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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2021
DATE OF DECISION : 11.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

A.S.Nos.895 & 896 of 2010

1. Johrilal Chowdhary (Died) ...Appellant/Plaintiff
 2. Khand Chand Kanwar
W/o late Johrilal Chowdhary
 3. Suresh Chand
S/o late Johrilal Chowdhary
 4. Hemanth Kumar
S/o late Johrilal Chowdhary
 5. Pushpa Devi
D/o late Johrilal Chowdhary
(Appellants 2 to 5 brought on record as
LR's of the deceased sole appellant vide
order of Court dated 5.2.2020 made in
CMP Nos.26196, 26200 & 26204 of 2019
in A.S.No.895 of 2010)
...Appellants in A.S.No.895 of 2010 /
LR's of the 1st Appellant
-
1. Johrilal Chowdhary (Died) ...1st Appellant/1st Plaintiff
 2. Suresh Chand
S/o Johrilal ...2nd Appellant/2nd Plaintiff
 3. Khand Chand Kanwar
W/o late Johrilal Chowdhary
 4. Hemanth Kumar
S/o late Johrilal Chowdhary
 5. Pushpa Devi
D/o late Johrilal Chowdhary
(Appellants 3 to 5 brought on record as
LR's of the deceased first appellant vide
order of Court dated 5.2.2020 made in
CMP No.26207 of 2019
in A.S.No.896 of 2010)
...Appellants in A.S.No.896 of 2010/
LR's of the 1st Appellant

-vs-



2. The Plaintiffs have pleaded that the Defendant borrowed a sum of Rs.27 lakhs from Mr.Johrilal Chowdhary by executing a promissory note on 4.11.99 agreeing to repay the said amount with interest at the rate of 24% per annum on demand either to him or to his order, The previous loan of Rs.21 lakhs borrowed by the Defendant in the year 1998 was discharged by him. Since the Defendant intended to create a security for repayment of the loan amount of Rs.27 lakhs borrowed on 4.11.99 with interest, deposited the title deeds with reference to the subject property to the Plaintiffs at Sirkali Town on 3.3.2000, i.e., equitable mortgage marked as Ex.A7. Since the equitable mortgage under Ex.A7 was created by the Defendant over the subject property for due discharge of the loan amount with interest due thereon as security, the Defendant also issued a notice on 8.10.2002 through his lawyer marked as Ex.A2 calling upon the Plaintiff to return the title deeds. On receipt of the same, the Plaintiffs also issued a reply notice dated 17.2.2003 marked as Ex.A3 that the Defendant had admitted the receipt of the loan of Rs.27 lakhs and also further admitted the deposit of title deeds in respect of the properties situate at Tirupappuliyur and Gundu Uppulavadi village. When these are all the clear admissions made by the Defendant for acknowledgment of the debt, as per Section 58 of the Evidence Act, the facts admitted need not be proved, hence the Plaintiffs claim deserve to be decreed. Moreover, when the Defendant executed a promissory note dated 4.11.99 at the time of borrowing Rs.27 lakhs agreeing to repay the same with 24% interest, on 3.3.2000, he had deposited the title deeds as security to the loan as a simple mortgage under Ex.A7. Thereafter, when the legal notice dated 8.10.2002 was issued by the Defendant, he had clearly admitted therein the receipt of the loan amount, therefore the admission as to the execution of the promissory note and the deposit of the title deeds by the Defendant would prove that the suit filed by the Plaintiffs on 24.3.2004 was on time.

3. After the suit was filed by the Plaintiffs in O.S.No.22 of 2004, which stood transferred and renumbered as O.S.No.19 of 2006, the Defendant filed the civil suit in O.S.No.120 of 2004, which stood transferred and renumbered as O.S.No.18 of 2006, for a mandatory injunction directing the Plaintiffs to deliver the title deeds relating to the property belonging to the Defendant, taking a stand that when both the Defendant and the Plaintiffs had regular dealings from the year 1995, the Defendant pleaded that in the year 1998, he borrowed a sum of Rs.21 lakhs from the Plaintiffs and even before disbursing the loan amount, they had obtained gold and diamond ornaments as pledge for the loan advanced; that the gold jewels weighing about 500 grams and the diamond jewels, namely, one pair of bangle, two necklaces, one pair of stud redstoned necklace, one ring and one ring and that the Defendant was making periodical payments for the said



