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AS No. 511 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10 .07.2026

CORAM

THE HON'BLE MRS.JUSTICE R. KALAIMATHI

**AS No. 511 of 2020
and CMP.No.2288 of 2021 & 6974 of 2020**

K.Rajendran
S/o V.Kumarasamy, Old No.20, New No.43,
Arunachala Gramani Street, Shenoy Nagar,
Chennai 600 030

..Appellant

Vs

Mrs.Dhanabakkiam
W/o Sugumaran, Old No.48, New No.56,
Arunachala Gramani First Street, Shenoy Nagar,
Chennai 600 030

..Respondent

Prayer: First Appeal has been filed under section 96 of Civil Procedure Code, for setting aside the judgement and decree dated 06-12-2019 passed in OS NO.1004 of 2018 on the file of VI Additional City Civil Court at Chennai.

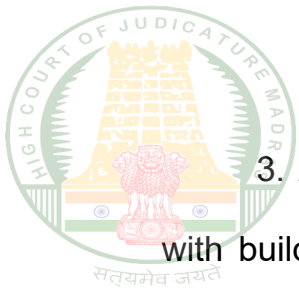
For Appellant: Mr. D.Rajagopal

For Respondent: Mr.A.A.Rajan

JUDGMENT

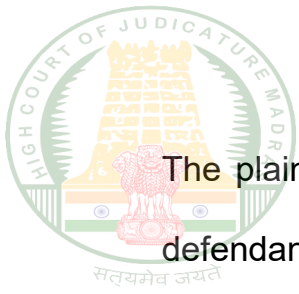
This Appeal Suit is preferred by the defendant against the judgment and decree dated 06.12.2019 passed in OS.No.1004 of 2018 on the file of the VI Additional City Civil Court, Chennai.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.



3. According to the plaintiff, the suit property measuring 750 sq.ft land with building was settled by R.Uma in favour of the defendant by way of a settlement deed dated 07.03.2014. A sum of Rs.6 lakhs, was borrowed by the defendant from the plaintiff as loan. The defendant agreed to repay the said amount with interest at the rate of 24% interest per annum. The defendant is a railway employee and is also doing some business. After a few days of such lending, the defendant executed a deed of mortgage in favour of the plaintiff on 06.03.2015 for the money borrowed by the defendant, and he handed over document to the plaintiff together with the original title deed of the said property. When the plaintiff demanded registration of the said mortgage deed, the defendant refused to register the mortgage. The document dated 06.03.2015 is, therefore, used as a memorandum of borrowal, and the defendant handed over the original title deeds relating to the property to the plaintiff.

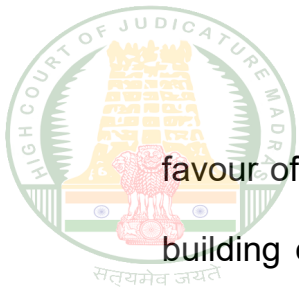
3.1. After the defendant executed the memorandum of borrowal, he has not paid any amount either towards principal or towards interest to the plaintiff. The defendant thereafter created an encumbrance on the property by settling a portion of the property (undivided 250 sq.ft of land with building built thereon) in favour of his brother K.Mani, by way of settlement deed dated 13.03.2015, registered as document No.699 of 2015. The said K.Mani, transferred the said property in favour of his wife M.Lakshmi by way of settlement deed dated 15.12.2015, registered as document No.3270 of 2015.



The plaintiff is not filing the suit in respect of the portion thus settled by the defendant. The suit relates to the property which remains unsettled and remains still with the defendant, being 500 sq.ft with building. The said remaining property is the suit property. The suit is laid for recovery of money of Rs.10, 08,000/- and prays for a charge on the property shown in the suit schedule of property.

4. Per contra, refuting the details found in the plaint by filing a written statement the defendant has stated that the suit schedule mentioned property (in the plaint) was originally owned by the father of the defendant, Kumarasamy. His father Kumarasamy, purchased the larger extent of land and building measuring 2550 sq.ft. under a sale deed registered as document No.1577 of 1970. On the death of Kumarasamy in the year 2003, the suit property and the larger extent purchased by the said Kumarsamy devolved upon his two sons, namely the defendant and his brother K.Mani, equally.

