

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S. No.268 of 2017

Mr.S.Mohankumar ... Plaintiff

..Vs..

1. Mr.K.Murugesan
2. Mr.Muthuselvan
3. Mr.Ilayaraja ... Defendants

Plaint filed under Order IV, Rule 1 O.S.Rules and under Order VII Rule 1 CPC praying for Judgment and decree against the defendants:

(a) Directing the defendants 1 to 3 to pay a sum of Rs.2,58,75,000/- (Rupees two crore Fifty Eight Lakhs Seventy Five Thousand only) together with interest at 18% per annum for the principal amount of Rs.2,25,00,000/- from the date of the plaint till the date of realisation.

(b) award cost of the suit, and

For Plaintiff : Ms.Abitha Banu A.Damodaran
Defendants : set exparte

J U D G M E N T

This suit has been filed praying seeking for the following relief:

"(a) Directing the defendants 1 to 3 to pay a sum of Rs.2,58,75,000/- (Rupees two crore Fifty Eight Lakhs Seventy Five Thousand only) together with interest at 18% per annum for the principal amount of Rs.2,25,00,000/- from the date of the plaint till the date of realisation."

2. According to the Plaintiff they are doing business of finance for the past 25 years. The Defendant Nos.1 to 3 approached the Plaintiff at this office in Chennai for availing financial facilities for their business purposes. The Defendants also promised to secure the loan by mortgaging their properties.

3. It is stated that on believing the assurance given by the Defendants 1 to 3, the plaintiff lends a sum of Rs.2,25,00,000 (Rupees Two crore Twenty-Five Lakhs only) to them and to secure the said loan, the defendants 1 to 3, executed a Mortgage Deed dated 05.06.2015 registered as Document No.2161 of 2015 at office of Sub Registrar, Mannachanallur, which is marked as Ex.P1

and deposited the original title deeds in respect of the suit properties with the Plaintiff with an intention to create mortgage thereby created a Mortgage in favour of the Plaintiff in respect of the suit properties. The title deeds are marked as Ex.Nos. P2 to P8. Thus, the defendants 1 to 3 had acknowledged the debt. Apart from the mortgage deed, the first Defendant also executed a Promissory Note dated 10.06.2015 in favour of the Plaintiff for a sum of Rs.2,25,00,000/- which is marked a Ex. P9. The following are the title deeds deposited by the Defendants:

(i) Sale deed dated 06.03.2006 registered as Document No.460 of 2006 at the office of Sub Registrar Mannachanallur executed by Mrs.K.Anjalai in favour of Mr.K.Murugesan along with patta and adangal. **(Exhibit P2).**

(ii) Sale deed dated 20.08.2009 registered as Document No. 3313 of 2009 at the Office of Sub Registrar Mannachanallur executed by Mr.D.Mark and others in favour of Mr.K.Murugesan. **(Exhibit P3)**

(iii) Sale deed dated 19.12.2008 registered as Document No.6309 of 2008 at the office of Sub Registrar Mannachanallur executed by Mr.D.Devanbu in favour of Mr.K.Muthuselman. **(Exhibit P4).**

(iv) Sale Deed dated 10.03.2010 registered as Document No.1024 of 2010 at the office of Sub Registrar Mannachanallur executed by Mr.K.Vadivel Karupiah in favour of Mr.K.Muthuselman. **(Exhibit P5)**

(v) Sale deed dated 10.03.2010 registered as Document No.1025 of 2010 at the office of Sub Registrar Mannachanallur executed by Mr.K.Vadivel Karupiah in favour of Mr.Muthuselman **(Exhibit P6)**

(vi) Sale deed dated 06.07.2010 registered as Document No.3231 of 2010 at the office of Sub Registrar, Mannachanallur executed by Mr.K.Vadivel Karupiah in favour of Mr.K.Muthuselman. **(Exhibit P7)**

(vii) Sale deed dated 15.07.2009 registered as Document No.2831 of 2009 at the office of Sub Registrar Mannachanallur executed by Mr.M.Immanuel Devdoss in favour of Mr.Ilayaraja.

(Exhibit P8)

3. It is further submitted that the Mortgage was created by the defendants 1 to 3 to the following.

a. The mortgagors jointly shall pay interest @ 1.5% per month on the said Principal amount of Rs.2,25,00,000/- (Two Crores and twenty-five lakhs only) on or before 5th day of each English Calender month regularly month after month.

b.The Principal amount due under this mortgage shall be repayable within Twelve months from this date and the mortgage can be discharged/cancelled on the repayment of the principal amount and interest up to date.

c.If the mortgagors had paid the entire principal amount with Interest thereon, the mortgage shall cancel this Mortgage Deed and register the Cancellation of Mortgage Deed in the concerned SRO Office.

4.It is stated that the first Defendant issued a Cheque bearing No.266108 dated 09.08.2016 for a sum of Rs.2,04,80,000 (Two Crores Four Lakhs Eighty Thousand only) towards part payment of the loan amount and the same is marked as **Ex.P10**. The said cheque was dishonoured and the return memo is marked as **Ex. P11**. The Plaintiff issued an auction notice dated 16.08.2016 and the same is marked as **Ex.P12**. The Plaintiff issued a statutory notice dated 01.09.2016 and the same was replied by the Defendant. The notice and reply is marked as **Ex.Nos. P13 and P14**.