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borrowal. Thereafter, when the Defendant again borrowed a sum of Rs.27 lakhs in the year 1999, the Plaintiffs obtained signatures of the Defendant and his wife in various printed forms contained in a book, blank promissory notes, in revenue stamp affixed blank papers and printed papers and also obtained the title deeds relating to the properties situate at Tiruppapuliyur and Gundu Uppalavadi village as pledge. When the Plaintiffs received a total sum of Rs.25 lakhs through periodical payments made by the Defendant between 1998 and 2002, more particularly, when the Plaintiffs 1 & 2 in A.S.No.896 of 2010 had purchased 34 plots valued at Rs.39,25,000/- through nine sale deeds bearing Nos.1795 to 1803 of 2002 registered on the file of the Joint Sub Registrar, Cuddalore on 15.7.2002, without making any payment towards the purchase of the said plots including the registration charges, the Plaintiffs ought to have delivered the jewels, title documents at the time of registration of the documents in their favour. But they were evasive. Therefore, a demand was made through the Advocate notice dated 8.10.2002. After a lapse of four months, on 17.2.2003, the Plaintiffs gave a false reply stating that they had not received any amount from the Defendant. Therefore the Defendant was advised to file the suit for a mandatory injunction directing the Plaintiffs to deliver the title deeds relating to the properties owned by him.

4. In the suit filed by the Plaintiffs in O.S.No.19 of 2006 (O.S.No.22 of 2004) praying for a preliminary mortgage decree directing the Defendant to pay or deposit the suit amount with subsequent interest, failing which to pass a final decree to bring the mortgaged property detailed in the schedule for sale and apply the proceeds thereon for satisfaction of the decree amount, the Defendant filed his written statement and additional written statement. In the first written statement, the Defendant has admitted that when he used to borrow money from the Plaintiffs for his business purposes, the Plaintiffs also obtained the title deeds of the properties belonging to him and that he never created any mortgage by deposit of title deeds for the alleged repayment of Rs.27 lakhs. In the first written statement he has also pleaded that a perusal of the promissory note and the letter of deposit of title deeds would show that they were not true and genuine, but fabricated for the purpose of extracting large sums from the Defendant; that the suit is barred by limitation; that after obtaining the Defendant's signature in blank papers etc., due to the misunderstanding arose between them, the blank signed stamp papers have been misused; that one Senthilkumar employed by the Defendant was known to the Plaintiffs, therefore, the sale deeds executed in favour of the Plaintiffs do not reflect the real price for which the plots were sold; that knowing pretty well that the Defendant only made the real estate layout and executed the sale deeds through his employee Mr.Senthilkumar, the act of the Plaintiffs



in purchasing 34 plots without making any payment would clearly show that the borrowed amount has been repaid. In spite of that, the Plaintiffs refused to give back the title deeds, therefore, he was constrained to file the suit for mandatory injunction directing the Plaintiffs to deliver the title deeds to him. The Defendant also filed an additional written statement stating that the document under Ex.A7 dated 3.3.2000 showing the deposit of title deeds creating an equitable mortgage as security for the borrowed loan, was inadmissible in evidence, because it was not an acknowledgment of the prior deposit of title deeds which also require registration. Therefore, the unregistered document under Ex.A7 cannot be admitted in evidence. In the additional written statement, the Defendant also disputed the execution of the promissory note dated 4.11.99 as fabricated. Moreover, he pleaded that the alleged promissory note dated 4.11.99 is barred by limitation, since the suit was filed only in the year 2004. Again he has taken a stand in the additional written statement that when the loan has been discharged, taking advantage of the deposit of title deeds, a fresh suit is not maintainable and that the Plaintiffs are not entitled to claim interest.

5. However, in the suit filed by the Defendant in O.S.No.18 of 2006 (O.S.No.120 of 2004), the Plaintiffs have filed a written statement taking a stand that the suit itself is not maintainable, because when the Defendant has admitted the receipt of the loan amount of Rs.27 lakhs by depositing the title deeds as equitable mortgage over the properties detailed in the title deeds, till the loan amount is discharged, the Defendant is not legally entitled to get back the documents given as security. Coming to the averment of part payment made by the Defendant, the Plaintiffs stated that for the loan of Rs.27 lakhs, the Defendant has paid only Rs.1,75,000/- and vouchers also were given for the said payment and thereafter, when the Defendant failed to repay the balance amount, his suit is not maintainable. It was also pleaded that no plot was taken from the Defendant, because the plots were purchased from the owner Senthilkumar for a valid sale consideration of Rs.3,41,000/- and that the sale consideration was also received by the vendor of the plots, namely, Mr.Senthilkumar. Finally it was pleaded that when the Defendant and his counsel met the Plaintiffs after the notice dated 8.10.2002 and the reply dated 17.2.2003 saying that they would arrange to sell the shops near cinema theatre at Cuddalore and settle the dues and claims, the Defendant cannot turn around and plead that the promissory note was false and fabricated and the deposit of title deeds cannot be taken as equitable mortgage over the properties detailed in the title deeds.



