



A.S.No.891 of 1993

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.12.2022

PRONOUNCED ON : 07.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

A.S.No.891 of 1993

1.Sornam Servai (Died)

...Plaintiff/
Appellant

2.xxxxxxx

*(2nd appellant is deleted as per order of
this Court dated 25.08.2021 made in
C.M.P(MD)Nos.1916 of 2021 and 2707
of 2017 in A.S(MD)No.891 of 1993)*

Vs

1.Chandrasekaran

2.Jothilakshmanan

3.Subbulakshmi

...Defendants 1 to 3/
Respondents 1 to 3

4.Gayathri

5.Thilagavathi

6.Karthik

7.Sornaprasanna

8.Ranjani

9.Vijayalakshmi

10.Sundarambal

11.Sornalingam



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12.Sumathi.

... Respondents

(R4 to R12 are brought on record as legal heirs of the deceased 1st appellant-Sornam Servai vide Court order dated 25.08.2021 in C.M.P(MD)Nos.1916 of 2021 and 2707 of 2017 in A.S(MD)No. 891 of 1993)

PRAYER: Appeal Suit filed under Section 96 of Code of Civil Procedure Code, to set aside the judgment and decree dated 28.07.1993 passed in O.S.No.6 of 1992 on the file of Sub Court, Devakottai.

For Appellant	: Mr.P.Mani
For R1 & R2	: M/s.A.L.Gandhimathi
For R3	: Mr.R.Thamarai Selvan
For R5 to R7	: Mr.S.Gopi
For R11	: Mr.S.Mani Kandan
For R4 & R8 to R12	: No Appearance

JUDGMENT

The unsuccessful plaintiff is the appellant in the appeal. The appeal is filed against the judgment and decree of the trial Court, dated 28.07.1993 passed in O.S.No.6 of 1992 for recovery of money on a mortgage.

2. The facts pithily stated are as follows:

The defendants 1 and 2 are brothers and the third defendant is the mother of the defendants 1 and 2. The second defendant was a minor at the relevant period. The defendants 1 and 3 approached the plaintiff for a loan of



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Rs.65,000/- for settling the joint family debts and for the educational expenses of the second defendant. The plaintiff advanced the loan on 13.06.1988 and on the same date, the defendants 1 and 3 executed a registered mortgage deed agreeing to repay the sum of Rs.65,000/- @ 1% interest within a period of 12 months. The defendants 1 to 3 further agreed to pay penal interest in case of failure to repay within the stipulated period. The plaintiff in the plaint stated that he was waiving penal interest. As the defendants 1 to 3 did not pay any amount either towards principal or interest, the plaintiff sent a notice on 24.10.1989 calling upon the defendants 1 to 3 to repay the loan. The defendants 1 to 3 sent a reply on 03.11.1989 denying the borrowal and the execution of the mortgage. The plaintiff having failed in his attempts to arrive at an amicable settlement through the panchayatdars filed the above suit.

3. The first defendant remained exparte and the defendants 2 and 3 filed separate written statements denying the suit transaction. The second defendant apart from denying the borrowal of Rs.65,000/- stated that the third defendant could not act as his guardian as the father as natural guardian was alive. The second defendant further submitted that there was no necessity for the loan and the recital in the mortgage deed as if the money was borrowed for his educational expenses was untrue as he was granted scholarship for his



education. The second defendant further contended that the mortgage was not binding on him either personally or in respect of his share in the property.

4. The third defendant, who filed a separate written statement traced the title to the suit property to a settlement deed, dated 09.06.1983 executed by her father-in-law, Lakshmana Konar, in favour of the defendants 1 and 2. The third defendant therefore denied that the suit property was joint family property. The third defendant stated that the mortgage deed was invalid as it was against the provisions of the Hindu Minority and Guardianship Act which provides that the father is the natural guardian and the defacto guardian could not deal with the minor's property without the permission of the competent Court.

5. The third defendant further narrated the circumstances under which the mortgage deed was executed. According to the third defendant, the mortgage deed was obtained by threat and coercion. The third defendant denied the passing of any consideration as alleged by the plaintiff under the mortgage deed. For these and other reasons spelt out in the written statement, the defendants 2 and 3 prayed for the dismissal of the suit.



