IN THE COURT OF THE SUBORDINATE JUDGE,
PADMANABHAPURAM
Present: Tmt. K. Renugadevi, L.L.M.,
Subordinate Judge.
Tuesday, the 24th day of September, 2019.
Original Suit No.79/2014

M. Christhu Rajan ... Plaintiff

Vs.

D. Isac Jane ... Defendant

This suit is coming on 5th day of September 2019 before me for final hearing, in the presence of Thiruvalagal. V.N. Biju, S.K. Ajithkumar Advocates for the plaintiff, and Thiru.K. Gopakumar Advocate for the defendant and upon hearing the both side arguments, upon perusing the case records and having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

This is a suit filed by the plaintiff to pass a preliminary decree in favour of the plaintiff for recovery of the sum of Rs.4,41,000/- with interest at the rate of 12% per annum on the principal amount of Rs.3,00,000/- till the date of recovery, together with the cost of this suit to be recovered from the defendant, and his assets both movable and immovable properties including the hypothecated property.

2. The case of the plaint in nutshell in brief:-

The plaintiff has filed the suit for recovery of amount of Rs.4,41,000/- on the ground that on 27.11.2009, the defendant borrowed a sum of Rs.3,00,000/- from the plaintiff and executed a registered hypothecation bond in document No.2339/2009 with respect to the defendant's property and agreed to pay the interest of 12% per annum for the loan amount. Thereafter he paid interest till

May 2010 and thereafter defaulted to pay the interest in spite of repeated demands and successfully dragged till 05.04.2014. Therefore the plaintiff issued notice to the defendant on 07.04.2014 demanding the defendant to repay the principal amount along with interest as agreed. But the defendant has not settled the amount and so the present suit is filed.

3. **The case of the Written statement of defendant averments in brief:-**

The defendant admitted the borrowal of Rs.3,00,000/- on 27.11.2009 and also the interest. However, the defendant denied the execution of hypothecation bond rather he would show that he executed only promissory note for the loan amount. He further alleged that as per the promissory note he paid interest till January 2014. No notice was sent to the defendant's residence. As the plaintiff well aware of the fact that the defendant is residing at Nesamony Nagar for his business purpose from 2012. Further the suit is barred by limitation. However he is ready to pay the loan amount in installments and so sought to dismiss the suit.

4. On the basis of the averments of the plaint and written statement and upon hearing both sides, this court framed the following issues:-

1. Whether the defendant borrowed Rs.3,00,000/- and executed pronote?
2. What other relief?

5. On the side of the Plaintiff, Plaintiff was examined as PW1 through him Ext. A1 to A4 were marked and one Thiru. C. Michael Dhas was examined as PW2. On the side of the defendant, defendant

was examined as DW1 and no exhibits were marked through him.

6. Issue No.1

The learned counsel for the plaintiff argued that the defendant had admitted the borrowal from the plaintiff. However he denied the execution of hypothecation bond. Whereas Ext.A1 is the registered hypothecation bond and the defendant found to be literate person and therefore the presumption is always in favour of the registered document and the contrary has to be proved by the defendant. But no such evidence is available. Further the plaintiff counsel argued that the defendant has not produced a document to substantiate that he paid interest till January 2014. And therefore as per the Ext.A1 hypothecation bond the plaintiff is entitled for bringing the schedule property for the sale if the defendant fails to pay the amount within the stipulated time given by this court.

7. On the other hand the learned counsel for the defendant argued that though the borrowal is admitted, it is a specific case of the defendant that he paid interest till January 2014. Even as per Ext. A1 deed, the plaintiff has to give receipt for the interest amount. But PW1 through his cross examination has denied the issuance of receipt for the interest amount paid by the defendant and therefore there is no document on the side of the defendant to produce before this court. However no prudent man will wait for such a long period to initiate action against the defaulted defendant if really the defendant has not paid the interest from May 2010 and therefore the conduct of the plaintiff itself would prove the case of the defendant, that the defendant has paid interest till January 2014 and so, the plaintiff has

not taken steps till then. But due to his loss of business he could not pay the interest and argued fairly that the defendant is ready to pay the loan amount if sufficient time is given to the defendant excluding the rate of interest mentioned by the plaintiff till January 2014. However the learned counsel for the plaintiff sternly refused to accept the same on the ground that the defendant has failed to prove the payment of interest from May 2010 to January 2014 and so this court posted the case for judgment.