6. Based on the above pleadings, the trial Court, posting both the suits for common trial, framed the following issues:-
O.S.No.19 of 2006:

- (i) Whether the Plaintiff is entitled for preliminary mortgage decree?
- (ii) Whether the suit is barred by limitation?
- (iii) Whether the Defendant has created equitable mortgage by deposit of title deeds as claimed by the Plaintiff?
- (iv) To what relief the Plaintiff is entitled to?

O.S.No.18 of 2006:

- (i) Whether the suit is maintainable?
- (ii) Whether the statement of the Plaintiff that the loan amount has been discharged to the Defendants is true?
- (iii) Whether there is no cause of action for the suit?
- (iv) Whether the Plaintiff is entitled for the relief of mandatory injunction?
- (v) To what relief the Plaintiff is entitled to?

7. While dealing with the issues framed in O.S.No.18 of 2006 filed by the Defendant, the trial Court, disbelieving the case of the Plaintiffs that they failed to prove their case through Exs.A1 & A7, accepting the case of the Defendant that the suit filed by the Plaintiffs is barred by limitation, granted the decree of mandatory injunction in his favour holding that cause of action exists for filing of the suit and that his suit is also maintainable. However, while dealing with the first issue in O.S.No.19 of 2006 as to whether the Plaintiffs are entitled to get a preliminary mortgage decree directing the Defendant to pay or deposit into the Court the suit amount with subsequent interest, the trial Court, considering the fact that 34 housing plots were sold by Mr.D.Shankar Chettiar through his employee Senthilkumar, but the Plaintiffs have not paid any sale consideration after receiving the sale deeds in respect of 34 plots belonging to the Defendant, holding that since the amount said to have been borrowed by the Defendant from the Plaintiffs has been discharged by him, came to the conclusion that the Plaintiffs are not entitled for a preliminary mortgage decree.

8. So far as the third issue as to whether the Defendant has created equitable mortgage by deposit of title deeds is concerned, the trial Court, referring to Section 58(f) of the Transfer of Property Act, 1882 read with Section 17(1)(c) of the Registration Act, 1908, came to the conclusion that the mortgage by deposit of title deeds under Ex.A7 requires registration, if the rights and liabilities are created, hence, on account of the non-registration, it would not become mortgage by deposit of title deeds. The trial Court also answered the second issue



alia means transfer of interest in the specified immovable properties for the purpose of securing money advanced by way of loan.

10. On the contrary, it is the case of the Defendant that he has not executed the promissory note; that the promissory note on the blank stamp papers signed by him was created by the Plaintiffs; that the letter for deposit of title deeds was fabricated by the Plaintiffs on the blank signed papers; that he has not given the title documents as security, because he has no intention to create the mortgage; that he has been making periodical payments and not made Rs.1,75,000/- only towards part payment; peculiarly he has also pleaded that he entered into an unregistered agreement with his employee Senthilkumar by paying a sum of Rs.28 lakhs for the purchase of property for a sum of Rs.34 lakhs. Dr.Thiyagarajan, learned Senior Counsel, explaining further the case of the Defendant, pleaded that when the Defendant has denied the execution of the promissory note, how can Senthilkumar plead that he has executed nine sale deeds in favour of the Mr.Johrilal Chowdhary and his son for a sum of Rs.39,25,000/- without taking the sale consideration to discharge the loan when the subject matter of the lands in the sale deeds were owned by him. Again emphasizing the contra stand taken by Mr.Senthilkumar, Dr.Thiyagarajan stated that when the trial Court admitted the case of Senthilkumar that he has executed nine sale deeds for selling 34 plots for a sum of Rs.39,25,000/-, as a result the money borrowed by the Defendant from the Plaintiffs had been discharged, the execution of the promissory note by the Defendant and also the creation of mortgage by deposit of the title deeds, cannot be disbelieved. Moreover, when the Defendant has pleaded that he neither executed the promissory note nor deposited the title deeds by way of mortgage, there is no reason for executing the nine sale deeds in favour of the Plaintiffs without receiving the sale consideration to discharge the debt owed by the Defendant to the Plaintiffs. Therefore, it is proved that the Defendant has taken a false and frivolous ground to wriggle out of the transaction by projecting a false case, which was ignored by the trial Court. When the trial Court has erred in overlooking the legal position that the Defendant, having denied the execution of the very promissory note, has admitted his signature, the legal presumption under Section 139 of the Negotiable Instruments Act goes in favour of the holder of the instrument, therefore, the burden of proof is on the Defendant to refute this legal presumption. This clearly proved that the Plaintiffs had advanced the loan of Rs.27 lakhs and also got the title deeds dated 2.3.2000 as security as a simple mortgage on 3.3.2000 under Ex.A7 to the loan borrowed on 4.11.99.



