

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2015

(Judgment Reserved on 21-09-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.381 of 2013 and O.A.No.431 of 2013

Mrs.Vasuki Aravindan,
W/o C.Aravindan,
Proprietrix,
M/s.Vinod Builders,
residing at No.5, Rukmani Devi Street,
Indra Nagar, Chennai-600 087.

Also at
having construction business office of
M/s.Vinod Builders
at No.13/2, Krishna Bai Street,
Gokulam Colony,
Thiyagaraya Nagar,
Chennai-600 017.

... Plaintiff

Vs.

M.Sundaravarathan

.. Defendant

Plaint filed and numbered as Civil Suit under Order 7 Rule 1 of the Code of Civil Procedure read with Order 4 Rule 1 of the Madras High Court Original Side Rules, praying for judgment and decree:

(a) directing the defendant to pay the principal sum of Rs.30 lakhs together with interest at 24% per annum, payable from 17.12.2012 onwards till the date of realisation;

(b) to create charge over the suit schedule mentioned properties;

(c) grant permanent injunction restraining the defendant from encumbering or alienating or dealing with the suit schedule mentioned properties, and

(d) to award costs of the suit.

Schedule of properties

Item No.1

All that piece and parcel of land situated at Sembakkam Village, S.P.Nagar, Chengalpattu Taluk, Kancheepuram District, in Patta No.201, Plot No.20, comprised in Survey No.217-C/1-B, ad-measuring an extent of 1551 Sq.Ft., superstructure, including electricity, bore-well, compound wall, bounded on the:

North by: 20 feet Road

South by: 15 feet Panchayat Road

East by : Survey No.217-C/2

West by: Plot No.19

measuring

East to west on the Northern side : 31.6 feet

East to west on the Southern side : 31.6 feet

North to South on the Eastern side : 49.3 feet

North to South on the Western side: 49.3 feet

totalling an extent of 1551 Sq.Ft., superstructure,

including electricity, bore-well, compound wall, mentioned in Item No.1 of the schedule property.

Item No.2

All that piece and parcel of land situated at Sembakkam Village, S.P.Nagar, Chengalpattu Taluk, Kancheepuram District, in Patta No.201, Plot No.1, comprised in Survey No.217-C/1-B, ad-measuring an extent of 1551 Sq.Ft., superstructure, including electricity, bore-well, compound wall, bounded on the:

North by: Survey No.217-C/1A2

South by: 20 feet Road

East by : Survey No.217-C/2

West by: Plot No.2

measuring

East to west on the Northern side : 31.6 feet

East to west on the Southern side : 31.6 feet

North to South on the Eastern side : 49.3 feet

North to South on the Western side: 49.3 feet

totalling an extent of 1551 Sq.Ft., superstructure, including electricity, bore-well, compound wall, mentioned in Item No.21 of the schedule property.

For plaintiff : Mr.M.C.Govindan

For defendant : Defendant set ex-parte on 14.11.2014

JUDGMENT

The Civil Suit is filed by the plaintiff to direct the defendant to pay the principal sum of Rs.30 lakhs together with interest at 24% per annum, payable from 17.12.2012 onwards till the date of realisation; to create charge over the suit schedule mentioned properties, to grant permanent injunction restraining the defendant from encumbering or alienating or dealing with the suit schedule mentioned properties, and for costs.

2. It is the case of the plaintiff that she is doing business in the name and style of M/s.Vinod Builders, which has got its construction business office in Chennai. The defendant sought M/s.Vinod Builders to construct a marriage hall for him, namely Periyavelikkadu Shri Vekkali Amman Thirumana Maaligai at Aryanur Road, Periyavelikkadu Village, Kancheepuram District, measuring an extent of 16,870 Sq.Ft. In February 2011, the defendant represented that he was in urgent requirement of money to settle his creditors and to meet his family expenses, for which, the plaintiff

lent a loan of Rs.30 lakhs to the defendant, who agreed to repay the same with interest at the rate of 24% per annum and the defendant agreed to deposit the title deeds of the suit properties as security for re-payment. The defendant executed a Deed of Deposit of Title Deeds, dated 17.02.2011 in respect of the suit properties. He was regularly paying monthly interest of Rs.75,000/- by cheque and the interest was paid by him every 17th day of the month by cheque. The defendant was regularly paying interest at Rs.75,000/- p.m. from 21.03.2011 till 18.12.2012 and thereafter, neither the interest nor the principal amount was paid by the defendant. Hence, the plaintiff has filed the suit for the above relief.