6. In the trial Court, the plaintiff and 3 witnesses were examined and 1 document was marked on behalf of the plaintiff and for the defendants, the third defendant examined herself and marked 1 document. The trial Court framed the following issues:

1. *gpujpthjpf; thjpaplk; &.65>000/-;jpid khjk; &. 100/-;F &.1 tPjk; tl;b Nrhl;j;J jUtjhf xg;Gf;nfhz;L> Nkw;gb njhifia 13.06.88-y; ngw;Wf;nfhz;L mlkhdg;gj;jpuk; vOjp gjpe;J je;jJ cz;ikah?*

2. *3k; gpujpthjp Nkw;gb mlkhdg;gj;jpuj;jpy; 2k; gpujpthjpapd; ghJfhtyuhf nray;gl;lJ cz;ikah?*

3. *il fld; 2k; gpujpthjpiaf; fl;Lg;gLj;Jkh?*

4. *tl;b tPjk; rl;lg;gb mjpfkhdjh?*

5. *1>3> gpujpf; el;jp te;j =nry;ttpehafh; FLk;g ey Nrkgp;Gj;jpl;l;jpy; thjpf;Fk;> 3k; gpujpthjpapd; fzth; jpahfuh[d; kw;Wk; Vokiy vd;gtUf;Fk; ju Ntz;ba ghf;fpf;fhfTk;> jhth mlkhdg;gj;jpuk; gaKWj;jp vOjp thq;fg;gl;ljh?*

6. *thjpf;F gpujpthjpf; ve;;jnthU njhifAk;> juNtz;baJ ,y;iyah?*

7. The trial Court on an appreciation of the entire evidence on record dismissed the suit with costs on its finding that the suit mortgage deed was invalid as it was obtained by threat and coercion and further, the mortgage deed was not binding on the second defendant as the third defendant was not the natural guardian of the second defendant.



8. Aggrieved by the judgment and decree of the trial Court, the plaintiff has filed the above appeal. For the sake of convenience, the parties will be referred to as per their rank in the suit.

9. The learned counsel for the plaintiff raised the following questions at the time of hearing.

1. The trial Court erred in its finding that the mortgage deed was invalid as it was obtained by threat and coercion.

2. The trial Court failed to note that the third defendant was competent to execute the mortgage in favour of the plaintiff and as such the mortgage was valid and binding on the second defendant.

3. That the mortgage was proved by examining one of the attestors and the scribe and hence, the mortgage deed ought to have been held to be valid.

10. The learned counsel for the defendants on the other hand submitted that the findings of the trial Court were unassailable and deserved to be confirmed. The learned counsel relied on few judgments in support of her contention that the mortgage deed executed by the third defendant on behalf of the second defendant as a guardian was not valid for want of permission from the competent Court.



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11. I have heard both the learned counsels and skimmed through the records.

12. The points that raise up for determination are as follows:

1. Whether the suit mortgage is valid and binding on the defendants.
2. Whether in the absence of permission from competent Court under Section 8 (2) (a) of the Hindu Minority and Guardianship Act, 1956, suit mortgage is binding on the second defendant.

13. Both the points will be taken up together as they are inter-wound.

14. The relationship of the defendants is not disputed. It is the case of the plaintiff that he had advanced a loan of Rs.65,000/- at 1 % interest to the defendants as they needed the same for family necessity and for the educational expenses of the second defendant. According to the plaintiff, the suit registered mortgage, dated 13.06.1988 was given as security for the above loan. On the other hand, the defendants contended that the suit mortgage dated 13.06.1988 was invalid as no consideration passed thereunder and the same was obtained under threat and coercion. According to the third defendant, there were certain chit transactions between the plaintiff and the third defendant's husband. Under the said transaction, the plaintiff agreed to



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pay Rs.4,000/- per month for 25 months and further agreed not to ask for the amount till the period of the scheme and joined the same on 08.07.1987.