11. Explaining further, Dr.Thiyagarajan also stated that the Defendant has also admitted in his evidence before the trial Court that he handed over all the documents in Sirkali, therefore, his admission as to the handing over of documents at Sirkali at the Plaintiffs place would further prove the fact that the documents have been received by the Plaintiffs when the loan was given to the Defendant. Since the deposit of title deeds is a simple mortgage, as per Section 58(f) of the Transfer of Property Act, it need not be registered, because Section 58 (f) of the Transfer of Property Act clearly says that the deposit of title deeds is sufficient for creating an equitable mortgage and the intention of the parties alone is the prime factor to be considered. The said intention can be easily gathered from the admission made by the Defendant himself that when the Plaintiffs demanded the repayment of the loan amount and further insisted for security, he has deposited the title deeds in the house of the Plaintiffs. Therefore, the Plaintiffs have proved from the evidentiary conduct of the Defendant that he has not paid the entire loan amount and as a security for the loan amount, he has agreed to deposit the title deeds as security for the loan. Taking support from a judgment of the Division Bench of this Court in the case of C.Rajagopal v. State Bank of Travancore, Karur Branch and others, 1995 MLJ 175, he pleaded that the Division Bench has relied upon another judgment in the case of Angu Pillai v. Kasi Viswanathan Chettiar, (1993) I MLJ 334, wherein it has been held that it is sufficient if the deeds deposited bona fide relate to the property or are material evidence of title or are shown to have been deposited with the intention of creating security thereon, to constitute an equitable mortgage. Even going back to 1950, Dr.Thiyagarajan, learned Senior Counsel, relying on the judgment of the Apex Court in the case of Rachpal Mahraj v. Bhagwandas Daruka and others, AIR 1950 SC 272, argued that the Apex Court has also held in that judgment that when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required under Section 59 as in other forms of mortgage. Again referring to another judgment of the Apex Court in the case of United Bank of India Limited v. Lekharam Sonaram and Company and others, AIR 1965 SC 1591, Dr.Thiyagarajan argued that the Apex Court in the said case has held that the mortgage by deposit of title deeds is a form of mortgage recognized by Section 58(f) of the Transfer of Property Act, which provides that where a person delivers to a creditor documents of title to immovable property with an intent to create a security thereon so that the creditor can ultimately recover the money which he has lent. Again observing that if any document of title has created an equitable mortgage to the secured advance made by the creditor and if it is contested by the defendant on the ground that the title deeds



were not deposited with a view to create an equitable mortgage, because it was not registered under Section 17 of the Registration Act, the Supreme Court has clearly held that the said document need not be registered under Section 17 and the plaintiff to be granted a mortgage decree, if it is proved that there was a deposit of title deeds by the defendant with a view to create an equitable mortgage. Finally thrusting his argument on the judgment of the Apex Court in State of Haryana and others v. Narvir Singh and another, (2014) 1 SCC 105, learned Senior Counsel argued that the Apex Court also, while dealing with Section 58(f) of the Transfer of Property Act and Section 17(1) (c) of the Registration Act, has held clearly that a mortgage by deposit of title deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. In the present cases, when the Defendant had deposited with the Plaintiffs the title deeds of the properties for the purpose of security, it clearly becomes a mortgage in terms of Section 58 (f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. Ignoring this settled legal position, the trial Court has gone wrong, therefore, the impugned judgment and decree are liable to be set aside by allowing the first appeals, he pleaded.

12. Mrs.Hema Sampath, learned Senior Counsel appearing for the Defendant, supporting the impugned judgment and decree, argued that while both the parties had dealings with the business activities from the year 1995, in the year 1998, the Defendant borrowed a sum of Rs.21 lakhs from the Plaintiffs. Before disbursing the loan amount, the Plaintiffs have obtained gold and diamond ornaments as pledge for the loan amount, i.e., the gold jewels weighing about 500 grams and the diamond jewels, namely, one pair of bangle, two necklaces, one pair of stud redstoned necklace, one ring and one ring from the Defendant. Again the Defendant borrowed a sum of Rs.27 lakhs in the year 1999. At that time the Plaintiffs obtained the signatures of the Defendant and his wife in various printed forms contained in a book, blank promissory notes and printed papers. In addition thereto, they also obtained from the Defendant the title deeds relating to his properties situate at Thirupappuliyur and Gundu Uppalavadi village as pledge. When the Defendant was making periodical payments towards discharge of the loan, the Plaintiffs have received a sum of Rs.25 lakhs made by him between 1998 and 2002. Besides, the Plaintiffs have also purchased 34 plots in the layout formed by the Defendant at Cuddalore and with the help of his assistant by name