3. The defendant was set ex-parte by this Court on 14.11.2014.

4. The plaintiff examined herself as P.W.1 and marked Exs.P-1 to P-6.

5. The plaintiff has clearly proved her case from her oral and documentary evidence that the defendant

received Rs.30 lakhs from her, agreeing to return the amount with 24% per annum and that the defendant also deposited title deeds in respect of the suit properties in Exs.P-1 and P-2. The deed of money acceptance is Ex.P-3 and Exs.P-4 to P-6 are the statement of account transactions of the plaintiff issued by ICICI Bank, Canara Bank and State Bank of India respectively. Even though the plaintiff in the plaint stated that for the money lent by her, the defendant agreed to deposit the title deeds of the suit properties as security for repayment, the plaintiff did not seek for any mortgage decree, and hence, she is not entitled for the mortgage decree and she is only entitled for money decree as prayed for in the plaint.

6. It is admitted by the plaintiff that she has received Rs.75,000/- towards interest from from 21.03.2011 till 18.12.2012. It is admitted in the plaint that for Rs.30 lakhs, the interest is at 24% per annum. When calculated for one month, the interest comes to Rs.60,000/-. It is seen from the plaint that the defendant paid Rs.75,000/- to the plaintiff as interest

per month. The excess amount of Rs.15,000/- has to be adjusted towards principal to be paid by the defendant to the plaintiff. The plaintiff, in the memorandum filed by the plaintiff, dated 14.09.2015, stated that the said amount of Rs.15,000/- has to be adjusted towards the principal amount. The amount due from the defendant to the plaintiff from February 2011 till 17.04.2013, with interest at the rate of 24%, is calculated as under:

<i>Details</i>	<i>Amount</i>
Amount received by the plaintiff in February 2011	30,00,000.00
Since no date is mentioned, it is fixed that 21.03.2011 is the first instalment due date. One month period ends on 21.03.2011.	60,000.00
Add: Interest for one month, @ 24% on Rs.30,00,000/- upto 21.03.2011	
	30,60,000.00
Less: Amount paid on 21.03.2011	75,000.00
	29,85,000.00
Add: Interest on Rs.29,85,000/- @ 24% for one month upto 20.04.2011	59,700.00
	30,44,700.00
Less: Amount paid on 20.04.2011	75,000.00
	29,69,700.00
Add: Interest on Rs.29,69,700/- @ 24% for one month upto 20.05.2011	59,394.00
	30,29,094.00
Less: Amount paid on 20.05.2011	75,000.00

<i>Details</i>	<i>Amount</i>
	29,54,094.00
Add: Interest on Rs.29,54,094/- @ 24% for one month upto 21.06.2011	59,081.88
	30,13,175.88
Less: Amount paid on 21.06.2011	75,000.00
	29,38,175.88
Add: Interest on Rs.29,38,175.88 @ 24% for one month upto 20.07.2011	58,763.52
	29,96,939.40
Less: Amount paid on 20.07.2011	75,000.00
	29,21,939.40
Add: Interest on Rs.29,21,939.40 @ 24% for one month upto 22.08.2011	58,438.79
	29,80,378.19
Less: Amount paid on 22.08.2011	75,000.00
	29,05,378.19
Add: Interest on Rs.29,05,378.19 @ 24% for one month upto 19.09.2011	58,107.56
	29,63,485.75
Less: Amount paid on 19.09.2011	75,000.00
	28,88.485.75
Add: Interest on Rs.28,88,485.75 @ 24% for one month upto 19.10.2011	57,769.72
	29,46,255.47
Less: Amount paid on 19.10.2011	75,000.00
	28,71,255.47
Add: Interest on Rs.28,71,255.47 @ 24% for one month upto 19.11.2011	57,425.11
	29,28,680.58
Less: Amount paid on 19.11.2011	75,000.00
	28,53,680.58