4.1. His brother K.Mani relinquished his undivided share in the property left out by Kumarasamy in favour of the defendant under a release deed dated 29.08.2007, registered as document No.1938 of 2007. The defendant thereafter executed a settlement deed dated 05.09.2007 in favour of his wife R.Uma, registered as document No.1986 of 2007 in respect of the entire extent of 2550 sq.ft of land and building including the suit property. His wife executed a sale deed dated 12.09.2007 in document No.2035 of 2007 in



favour of one Asirvatham and Rayappan in respect of 1800 sq.ft. of land and building out of the property settled in her favour, under the settlement deed dated 05.09.2007. His wife R.Uma retained land and building measuring 750 sq.ft. and executed a settlement deed dated 07.03.2017 in document No.580 of 2014 in favour of the defendant in respect of the land and building measuring 750 sq.ft.

4.2. The defendant had borrowed a sum of Rs.6 lakhs from the plaintiff, but did not agree to pay 24% interest per annum. The defendant denied the execution of the deed of mortgage on 06.03.2015. The alleged document dated 06.03.2015 cannot be a valid deed of mortgage as it was not registered. The said document cannot be used as a memorandum of borrowal also for the said reason. Title deeds were not handed over to the plaintiff for security purpose.

4.3. The defendant has paid a sum of Rs.7,92,000/- to the plaintiff towards principal and interest, for which the plaintiff has not issued any receipt. Every month on or before 12th, a sum of Rs.24,000/- was paid by way of cash to the plaintiff, which was suppressed by the plaintiff in the plaint. The plaintiff cannot have a charge over the suit property as the defendant had already paid as on date a sum of Rs.7,92,000/- towards principal and interest. The alleged mortgage deed dated 06.03.2015 is not a registered one, and the defendant did not hand over the original settlement deed dated 07.03.2014 to



the plaintiff, seeks for dismissal of the suit.

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5. Based on the divergent pleadings, the Trial Court framed relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, the plaintiff has examined herself as PW1, and seven documents have been marked. Ex.A1 dated 07.03.2014 is the certified copy of the settlement deed executed by the wife of defendant. Ex.A7 dated 07.03.2014 is the settlement deed executed by Smt.Uma Rajendiran in favour of K.Rajendiran in document No.580 of 2014. On the defendant's side, the defendant has examined himself as DW1, and no document is produced and marked.

6. The following points arise for consideration.

(i) Whether the Trial Court has erred in passing money decree based on the admission made by the defendant, particularly when the defendant has not admitted the execution of Ex.A2 mortgage deed?

(ii) Whether the Trial Court has erred in holding that the mortgage deed under Ex.A2 is not admissible in evidence and ought to have non-suited the plaintiff?

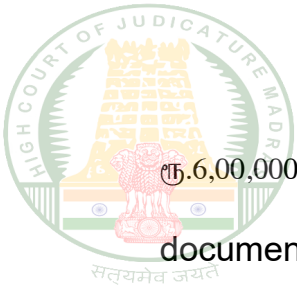
(iii) Whether the appeal suit is to be allowed or not?

7. The plaintiff has examined herself as PW1 and she has filed the proof affidavit in line with the details of the plaint. The case of the plaintiff is that the defendant borrowed a sum of Rs.6 lakhs as a loan from the plaintiff, agreeing



to repay the said amount with interest at the rate of 24% per annum. The further case of the plaintiff is that after a few days of such lending, the defendant executed an instrument in the nature of simple mortgage deed in respect of the suit property in favour of the plaintiff for the money borrowed by the defendant. On 06.03.2015, as he did not come forward to repay either towards principal or interest, this suit is filed for recovery of said money.

8. On a careful perusal of the plaint, the suit is filed under Order VII Rule 1 and 2 of the CPC., and the Court fee was paid under section 22 of the Tamil Nadu Court Fees and Valuation Suits Act, 1955. As urged by the learned counsel for the appellant/defendant, the suit is not filed under Order 34 of the CPC. Order 34 of the CPC., deals with suits relating to mortgages of immovable property. If the suit is filed under Order 34 of the CPC., then the plaint pleadings would have to be drafted as per Form 45 of Appendix A of the CPC. The plaintiff very strongly submits that after the borrowal of the money by the defendant, he executed a document dated 06.03.2015 and that document is used as a memorandum of borrowal, and besides the same, the defendant also handed over the original title deeds relating to the property to the plaintiff. But the defendant has not admitted as to the execution of the mortgage deed, and he proceeds to state that the said document dated 06.03.2015 cannot be a valid deed of mortgage as the same was not registered. The said document is marked as Ex.A2, which is admittedly written on a non-judicial stamp paper to the value of Rs.50/-. Ex.A2 is titled as “