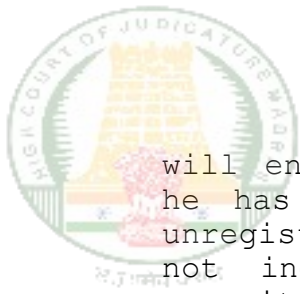
Senthilkumar, nine sale deeds bearing Nos.1795 to 1803 of 2002 were registered on the file of the Joint Sub Registrar, Cuddalore on 15.7.2002. When the Plaintiffs continued to keep the jewels even after settlement of the loan amount, the Defendant was advised to file the suit in O.S.No.18 of 2006 (O.S.No.120 of 2004) for a mandatory injunction directing the Plaintiffs to deliver the title deeds relating to the properties belonging to the Defendant. Before the Defendant filed the said suit for mandatory injunction to deliver the title deeds to him, the Plaintiffs filed O.S.No.19 of 2006 (O.S.No.22 of 2004) for a preliminary mortgage decree directing the Defendant to pay or deposit into the Court the suit amount with subsequent interest, failing which to pass a final decree to bring the property for sale and settle the proceeds thereof for satisfaction of the decree amount. Therefore, a detailed written statement was filed by the Defendant denying the execution of the promissory note and passing of consideration in the alleged promissory note dated 4.11.99 for Rs.27 lakhs; that the Defendant never created any mortgage by deposit of title deeds for the alleged repayment of Rs.27 lakhs, because the Defendant had no intention to create the mortgage over the properties. Moreover, the mortgage was not registered under Section 17 of the Registration Act, because when the parties create a mortgage by deposit of title deeds, the said document must be registered. As the mortgage by deposit of title deeds was not registered, the trial Court has rightly dismissed the suit in O.S.No.19 of 2006 (O.S.No.22 of 2004) filed by the Plaintiffs. Therefore, no interference is called for by this Court, she pleaded.

13. Continuing her arguments, Mrs.Hema Sampath again pleaded that when the alleged promissory note was dated 4.11.99, the suit filed on 24.3.2004 is barred by limitation, as it was not filed in time. Again she pleaded that when the Defendant has sold away 34 plots to the Plaintiffs under nine sale deeds bearing Nos.1795 to 1803 of 2002 registered on the file of the Joint Sub Registrar, Cuddalore on 15.7.2002 without receiving any sale consideration to discharge the loan amount, the Plaintiffs should have returned the title deeds deposited as security to the loan. The trial Court also, after considering the evidence of Mr.Senthilkumar, who was an employee of the Defendant, found that the sale deed executed in favour of the Plaintiffs by Senthilkumar is a clear evidence to show that the amount borrowed by the Defendant from them was discharged. Therefore, the dismissal of the suit filed by the Plaintiffs for a preliminary mortgage decree does not call for any interference. Taking support from the Division Bench judgment of the Karnataka High Court in the case of Canara Bank v. M/s Vara Trading Company and others, AIR 2006 Karnataka 88, she pleaded that any suit for recovery of the loan amount shall be filed within three years. In the present cases, the alleged promissory



note was executed on 4.11.99 under Ex.A1, the alleged deposit of title deeds as security to the loan as a simple mortgage was made on 3.3.2000 under Ex.A7, whereas the suit was filed on 24.3.2004. When the mortgage by deposit of title deeds is to be compulsorily registered under Section 17(1)(c) of the Registration Act, as the mortgage by deposit of title deeds was not registered, the suit filed belatedly on 24.3.2004 is barred by limitation. Therefore only, the suit was dismissed by the trial Court, hence, no interference is called for.