Contrary to the said understanding, the plaintiff on 13.06.1988 entered the defendant's house along with his henchmen and demanded the defendants to settle the chit amounts of plaintiff as also one Dr.Elumalai and Karrupiah Ambalam, who were also members of the chit scheme promoted by the third defendant's husband. Though the third defendant pleaded that the plaintiff's amount would be settled at the end of the chit period (ie) 08.09.1989 and that she had no knowledge of the amounts due by the first defendant and her husband, the plaintiff threatened her and her family with dire consequences and forced her and the first defendant to sign the mortgage deed with further warning that she should appear before the Registrar and register the same. The plaintiff dared the defendant to complain to the authorities and further threatened to kill the defendants and her husband if she defied his warning. The defendants further stated that absolutely no consideration passed under the mortgage.

15. The plaintiff having approached the Court for the relief of recovery of money on the suit mortgage, the initial burden to prove the validity of the suit mortgage is on the plaintiff.



16. It is the specific case of the plaintiff that an amount of Rs.65,000/- was advanced to the defendants on 13.06.1988 and on the same day, the defendants executed the registered mortgage deed agreeing to repay the sum of Rs.65,000/- along with 1% interest within 12 months. So, according to the plaintiff the payment of the loan amount of Rs.65,000/-, the execution of the mortgage and the registration of the same took place on 13.06.1988. In this Context, the evidence of the plaintiff as P.W.1 is as follows:

“13.06.88 md;W gjpT mYtyfj;jpy; gj;jpuk; gjpe;j me;W gfy; 12 kzp;f;F gzk; nfhlj;Njd;. md;W gfy; 3 kzp;f;F gj;jpuk; gjpT nra;;ag;gl;IJ.”

17. When this evidence is contrasted with the evidence of P.W.3, the scribe of the document, the contradiction in the evidence will be lucid. P.W.3 in his chief examination stated as follows:

“15.06.88-e; Njjpad;Nw gj;jpuk; kjpaj;jpw;F Nky; gjpT nra;ag;gl;IJ.”

18. The above evidence of the plaintiff and his own witness P.W.3 raises a doubt on the veracity of the plaintiff's case. It is further pertinent to note here that P.W.2, the attesting witness does not pointedly refer to the date of execution and registration of the mortgage deed. The evidence of P.W.3 in this regard is as follows:



“88 [d; khjk; xU gfy; 12 kzpf;F gj;jpu mYtyfj;jpy; itj;J
gzk; nfhlj;jhh;fs; md;W gfy; 3 kzpf;F rhh;gjpthsh; mYtyfj;jp;y;
gj;jpuj;jpy; nanaOj;jJg; Nghl;Nld;.”

19. There are conflicting versions on the date of execution and registration of the mortgage deed which raises suspicion on the validity of the mortgage. In my view the icing on the cake is the evidence of the plaintiff's witnesses on the passing of consideration. It is to be noted that the defendant's categorical case is that no consideration was paid and the document was obtained by threat and coercion.

20. The evidence of the plaintiff as regards consideration is as under:

“ehd; &.35>000/- ifap;y; itj;jpUe;Njd;. &.15>000/-f;F ney;
tpw;Nwd;. kPjpj;njhif ifkhj;jhf thq;fpNdd;. ifkhj;jhf
thq;fpath;fspd; ngah; Qhgfkpy;iy. mJ gw;wp Fwpj;J itf;fTk; ,y;iy.
ifkhw;W nfhlj;jth;fsplk; 1 tl;b jUtjhf \$wpNdd;.

vdf;F tq;fpapy; fzf;F ,y;iy vd;Dila tuT nryTfs; rhjhuzkhdJ.

ehd; fld; nfhlj;j fhyj;jpy; &.65>000/- ,Ue;jd vd;gjw;F
vd;dplk; Mjhuk; ,y;iy vJTk; ,y;iy.

65000 nuhf;fkhf nfhlj;Njd;. ehd; &.65>000/- nfhlj;J lhf;lh;
VOkiy> ghz;bad;> jpahfuh[d; mtuJ jk;gp> NrJf;fuR
MfpNahh; ,Ue;jdh;. gzj;ij gj;jpuk; vOjpa uhkr;re;jpud; Kd;G
gpupjthjpfSf;Ff; nfhlj;Njd;. 13.06.88 md;W gjpT mYtyfj;jp;y;
gj;jpuk; gjpe;j md;W gfy; 12 kzpf;F gzk; nfhlj;Njd;.