8. **Rival Submissions considered, records perused:**

It is an admitted fact that on 27.11.2009 defendant borrowed a sum of Rs.3,00,000/- from the plaintiff. However the defendant denied the execution of Ext. A1 hypothecation bond. It is seen that Ext. A1 found be a simple mortgage deed in which the defendant agreed to mortgage the plaint schedule property for the loan amount. The court fee is also paid under section 33 of the Tamil Nadu Court Fees Act.

9. Even though the plaintiff denied the execution of the hypothecation bond the defendant did not deny signature found in Ext.A1 simple mortgage deed. Moreover Ext.A1 found be a registered document. And therefore presumption is available in favour of the registered document and the contrary has to be proved by the defendant. But no such evidence is available to rebut the execution of Ext.A1 mortgage deed. That apart though it has been stated as hypothecation bond in the plaint, Ext.A1 deed discloses to be a simple mortgage deed.

10. Further it has to be seen that whether the defendant has paid interest till January 2014.

11. The plaintiff has claimed interest at the rate of 12% from

May 2010 to till filing of the suit. Whereas the defendant alleged that he paid interest till January 2014. It is admitted by either side that till May 2010, the plaintiff has received the interest. Further from Ext.A1 it is found that the plaintiff has to give receipt for interest amount. But the plaintiff has not issued receipt for the interest paid by the defendant till May 2010 as admitted by the plaintiff in his cross examination. In such circumstance, argument on the side of plaintiff that defendant not produced document to substantiate the payment of interest till January 2014 is not sustainable.

12. On the other hand when the plaintiff says that defendant has not paid interest from May 2010 what prevented the plaintiff from taking action against the defendant from May 2010 is not explained. The argument of the plaintiff's counsel that is the plaintiff and defendant are friends and at request of defendant, no action was initiated could not be believed rather it is a plea created for the purpose of suit. Hence applying section 114 presumption of Indian Evidence Act, this court inclined to presume that is the defendant paid interest till January 2014, and so the plaintiff has not taken action against the defendant from May 2010, and this presumption is not rebutted by the plaintiff by appropriate evidence.

13. Therefore as the defendant admitted the borrowel of Rs.3,00,000/- from the defendant and the payment of interest till January 2014 by the defendant is accepted this court inclined to decree the suit directing the defendant to pay a sum of Rs.3,00,000/- along with 12% interest from February 2014 to till the date of filing of the suit and 9% interest from the date of suit, within two months from the date of judgment, failing which the plaintiff can proceed to file the

final decree application on the expiry of 2 months from the date of judgement for bringing the schedule property for sale.

14. **<u>Issue No.2:-</u>**

No other relief is granted to the plaintiff.

In the result, the preliminary decree is passed directing the defendant to pay the plaintiff a sum of Rs.3,00,000/- along with 12% interest from February 2014 to till the date of filing of the suit and 9% interest from the date of suit till date, within two months from the date of judgment, failing which the plaintiff can proceed to file the final decree application for bringing the schedule property for sale. No cost ordered considering the facts and circumstances of the case.

Dictated to the Steno-typist by me, taken down by her in shorthand, transcribed and typed by her and after making necessary corrections, this Judgment pronounced by me in the open court, this the 24th day of September 2019.

Subordinate Judge,
Padmanabhapuram.

APPENDIX:-

**Witness examined by the Plaintiff:-**

P.W.1.. Thiru. M. Christhu Rajan (Plaintiff)

P.W.2.. Thiru. Michael Dhas

Witness examined by the Defendant:-

D.W.1 .. Thiru.D. Isac Jane (Defendant)

**Exhibit marked by the Plaintiff:-**

| | | | |
|---|---|---|---|
| 1. | 27.11.2009 | : | Registered hyopothecation deed executed by defendant in favour of plaintiff |
| 2. | 07.04.2014 | : | Suit notice with postal receipt |
| 3. | 17.04.2014 | : | Return notice as unclaimed |
| 4. | 05.03.2013 | : | Encumbrance certificate |

**Exhibit marked by the defendant:-**

NIL

S.J.