₹.6,00,000- அடமானக் கடன் பத்திரம்;” and on a thorough perusal of the said document, it appears that the recitals are that of a mortgage deed. In the last

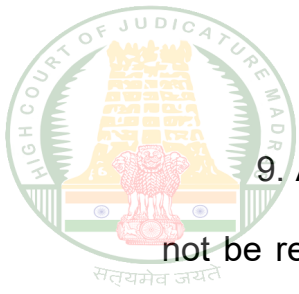
page on the left side, two witnesses have attested the document. This document is not registered. As per Section 59 of the Transfer of Property Act, when the principal money secured is Rs.100/- or upwards, a mortgage other than a mortgage deed by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. If the principal money is secured is less than Rs.100/-, a mortgage may be effected either by a registered instrument signed and attested as aforesaid or, except in the case of a simple mortgage, by delivery of the property. Section 58(b) deals with Simple Mortgage. Section 58(b) and section 59 of the Transfer of Property Act are extracted hereunder:

“58. “Mortgage”, “mortgagor”, “mortgagee”, “mortgage-money” and “mortgage-deed” defined

(a).....

(b) Simple mortgage.-- Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

59. Mortgage when to be by assurance.—Where the principal money secured is one hundred rupees or upwards, a mortgage 5 [other than a mortgage by deposit of title-deeds] can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by 6 [a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property. ”



9. As per section 59, earlier the mortgage by deposit of title deeds need not be registered. Thereafter, even the mortgage by deposit of title deeds is made compulsorily registrable. When Ex.A2 document is executed for an amount of Rs.6 lakhs, it is compulsorily registrable. For want of registration, the said document need not be looked into, for the reason that it ought to have been registered as per Section 17(b) of the Indian Registration Act and necessarily it has to be stamped under section 35 of the Indian Stamp Act.

10. The suit is laid for recovery of Rs.10,08,000/- with interest at the rate of 24% per annum. In paragraph No.4 of the written statement, the defendant has admitted to have borrowed a sum of Rs.6 lakhs from the plaintiff but has not agreed to pay 24% interest per annum. When the defendant admits the borrowal of Rs.6 lakhs, rather he has omitted to mention about the details of rate of interest. DW1 has, in the written statement as well as in his proof affidavit, stated that he has paid a sum of Rs.7,92,000/- to the plaintiff towards principal and interest. When the defendant takes a stand that he has repaid a part of the loan amount, then it has to be substantiated by concrete proof. To prove the said details, no document such as a receipt is marked by the defendant, which would go to show that the alleged statement made by the defendant that he repaid a part of the loan amount is totally incorrect. As regards the repayment, DW1 has stated that every month on or before 12th, a sum of Rs.24,000/- was paid by way of cash to the plaintiff. In case of repayment, an oral assertion by the defendant is not suffice. Therefore, the



said details put forth by the defendant as to the repayment stand rejected.

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11. Law well settled that a party is bound by his pleadings. Having admitted to have borrowed Rs.6 lakhs from the plaintiff in the written statement, when he was cross examined he has denied about the same, and it would have no consequence as he is bound by his pleadings. The cross examination of DW1 runs to 2 pages. During his cross examination, DW1 has accepted and he has stated that : '.....வழக்குரையில் கண்டுள்ள கடனான ரூ.6 லட்சத்தை 24 சதவீத வட்டியுடன் திருப்பி தருவதாக ஒப்பு கொண்டு தான் வா.சா.ஆ.2 ஆவணம் எழுதிக்கொடுத்தேன் என்றால் சரி."

12. In such circumstances, section 58 of the Indian Evidence Act comes to the rescue of the plaintiff. For a better understanding, section 58 of the Indian Evidence Act is extracted hereunder:

"Section 58 of the [Indian Evidence Act, 1872](#) states that facts admitted by parties or their agents in court, in written documents, or through pleadings do not need to be formally proven. However, the court has the discretion to require these facts to be proven by other evidence regardless of the admission"

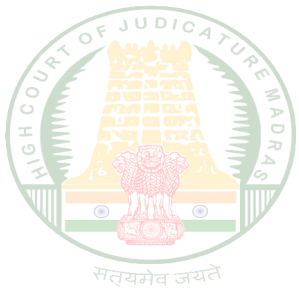
13. From the evidence of DW1, it is discernible that he is a railway employee and earning a sum of Rs.50,000/- per month. From the afore-stated details of his evidence, it is made clear that he has admitted to have received



Rs.6 lakhs from the plaintiff as a loan. Upon instructions from the defendant, the learned counsel for the defendant had filed the written statement. In para No.4 of the written statement, it has been admitted by the defendant that he borrowed a sum of Rs.6 lakhs from the plaintiff and had not agreed to pay 24% per annum. According to Section 58 of the Indian Evidence Act, admitted facts need not be proved.