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vdf;F Mz;L 1f;F tptrhaj;jpypUe;J tUkhdk; &.40>000/-
fpilf;Fk;. jhth fld; nfhLf;Fk; rkaj;jpy; 12 irf;fps;fs; thliff;F
tpl;bUe;Njd;. irf;fps; thlifapy; &.1>000/- fpilf;Fk;.”

21. The evidence of P.W.2 is not helpful to the plaintiff as he does not refer to any specific date. The evidence of P.W.3 demolishes the case of the plaintiff. The evidence of P.W.3 reads as follows:

“13.06.88y; gj;jpu vOjr;nrhd;dhh;fs;. md;Nw gj;jpuk;
vOjpNdd;. gzk; gl;Lthlh nra;tjw;F gw;whf;Fiwahf ,Ug;gjhy;>
kWehs; tUtjhf vd;dplk; nrhy;yp gj;jpuj;ij nfhLj;J tpl;Lg;
Ngha;tpl;lhh;fs;. gpd;dh; 15.06.88y; Kjy; gpupjthjp> thjp 3k;
gpupjthjp> jpahfuh[d;> NrJf;fuR> lhf;lh; VOkIy MfpNahh;fs;
vd; gj;jpu mYtyfj;jpw;F te;jhh;fs;.”

“13.06.88e; Njjp gzk; nfhLf;fg;gltpy;iy. 13.06.88e;
Njjpad;W gzk; nfhLf;fg;glhtpl;lhYk;> ehd; md;W gj;jpuj;jpy;
rhl;rp ifnaOj;Jg; Nghl;Nld;.”

Therefore from the evidence of the plaintiff and the P.W.3 it is not clear when the consideration was actually paid. Further, the evidence of the plaintiff on his capacity to pay the consideration does not inspire the confidence of the Court.

22. The plaintiff and P.W.2 do not deny the fact that they had some chit



dealings with third defendant's husband and the third defendant. The evidence of the plaintiff in this regard is as follows:

“jpahfuh[d; FLk;gj;jpy; rPl;L elj;JtJz;L vd;Wk;> fhiuf;Fbapy; elj;jpa rPl;by; ehd; cWg;gpduhfr; Nrh;e;Njd;. jpahfuh[d; nrhy;ypj;jhd; me;j rPl;by; ehd; Nrh;e;Njd;. ehd; vj;jid rPl;by; Nrh;e;Njd; vd;W Qhgfkpy;iy.

lhf;lh; VOkiy> fUg;igah jpahfuh[d; elj;jpa rPl;by; Mjhaf; fkp\ld; Nfl;L mth;fSf;Fs; jfuhW ,Ue;jJ. rPl;Lf;fk;ngdpapy; &. 17>000/- ghf;fp nfhLf;f Ntz;Lk; vd;gJ rhpay;y. me;j fzf;F Vw;fdNt Kbe;Jtpl;IJ.”

23. The evidence of P.W.2 in this context is as follows:

“ehd; rPl;Lf;F fl;ba gzk; KOtJk; jpUk;g thq;fptpl;Nld; vd;gJ jtW vd;why; mJ rhpay;y. jpahfuh[d; jhd; rPl;Lf;fk;ngdp eph;thfk; gh;h;j;J tUfpwhh;. jpahfuh[d; vd;dplk; rPl;L Mjhaf; fkp\ld; 3850/- gpbj;Jf;nfhz;L kPjp gzj;ij vdf;F nfhLj;jhh; vd;gJk;> mt;thW gpbf;fg;gl;l gzj;ij vdf;F nfhLj;jhh; vd;gJk;> mt;thW gpbf;fg;gl;l gzj;ij Nfl;Nld; vd;gJ rhpay;y. mt;thW thjpAk;> Mjha fkp\ld; gpbf;fhky; KO rPl;Lj;njhifiaAk; jpahfuh[dplk; Nfl;lhh; vd;gJk; rhpay;y. mt;thNw fUg;igah mk;gyKk;> Mjhaf; fkp\ld; gpbf;ff;\$lhJ vd;W jfuhW nra;jhh; vd;gJ vdf;Fj; njhpahJ.’