<i>Details</i>	<i>Amount</i>
Add: Interest on Rs.28,53,680.58 @ 24% for one month upto 20.12.2011	57,073.61
	29,10,754.19
Less: Amount paid on 20.12.2011	75,000.00
	28,35,754.19
Add: Interest on Rs.28,35,754.19 @ 24% for one month upto 19.01.2012	56,715.08
	28,92,469.27
Less: Amount paid on 19.01.2012	75,000.00
	28,17,469.27
Add: Interest on Rs.28,17,469.27 @ 24% for one month upto 18.02.2012	56,349.39
	28,73,818.66
Less: Amount paid on 18.02.2012	75,000.00
	27,98,818.66
Add: Interest on Rs.27,98,818.66 @ 24% for one month upto 22.03.2012	55,976.37
	28,54,795.03
Less: Amount paid on 22.03.2012	75,000.00
	27,79,795.03
Add: Interest on Rs.27,79,795.03 @ 24% for one month upto 18.04.2012	55,595.90
	28,35,390.93
Less: Amount paid on 18.04.2012	75,000.00
	27,60,390.93
Add: Interest on Rs.27,60,390.93 @ 24% for one month upto 18.05.2012	55,207.82
	28,15,598.75
Less: Amount paid on 18.05.2012	75,000.00
	27,40,598.75
Add: Interest on Rs.27,40,598.75 @ 24% for one month upto 19.06.2012	54,811.98

<i>Details</i>	<i>Amount</i>
	27,95,410.73
Less: Amount paid on 19.06.2012	75,000.00
	27,20,410.73
Add: Interest on Rs.27,20,410.73 @ 24% for one month upto 18.07.2012	54,408.22
	27,74,818.95
Less: Amount paid on 18.07.2012	75,000.00
	26,99,818.95
Add: Interest on Rs.26,99,818.95 @ 24% for one month upto 18.08.2012	53,996.38
	27,53,815.33
Less: Amount paid on 18.08.2012	75,000.00
	26,78,815.33
Add: Interest on Rs.26,78,815.33 @ 24% for one month upto 21.09.2012	53,576.31
	27,32,391.64
Less: Amount paid on 21.09.2012	75,000.00
	26,57,391.64
Add: Interest on Rs.26,57,391.64 @ 24% for one month upto 19.10.2012	53,147.83
	27,10,539.47
Less: Amount paid on 19.10.2012	75,000.00
	26,35,539.47
Add: Interest on Rs.26,35,539.47 @ 24% for one month upto 21.11.2012	52,710.79
	26,88,250.26
Less: Amount paid on 21.11.2012	75,000.00
	26,13,250.26
Add: Interest on Rs.26,13,250.26 @ 24% for one month upto 18.12.2012	52,265.01
	26,65,515.27
Less: Amount paid on 18.12.2012	75,000.00

<i>Details</i>	<i>Amount</i>
	25,90,515.27
Add: Interest on Rs.25,90,515.27 from 18.12.2012 to 17.04.2013 (4 months) @ 24%	2,07,241.22
Total decretal amount	27,97,756.49
	Rounded off to 27,97,800.00

7. Hence, the defendant is liable to pay the plaintiff Rs.27,97,800/- (Rupees twenty seven lakhs ninety seven thousand and eight hundred only), with further interest at the rate of 24% per annum from the date of plaint till the date of realisation. The charge decree prayed for by the plaintiff cannot be granted and only money decree as prayed for in clause (a) of the prayer is granted.

8. Accordingly, the suit is decreed to the extent of clause (a) of the prayer, by directing the defendant to pay the plaintiff Rs.27,97,800/- (Rupees twenty seven lakhs ninety seven thousand and eight hundred only) with interest at the rate of 24% per annum from the date of plaint till the date of realisation, with

proportionate costs. In other respects, the suit is dismissed. O.A.No.431 of 2013 is closed.

Witnesses examined on the side of plaintiff:-- P.W.1
Mrs.Vasuki Aravindan

List of documents marked on the side of plaintiff:--

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-1	02.12.2008	Original sale deed executed by R.Balasubramanian in favour of the defendant
P-2	02.12.2008	Original sale deed executed by R.Balasubramanian in favour of the defendant
P-3	17.02.2011	Deed of money acceptance executed by the defendant in favour of the plaintiff
P-4	21.03.2013	Statement of Account for the period from 01.10.2011 to 20.03.2013 of ICCICI Bank, Nungambakkam, in respect of the plaintiff
P-5	21.03.2013	Copy of pass book and pass book print outs for the period from 18.11.2010 to 31.01.2013 and Statement of Account for the period from 01.02.2012 to 21.03.2013 of Canara Bank, Chennai Habibullah Road in respect of the plaintiff

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-6		Copy of pass book and pass book print outs for the period from 01.12.2010 to 24.02.2013 of the State Bank of India in respect of the plaintiff and her husband (joint SB account holders)

Witnesses examined on the side of defendants:- Nil

Documents marked on the side of defendants: Nil

Court witness and Court document : Nil

sd/.G.C.J

03.11.2015

//Certified to be a true copy//

Dated this the day of 2016.

S.s/15.06.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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