14. Before the Trial Court, after receipt of summons from the Trial Court, the defendant entered appearance through his counsel and filed the written statement. Admissions made in the written statement are to be placed on a higher footing than an evidentiary admission. The reason being that for the plaintiff's case, the defendant filed his reply (written statement). Therefore, based on the said details, a case is decided. My views are fortified by the judgement of the Hon'ble Apex Court by a three judge Bench in *Nagindas Ramdas V.Dalpatram Ichharam Alias Brijram* (1974) 1 SCC 242 (3 Judges), where it has been held as under:

"27.... Admissions if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable



at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

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15. In yet another judgment by a Three Judges Bench in *Mohd.Koya Vs.TKSMA.Muthukoya (1979) 1 SCR 664*, the Hon'ble Supreme Court has observed with regard to the admission, "....Admissions as defined as under sections 17 and 20 and fulfilling the requirement of section 21 are substantive evidence. An admission is the best evidence against the party making it, though not conclusive, it shifts the onus to the maker on the principle that when a party himself admits to be true, it may be reasonably presumed to be true so that until the onus is discharged, the facts admitted must be taken to be true."

16. As regards, the binding nature of admissions, the Supreme Court in *Union of India Vs.Moksh Builders and Financers Ltd. (1977) 1 SCR 967*, the Hon'ble Supreme Court has observed that an admission is substantive evidence of the fact admitted and, when properly proved is relevant irrespective of the fact whether the maker approved it in the witness box or not and when he appears, whether he was confronted with those statements or not in case he made a statement contrary to his admission.

17. Therefore, the admissions as to the facts bind the maker. An admission may be oral or contained in documents, depositions in the form of

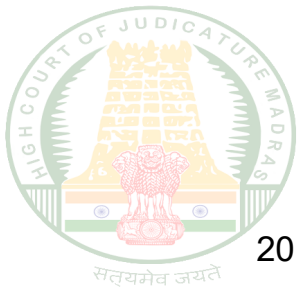


letters, affidavits, pleadings to the proceedings, written statements, deeds, receipts etc. The Supreme Court has held in yet another case in *Shankar Vs.*

WEB COPY *Vithalrao AIR 1989 SC 879*, that an admission in the written statement filed in some other case has been held to be an important piece of evidence. Therefore, it is entitled to its due weight though, like all other admissions, it is neither conclusive nor irrefutable. Therefore, the admissions made in the written statement are substantive evidence as per sections 17, 20 and 21 of the Indian Evidence Act, 1872.

18. Based on the admissions made in his written statement and thereafter based on the cross examination of DW1 having admitted to have received Rs.6 lakhs from the plaintiff (Evidentiary Admission). This Court of the considered view that the plaintiff has proved his case. As regards the interest of 24% that is claimed in the plaint, though the defendant has agreed to have received Rs.6 lakhs from the plaintiff as a loan, he denied the interest rate at 24%. In such circumstances, section 34 of the CPC., comes into play. The Trial Court has ordered 12% per annum from the date of plaint till the date of judgement and thereafter at 6% thereafter, cannot be found fault with.

19. In fine, this Court does not find any perversity or infirmity in the findings of the Trial Court. This Court also does not find any good reason to upset the findings of the Trial Court. The points formulated are answered against the appellant/defendant.



20. Based on the above stated observations and discussions, this first appeal stands dismissed. Sequel to this, the judgement and decree dated 06.12.2019 passed by the VI Additional City Civil Court, Chennai stands confirmed. There is no order as to costs. Connected miscellaneous petitions are closed.

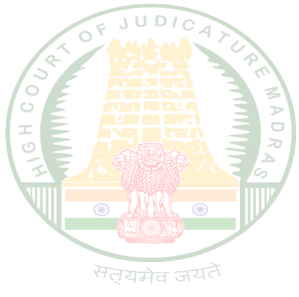
10.07.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MPA

To

1. The VI Additional City Civil Court, Chennai.
2. The Section Officer, VR Section, High Court, Madras.



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AS No. 511 of 2



R.KALAIMATHI, J.

MPA

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