24. From a conspectus of the evidence of the plaintiff, it can be noted that the plaintiff lacked the wherewithal to pay the consideration for the mortgage. Even as regards the consideration alleged to have been paid there is no consistency in the evidence. The contradictions in the plaintiff and his



witnesses evidence raises a doubt as to the truthfulness of the plaintiff's claim that he paid the consideration of Rs.65,000/- in cash. On the other hand, the very fact that the plaintiff and P.W.2 admit the chit transactions between the third defendant's husband and themselves probalises the defendant's case. One other important aspect that is very relevant is that it was the plaintiff's specific case and also the recital in the mortgage deed recites that the money was advanced for joint family debts and educational expenses of the second defendant. But in his evidence the plaintiff candidly admits that he made no enquiries regarding the same while advancing the loan. The evidence of the plaintiff is as follows:

*“2tJ gpupthjp vd;d gbg;G nryT vd;Wk; Nfl;Lf;nfhs;stpy;iy>
vd;d FLk;gr; nryT vd;Wk; Nfl;Lf;nfhs;stpy;iy. gzk; nfhLf;Fk;
fhyj;jpy; gpupthjpapd; FLk;gj;jpy; fld; ,Ue;jjh vd;gJ vdf;Fj;
njhpahJ. mJ rk;ge;jkhf gpupthjpaplk; ehd; Nfl;Lj;
njhpe;Jnfhs;stpy;iy.”*

25. The defendants on the other hand stated that the second defendant studied on scholarship. In my view on a resume of the entire evidence of the plaintiff and his witnesses the inevitable conclusion is that the plaintiff's case is unbelievable and the plaintiff has miserably failed to prove the validity of the suit mortgage.



26. On the issue of the right of the third defendant to execute the mortgage on behalf of the third defendant who was a minor then, I am of the considered view that the law on the subject is no longer *res integra*. The learned counsel for the respondents relied on the judgment of this Court in the case of *Ammaniamal Vs. M.Palanisami and others*, dated 30.07.2008, wherein, the learned Judge in his inimitable style has culled out the entire case law on the subject and held as follows:

“8....In Mayilswami Chettiar's case, (1969) 1 MLJ 177, a learned Single judge of this Court expressed the view that even where there is a father for the minors alive, the mother can, acting as de facto guardian, of the minors alienate their property for necessity and that the father having attested the mortgage deed, should be deemed to have acquiesced in the mortgage and the alienation would be valid, if it is for necessity. The decisions of this Court in Angammal's case (1980) 1 MLJ 242 and Sundaramoorthy's case (1980) 1 MLJ 486, brought about the distinctions between the law governing a case prior to and after the coming into force of the Hindu Minority and Guardianship Act and there is no scope for applying cases decided without specific reference to the 1956 Act. The observation made in that context on the impact of participation by the father could not be availed of in a case, where there is absolutely no possibility for a de facto guardian to convey or alienate the rights or interests of a minor without prior sanction obtained from a competent Court.”



27. The learned counsel for the appellant relied on the Division Bench judgment of this Court in the case of ***A.R.Deivasigamani Mudaliar Vs T.N.Somasundara Nadar(died) and others*** reported in ***2003 (3) MLJ 91*** to persuade the Court to take a contra view. I have gone through the judgment and I find from a reading of the same that the said judgment is not helpful to the appellant. It is seen that the Hon'ble Division Bench noted the change in law and hence at Paragraph 31 observed as follows:

“31... As far as the decisions relied upon by the learned counsel for the appellant are concerned, they are not applicable as they deal with the powers of the guardian under the provisions of the Hindu Minority and Guardianship Act, 1956 which came into force on 25.08.1956 and before that date the sale in question had taken place and hence, the decisions relied upon by the learned counsel for the appellant, rendered under the provisions of the Hindu Minority and Guardianship Act are not applicable on the facts of the case.”

28. Therefore, I find no infirmity in the trial Court's finding that the suit mortgage deed was not binding on the second defendant.

29. In the light of the discussions made supra, I am of the considered view that the appeal has no merits and the same fails. The judgment and decree of the trial Court is confirmed. The appeal is dismissed. The appellant



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shall pay costs.

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Index : Yes / No

Internet : Yes / No

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To

- 1.The Sub Court, Devakottai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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