14. Again taking support from the judgment of the Apex Court in the case of Veeramachineni Gangadhara Rao v. The Andhra Bank Ltd., and others, AIR 1971 SC 1613, Mrs.Hema Sampath argued that even if it is admitted that there was a promissory note executed on 4.11.99 by the Defendant in favour of the Plaintiffs acknowledging the sum of Rs.27 lakhs and also to repay the same with interest, the said promissory note failed to disclose the deposit of title deeds. On the other hand, the Defendant is said to have deposited the title deeds as security to the loan on 3.3.2000 under Ex.A7. A reading of the same does not refer to any transaction between the Plaintiffs and the Defendant, except handing over of the documents. If it signifies the deposit of title deeds by mortgage intending to create, declare or assign or extinguish any right or title in any immovable property, under Section 17 of the Registration Act, registration is mandatory. A reading of Ex.A7 on 3.3.2000 neither indicates the loan transaction nor intends to create or extinguish any right in immovable property, therefore, it is inadmissible in evidence, as it was not registered under Section 17 of the Registration Act. In support of her submission, placing reliance from the judgment of the Apex Court in the case of Veeramachineni Gangadhara Rao v. The Andhra Bank Ltd., and others, AIR 1971 SC 1613, she stated that the Apex Court in the said case has held that if the parties had intended to reduce their bargain regarding the deposit of the title deeds to the form of a document, they must have registered the same. Since in the present cases, Ex.A7 has not been registered, it is inadmissible in evidence. Again referring to another judgment of the Apex Court in the case of Union Bank of India Limited v. M/s Lekharam Sonaram and Company & others, AIR 1965 SC 1591, Mrs.Hema Sampath pleaded that the Apex Court in the said judgment has held that when the debtor deposits with the creditor title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required under Section 59 as in other classes of mortgage. However, it is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a mortgagor to the lender of documents to immovable property with the intention that those documents shall constitute a security which



will enable the creditor ultimately to recover the money which he has lent. But in the present cases, a reading of Ex.A7 unregistered document said to have been executed on 3.3.2000 did not indicate the intention of the parties to create the security, therefore, it is not the deposit of title deeds in the eye of law. When there was no valid mortgage by deposit of title deeds, the suit filed by the Plaintiffs seeking a preliminary decree on mortgage is liable to be dismissed. Again taking support from the judgment of a Division Bench of this Court in the case of Indersain v. Mohammed Raza, AIR 1962 Madras 258, she pleaded that no interference is called for in the impugned judgment.

15. Having heard the respective learned Senior Counsel for the parties, this Court frames the following issues for consideration:

(i) Whether the Plaintiffs have advanced the loan amount of Rs.27 lakhs on receipt of the promissory note dated 4.11.99 under Ex.A1 from the Defendant agreeing to repay the same with 24 per cent interest?

(ii) Whether the suit filed by the Plaintiffs was barred by limitation?

(iii) When the debtor deposits with the creditor the title deeds of the property with intention to create a security for the loan amount, whether the said document is to be registered under Section 59 of the Transfer of Property Act?

16. So far as the first issue is concerned, in the suit filed by the Plaintiffs in O.S.No.19 of 2006 (O.S.No.22 of 2004) seeking a preliminary mortgage decree directing the Defendant to pay or deposit the suit amount into Court with subsequent interest, failing which to pass a final decree by bringing the mortgaged property for sale after satisfaction of the decree amount, it has been averred as follows:-

"3. The defendant borrowed a loan of Rs.27,00,000/- (Twenty Seven Lakhs of Rupees) from the plaintiff for his jewellery trade on executing the suit promissory note in favour of the plaintiff on 4-11-1999 agreeing to repay the said loan amount with interest at 24% per annum on demand either to the plaintiff or to his order. The previous loan of rupees Twenty one lakhs borrowed by the defendant in the year 1998 was discharged by him.



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4. The defendant with intent to create a security for repayment of the above said loan amount of Rs.2700000-00 borrowed on 4-11-1999 and interest thereon delivered and deposited his title deeds with reference to the property detailed hereunder to the plaintiff at Sirkali Town on 3-3-2000 and created mortgage by deposit of title deeds by equitable mortgage over the property detailed hereunder and belonging to him and situate at Thirupapuliur and Kundu Uppulavadi village within the jurisdiction of this Hon'ble Court. The equitable mortgage was created by the defendant over the property detailed hereunder for due discharge of the abovesaid loan amount and interest due thereon etc."

17. Similarly, paragraph-3 of the plaint filed by the Defendant in O.S.No.18 of 20016 (O.S.No.120 of 2004) seeking for mandatory injunction reads as follows:-

"3. The plaintiff is the resident of Cuddalore and engaged in various business activities. The defendants are the financiers and jewellers of Sirkazhi. The plaintiff and the defendants have been having regular dealings from the year 1995. In the year 1998, the plaintiff borrowed a sum of Rs.21 lakhs from the defendants. But before disbursing the loan amount, the defendants obtained from the plaintiff gold and diamond ornaments as pledge for the loan advanced. The articles are gold jewels weighing about 500 gms and the diamond jewels are the following : 1 pair of bangles, 2 Necklaces, 1 pair of of stud, 1 pair of bangles, 1 pair of stud, red stoned necklace, 1 ring and 1 ring. The plaintiff again borrowed a sum of Rs.27 lakhs in the year 1999. At that time the defendants obtained signatures of the plaintiff and his wife in various printed forms contained in a book, blank pronotes, blank papers, in revenue stamp affixed blank papers and printed papers. The defendants also obtained from the plaintiff title deeds relating to the plaintiff's properties situate at Thirupapuliur and Gundu Uppalavadi as pledge.

