

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2015

CORAM :

THE HONOURABLE Ms.JUSTICE S.VIMALA

C.S.No.896 of 2003

C.P.Jakachirpian

... Plaintiff

vs

Mrs.Jannathul Prithouse

... Defendant

Suit filed under order XXXVII, Rule 1 R/W ORDER IV RULE 1 OF O.S.Rules R/W Order VII Rule 1 & Order XXXIV Rule 1 of CPC praying for Judgment and decree againhst the defendant (a) for a sum of Rs.25,00,000/- together with interest @ 12% p.a. from the date of plaint till realisation (b) for a preliminary mortgage decree against the defendant directing her to pay the decretal sum of Rs.25,00,000/- together with further interest on or before a date to be fixed by this Court, failing which to permit the plaintiff to bring the schedule mentioned property to sale by publi auction and appropriate the sale proceeds towards the decretal amount and in the event of such sale proceeds being insufficient to satisfy the decretal amount, to pass a personal decree against the defendant in respect of the balance amount and for costs.

For plaintiff :Mr.G.Govindarajan
For Defendant :No appearance

JUDGMENT

The Suit has been filed by the plaintiff based upon the mortgage by deposit of title deeds.

2. The defendant wanted a loan of Rs.20 lakhs from the plaintiff and in consideration of payment of money, the defendant created equitable mortgage of his property by deposit of title deeds. The defendant has deposited his sale deed dated 25.01.1991 to the plaintiff and after receiving a sum of Rs.20 lakhs, executed a bond also on 12.07.2001 evidencing the deposit of title deed and receipt of money. The defendant has also agreed to pay interest @ 12% per annum on the principal amount of Rs.20,00,000/- on or before 12th day of every succeeding month commencing from 12.08.2001. But the defendant did not pay interest upto 13.11.2003. The defendant was liable to pay a sum of Rs.5,00,000/- towards interest. On account of non-payment of money, the plaintiff was forced to file the suit.

3. Despite notice, the defendant did not come forward to file the written statement and therefore he was set exparte on 16.04.2014. Thereafter, evidence has been recorded before the learned Additional Master-III. Exs.P1 to P3 has been marked on the side of the plaintiff. The bond executed by the defendant

in favour of the plaintiff evidencing the deposit of title deeds

has been marked as Ex.P1. Ex.P2 is the original promissory note and the copy of the legal notice is marked as Ex.P3.

4. The issue to be considered is whether the plaintiff is entitled to a preliminary mortgage decree against the defendant for a sum of Rs.25,00,000/-?

5. The essentials of mortgage by deposit of title deeds are as under:

1. There must be **delivery of document of title** of immovable property.

2. Such delivery must be made to a **creditor** or his agent.

3. Such delivery must be made **with intent to create a security** thereon.

6. So far as this case is concerned, delivery of sale deed has been made to the plaintiff. It is a case of the plaintiff that such delivery of sale deed was made with an intention to create a security thereon. If it is not so, it is for the contesting defendant to come to the Court and states so on oath. But, the defendant remains ex parte. The implication is that the defendant has no case to contest. Thus, the plaintiff has proved the borrowing by the defendant and the mortgage executed by him by producing Ex.P1 i.e. Mortgage by deposit of title deed. The debt is also supported by the pronote marked as Ex.P2.

6.1. The claim of the plaintiff stands proved through oral and documentary evidence. Therefore, the suit is decreed with

costs, granting the preliminary decree for mortgage. Time for payment is six months.

sd/.S.V.J

06.01.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/16.07.2015

COURT OFFICER

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



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