேண்டும் என்றும், அதற்கு ஆதரவாக எங்கள் அலுவலகத்தில் Deposit of Title Deeds பதிந்து கொடுக்க வேண்டும் என்றும், கிரையம் பெற்ற பிரதிவாதி சொத்தை 10 வருடங்களுக்கே வேறு நபர்களுக்கு விற்கவோ, ஈடு செய்யவோ முடியாது என்றும் நிபந்தனையுடன் கடன் வழங்கப்பட்டுள்ளது..... மேற்படி இந்திரா கடனை கட்டி முடித்து விட்டாரா என்றால் இல்லை. வட்டி மற்றும் அபராத வட்டியும் அவர் கட்டி முடிக்கவில்லை..... தாட் கோ மூலம் வாங்கப்பட்ட சொத்துக்கள் சம்பந்தமாக வேறு வில்லங்கம் ஏற்படுத்தினால் அது செல்லாது."

A go through of the above evidence and Ex X1 to X 4 would reveal that the suit property has been purchased by the defendant by availing loan from TAHDCO in this regard D.W.2 who is the Assistant Manager of TAHDCO has specifically stated that the suit property cannot be encumbered or alienated. Further it is also specifically stated that the loan amount has not been realized so far.

**16.** The plaintiff advanced her arguments on the basis that only for 10 years time the suit property cannot be encumbered or alienated and beyond the above said period the suit property can be encumbered. The plaintiff has also cross examined as to the steps taken by the TAHDCO for realization of the loan amount availed by the defendant. The relevant portion of D.W.2's evidence are as follows:-

D.W.2's evidence

"தாட்கோவில் ஡ெற்ற கடணை 1 ம் பிரதிவாதி திரும்ப செலுத்தாத நிலையில் அவரிமிருந்து அதை வசூல் செய்வதற்கு நடவடிக்கை எதுவும் தாட்கோவின்மூலம் எடுக்கவில்லை. .... 1 ம் பிரதிவாதி கடணை செலுத்தாத நிலையில் கடணை திரும்ப செலுத்தக்கோரி தாட்கோ மூலம் சட்டப்பூர்வ அறிவிப்பு எதுவும் அனுப்பப்படவில்லை...10.11.2009 ம் வருடம் ஡ெற்ற கடன் தொகையானது தற்போது 10 வருடங்களுக்கு மேலாகிவிட்டதால் அந்த கடன் தொகையை வசூலிக்கும்பொருட்டு 1 ம் பிரதிவாதிக்கு சொந்தமான தாவா பிராது சொத்துக்களின்மீது சட்ட நடவடிக்கை எடுப்பதற்கு தாட்கோவின் நிபந்தனைகள் எதுவும் தடையாக இருக்க முடியாது என்றால் சரியல்ல."

A go through of the above evidence would reveal that it is the specific case of the plaintiff that the loan availed by the defendant by way of mortgage deed can be proceeded further as the property has been purchased under TAHDCO scheme 10 years back in 2009 and no steps has been taken by the TAHDCO for realization of the amount.

17. Admittedly the suit property has been mortgaged in the year 2009 and the suit has been initiated in the year 2019 which is 10 years after TAHDCO loan has been availed and at this juncture the claim of defendant that the loan cannot be realized by way of initiating proceedings as against the defendant is not sustainable and even if there is any loan amount to be collected by TAHDCO, it is for them to take appropriate steps and the evidence on record shows that as on date there is no steps being taken by the TAHDCO for recovery of money. It is pertinent to note that the mortgage deed has been executed in the year 2009, but till 2019 the suit has not been initiated by the plaintiff herein and by 2019 the 10 years period within which the suit property cannot be alienated or encumbered has got lapsed. The debt of the plaintiff is a secured debt and the claim of defendant on the ground that the suit property is purchased from the loan availed in TAHDCO and that by itself the plaintiff cannot proceed against the defendant is not correct.