18. A careful reading of paragraphs 3 & 4 of the plaint filed by the Plaintiffs and paragraph-3 of the plaint filed by



the Defendant in the above suits will clearly bring the controversy to an end. When the Plaintiffs pleaded that the Defendant has borrowed a sum of Rs.27 lakhs on executing a promissory note on 4.11.99 agreeing to repay with interest to the Plaintiffs and with intention to create a security for repayment of the loan amount of Rs.27 lakhs, the Defendant has also deposited the title deeds creating mortgage by deposit of title deeds on 3.3.2000, this has been clearly admitted by the Defendant in paragraph-3 of his plaint that the defendants/ the Plaintiffs also obtained from the plaintiff/the Defendant the title deeds relating to his properties situate at Thirupapuliyur and Gundu Uppalavadi as pledge. In this context, if we look at the legal position, Section 58 of the Evidence Act tells us that the facts admitted need not be proved, therefore, let us again consider whether the case pleaded by the Plaintiffs has been admitted by the Defendant, in the light of Section 58 of the Evidence Act read with Order XII, Rule 6 and Order XV, Rule 1 of the Code of Civil Procedure, which are given as under:-

"Section 58. Facts admitted need not be proved. -No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Order XII, Rule 6 - Judgment on admission. -

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule(1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced".

Order XV, Rule 1 - Parties not at issue - Where at the first hearing of a suit it appears that the parties are not at issue on



any question of law or of fact, the Court may at once pronounce judgment."

19. As highlighted above, the Defendant in the plaint filed for mandatory injunction has clearly admitted the borrowal of Rs.27 lakhs on 4.11.99 with interest and also had admitted the deposit of his title deeds as security to the loan, as a simple mortgage on 3.3.2000. Even in the legal notice dated 8.10.2002 under Ex.A2, the Defendant has once again admitted the receipt of the amount as follows:-

"...Again our client was paid Rs.27 lakhs in the year 1999. At the time when the loan was advanced, the Plaintiff is said to have taken the title deeds in respect of the Defendant's property which is situate in Thirupapuliyur and Gundu Uppulavadi village."

20. In the light of the admission made by the Defendant, by virtue of Section 58 of the Evidence Act read with Order XII, Rule 6 and Order XV, Rule 1 of the Code of Civil Procedure, the trial Court ought to have decreed the suit filed by the Plaintiffs herein. As it did not do so, the impugned judgment and decree are liable to be interfered with.

21. Coming to the second issue whether the suit filed by the Plaintiffs was barred by limitation, the Defendant also filed a civil suit in O.S.No.18 of 2006 (O.S.No.120 of 2004) for mandatory injunction directing the Plaintiffs to deliver the title deeds relating to the property belonging to him. In paragraph 4 of the plaint, the Defendant has pleaded as follows:-

4. The plaintiff was making periodical payments towards discharge of the amounts borrowed from the defendants. During the times when the plaintiff may delay the payments, then either of the defendants used to visit the plaintiff at Thirupapuliyur and collect the monies. The defendants never used to give receipt for the payments made. The defendants in such manner received from the plaintiff a total sum of Rs.25 lakhs between 1998 and 2002....."

Since the Defendant has categorically admitted in paragraph-4 of the plaint that he has made repayments towards the loan between the year 1998 and 2002, filing of the suit in the year 2004 by the Plaintiffs for recovery, in our considered opinion, is not barred by limitation, therefore, the findings given by the trial Court for non suing the Plaintiffs, ignoring the vital admission made by the Defendant, are again unsustainable in law.