5.It is further stated that the Plaintiff has initiated proceedings under Section 138 of the Negotiable Instruments Act against the first Defendant in CC No.6839 of 2016 before the Hon'ble Fast Track Court II and the same is pending and the Defendants also did not make the payment. Hence, the Plaintiff has come forward with the present suit seeking for the relief stated supra.

7. Despite the suit summons being served on the Defendants and their names printed in the cause list, they have not chosen to appear before this Court. Hence, they were set exparte on

05.07.2019. Thereafter, the matter was listed before the Additional Master I for recording exparte evidence.

9. In order to substantiate their claim one Mr.S.Mohan Kumar (P.W.1) was examined on the side of the Plaintiff and Exhibits P1 to P14 were marked on their side.

10. I have heard the learned counsel for the Plaintiff and also gone through the Proof Affidavit as well as the documents filed on the side of the Plaintiff.

11. On a perusal of Ex.P1-Mortgage Deed dated 05.06.2015, this Court found that the Defendants 1 to 3 executed a Mortgage deed dated 05.06.2015 registered as Document No.2161 of 2015 at the office of the Sub Registrar Mannachanallur and the first defendant executed a promissory note for a sum of Rs.2,25,00,000/- (Rupees Two Crores Twenty Five Lakhs) on 10.06.2015 in favour of the Plaintiff on 10.06.2015, which is clear from Ex.P9. On a perusal of Ex.P10-cheque bearing No.266108 dated 09.08.2016, it is seen that the first defendant issued cheque in favour of the plaintiff towards part payment of the loan amount.

But, when the same was presented before the bank, it was

dishonoured and the return memo to that effect has been filed as Ex.P11.

12. On a perusal of all these documents, this Court is of the view that the defendant borrowed a sum of Rs.2,25,00,000/- from the Plaintiff on 10.06.2015 but till date, the defendants have failed to make any payment. Further, the Principal amount due to the defendants to the Plaintiff is Rs.2,25,00,000/- (Rupees Two Crores Twenty Five Lakhs only) and the defendants are liable to pay interest @ 18% per annum being the contractual rate of interest and therefore interest payable as on 05.02.2017 is Rs.33,75,000/- and thus the total outstanding comes to Rs.2,58,75,000/- for which the plaintiffs are entitled to the interest @ 18% per annum and therefore the Plaintiff is entitled to the relief as prayed for.

12. Resultantly, the suit is decreed as prayed for with costs.

21.08.2019

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KRISHNAN RAMASAMY, J

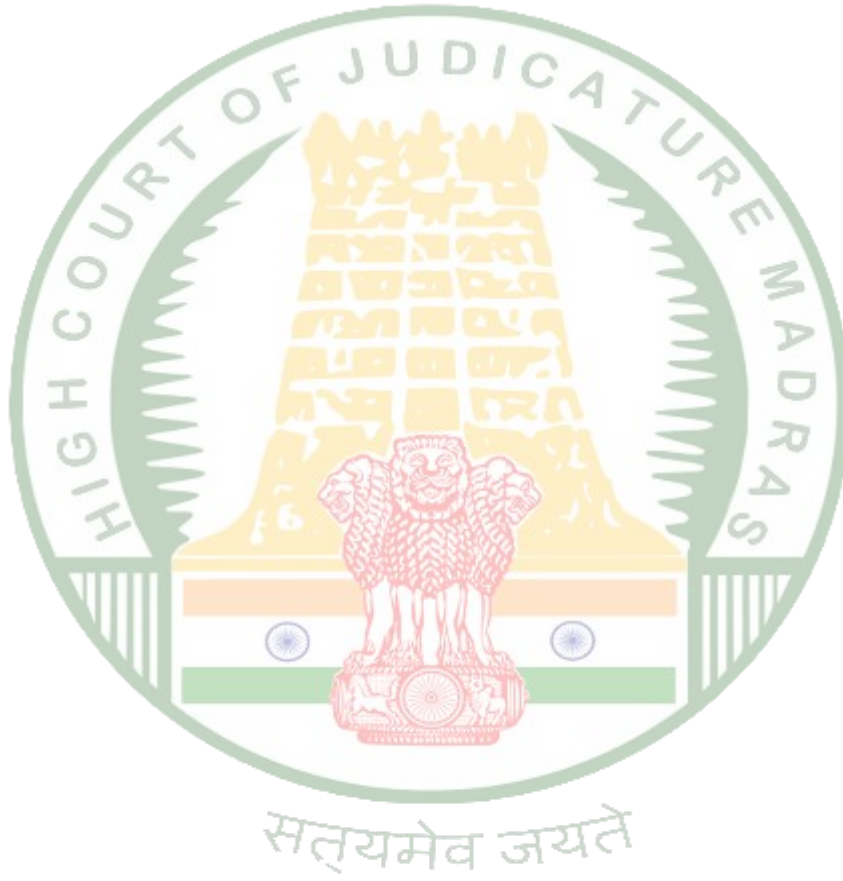
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