**18.** The plaintiff would contend that she had dispelled the initial burden cast upon her as to the execution of mortgage deed and there is no bar for legally enforcing the debt. Further the plaintiff would contend that the defendant had defaulted in payment of loan availed on the basis of mortgage deed and as the defendant has not paid the amount and the claim of plaintiff has not been realized. The legal notice has been issued by the plaintiff and the same has been received by the defendant. Further the defendant having received the above legal notice has not turned up to repay the loan. The plaintiff has marked the legal notice and the acknowledgement card as Ex.A.2 & Ex.A.3. A go through of the above documents would reveal that the plaintiff has caused legal notice as against the defendant seeking to repay the loan availed by the defendant, but inspite of the legal notice issued by the plaintiff, the defendant has not chosen to settle the loan amount.

**19.** The plaintiff through the valid oral and documentary evidence has putforth that the mortgage deed has been executed by the defendant herein. Though it is the case of the defendant that mortgage deed has not been executed as alleged by the plaintiff and only in the pretext of getting drought welfare fund the same has been executed, no material evidence has been placed before this court to substantiate her claim. The plaintiff has also caused legal notice to the defendant seeking for the payment of loan availed through mortgage and inspite of the same the defendant has not chosen to repay the same. The plaintiff having dispelled the initial burden cast upon her and the defendant claiming the plaintiff to have forged the mortgage deed has not established the above aspect.

**20.** Though it is the claim of the defendant that the suit property has been purchased by availing loan from TAHDCO and the suit property cannot be encumbered for 10 years period, it is brought to the notice of this court that the property has been purchased as early as in the year 2009 itself and as such the plaintiff can very well maintain the suit and there is no bar for proceeding as against the suit property and even if there is any arrears of loan for TAHDCO, it is for them to proceed as against the defendant in the manner known to law. The plaintiff having

established her case in consonance with the pleadings is as such entitled to the get the relief of preliminary decree for mortgage.

21. Hence issue no.1 is answered in favour of plaintiff.

22. Issue No.2: Since, issue No.1 is answered in favour of the plaintiff, no other relief is granted.

23. In the result the suit is decreed with costs. A Preliminary decree on mortgage is passed and the 1<sup>st</sup> Defendant is directed to pay a sum of Rs.2,06,553/- with interest at the rate of 9% p.a. from the date of plaint till the date of decree and at the rate of 6% p.a. from the date of decree till date of realization on the principal amount of Rs.52,000/-.

Dictated to the Stenographer and transcribed and typed by her in the computer and after correction, this Judgment is pronounced by me in the Open Court this the 30<sup>th</sup> day of April 2026.

Subordinate Judge,  
Aruppukottai.

**Witnesses examined on the side of the Plaintiffs:-**

P.W.1. Rajendran (2<sup>nd</sup> Plaintiff)

**Documents marked on the side of the Plaintiffs:-**

Ex.A.1. 10.11.2009 Mortgage Deed executed by 1<sup>st</sup> Defendant in favour of 1<sup>st</sup> Plaintiff

Ex.A.2. 02.05.2019 Legal Notice

Ex.A.3. 03.05.2019 Acknowledgement Card

Ex.A.4. 22.06.2020 Death Certificate of 1<sup>st</sup> plaintiff

Ex.A.5. --- Legal Heir Certificate of 1<sup>st</sup> plaintiff

**Witnesses examined on the side of the Defendants:-**

D.W.1. Indhra (1<sup>st</sup> Defendant)

D.W.2. Manjula (Assistant Manager)

**Documents filed on the side of the Defendants:-**

Ex.B.1. 26.02.2008 Sale Deed in the name of 1<sup>st</sup> Defendant

**Witness side Exhibits:-**

- Ex.X.1. 10.03.2008 Proceedings of District Officer, TAHDCO, Virudhunagar
- Ex.X.2. 19.12.2007 Proceedings of District Officer, TAHDCO, Virudhunagar
- Ex.X.2. 26.12.2007 Letter of the District Officer, TAHDCO, Virudhunagar to  
The Sub Registrar, Kariapatti
- Ex.X.4. 01.09.2008 Copy of Mortgage Deed

Subordinate Judge,  
Aruppukottai.

Sub Court, Aruppukottai  
O.S. No.96 of 2019  
Fair/Draft Judgment  
Dated: 30.04.2026