22. Coming to the third issue that when the debtor deposits with the creditor the title deeds of the property with intention to create a security of the loan amount, whether the said document is to be registered under Section 59 of the Transfer of Property Act, this issue has been answered by the Hon'ble Apex Court as early as in the year 1950 in *Rachpal Mahraj v. Bhagwandas Daruka and others*, AIR 1950 SC 272, wherein the Apex Court held as follows:-

"4. A mortgage by deposit of title deeds is a form of mortgage recognised by section 58(f) of the Transfer of Property Act which provides that it may be effected in certain towns (including Calcutta) by a person "delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon." That is to say, when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under section 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under section 17 of the Indian Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable, as in *Obla Sundarachariar v. Narayana Aiyar* 58 I.A.68 Or, it may be delivered at a later date and nevertheless be registrable, as in *Hari Sankar Paul v. Kedar Nath Saha* 66 I.A. 184. The crucial question is: Did the parties intend to reduce their bargain regarding the deposit of the title deeds to the form of a document? If so, the document requires registration. If, on



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the other hand, its proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, then, there being no express bargain, the contract to create the mortgage arises by implication of the law from the deposit itself with the requisite intention, and the document, being merely evidential does not require registration.

6...In agreement with the High Court, we are of opinion that the memorandum delivered by the appellant along with the title deeds deposited with the respondents did not require registration and was properly admitted in evidence to prove the creation of the charge."

23. Again in the judgment in United Bank of India Limited v. Lekharam Sonaram and Company and others, AIR 1965 SC 1591, the Apex Court reiterated as follows:-

"6. The main question presented for determination in this case is whether the view taken by the High Court as to the legal effect of these documents - exhibits 7(a), 7(b) and 12 - is correct.

7. A mortgage by deposit of title deeds is a form of mortgage recognised by section 58(f) of the Transfer of Property Act which provides that it may be effected in certain towns (including Calcutta) by a person "delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon." In other words, when the debtor deposits with the creditor title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required under section 59 as in other classes of mortgage. It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent....."

24. Following the aforesaid judgment, a Division Bench of this Court in the case of Canara Bank thru' its Kovilpatti



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Branch Manager etc., v. R.Rengasami and others, (1994) 2 LW 305, has also held as follows:-

"7. We have no hesitation to hold that there is a valid equitable mortgage in favour of the plaintiff and it is entitled to a decree on the basis of a mortgage. The judgment and decree of the trial Court, in so far as they negative the prayer for the grant of mortgage decree in favour of the plaintiff, are set aside. There will be a decree in the suit O.S.No.244 of 1980 on the file of the Principal Subordinate Judge, Tuticorin as prayed for by the plaintiff."

25. Finally, the Apex Court in State of Haryana and others v. Narvir Singh and another, (2014) 1 SCC 105, restating the legal position, has held as follows:-

"11. A mortgage inter alia means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(c) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. Mortgage by deposit of title-deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor deposits with the creditor title-deeds of the property for the purpose of security, it becomes mortgage in terms of Section 58(f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of a mortgage by deposit of title deeds is the handing over by a borrower to the creditor, the title deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent. After the deposit of the title deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an



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instrument of mortgage. A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)(c) of the Registration Act, but in a case in which such a document does not incorporate any term and condition, it is merely evidential and does not require registration."

The above settled legal position tells us that the third issue is no longer res integra, but this legal position also has been overlooked by the trial Court.

26. In the light of the above settled legal position, a perusal of Ex.A7 dated 3.3.2000 clearly goes to show that the Defendant had deposited the title deeds as security for the loan borrowed on 4.11.99 under Ex.A1 and also in his evidence as D.W.1, Shankar Chettiar has also admitted that he handed over all those documents to the Plaintiffs. This admission of the Defendant in his evidence that he has handed over the documents at face value at the Plaintiffs place would further prove the fact that the Plaintiffs had not taken those documents when the loan was given, but it was subsequently given as security. Therefore, the deposit of title deeds, being an equitable mortgage, need not be registered, as wrongly held by the trial Court.

27. Considering the fact that the trial Court has committed serious errors in not following the well settled legal position, we have no hesitation to hold that the Plaintiffs are entitled to a mortgage decree as prayed for. Accordingly, the judgment and decree passed by the trial Court are set aside and there will be a decree in the suit O.S.No.19 of 2006 on the file of the learned Additional District Judge (Fast Track Court No.2), Cuddalore as prayed for by the Plaintiffs. Consequently, for the reasons aforementioned, the false suit filed by the Defendant in O.S.No.18 of 2006 making bogus claim is dismissed. The first appeals are allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SS



To

1. The Additional District Judge
(Fast Track Court No.2)
Cuddalore

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COPY TO:

The Section Officer,
VR Section,
High Court, Madras 104.

+2 Ccs to Mr.S.Ramesh Kumar, Advocate, Sr.No. 27731.

+2 Ccs to M/s.R.Meenal, Advocate, Sr.No. 27647 & 27648.

A.S.Nos.895 & 896 of 2010

SSD(CO)
LS(06/10/2021)