



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 24TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE V. PARTHIBAN

C.S.No. 726 of 2019

Mr. C. Madanraj,
Son of Mr.J.Champalal Jain,
Having permanent residence at
No.3/2, Maligai Kandappa Chetty Street,
Ambur-82, Vellore District.
Having office at No.28/81, 1st Floor,
Millers Road, Kilpauk,
Chennai – 600 010.

... Plaintiff

-Vs-

Mohammed Riyaz Shareef,
Son of Janab Mohammed Sulthan Shareef,
No.28/81, Millers Road,
Kilpauk, Chennai – 600 010.

... Defendant

Civil suit praying that this Hon'ble Court be pleased to pass a Judgment and Decree in favour of the Plaintiff and as against the defendant.

(a) To pass a Preliminary Decree directing the defendant to pay to the plaintiff a sum of Rs.6,94,90,000/- (Rupees Six Crores Ninety Four Lakhs and Ninety Thousand only) together with interest at the rate of 24% per annum on the principal amount of Rs.3,15,00,000.00/- (Rupees Three Crores Fifteen Lakhs only) from the date of plaint till the date of realization

within the time frame to be fixed by this Hon'ble Court, failing which, this



Court be pleased to pass a decree for selling the suit schedule property in public auction for realizing the due amount as determined by the Court.

(b) To grant permanent injunction restraining the defendant, his men, agents, servants, subordinates or anybody claiming through him from in any manner creating any encumbrance with respect to the suit 'B' schedule property.

(c) To grant permanent injunction restraining the defendant, his men, agents, servants, subordinates or anybody claiming through him from in any manner disturbing plaintiffs peaceful possession and enjoyment over the suit 'C' Schedule property.

(d) To award cost of the suit.

This Civil suit coming on this day before this Court for hearing in the presence of Mr.M.Himavanth, Advocate for the Plaintiff herein and the defendant herein not appearing in person or by advocate and the said defendant herein, having been set exparte and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and this Court having observed that the plaintiff has proved that the defendant had executed mortgage deed and promisory notes in favour of the plaintiff and not repaid the loan amount, **it is ordered**



That the plaintiff herein be and is hereby entitled to equitable mortgage by depositing the title deeds of the properties morefully setout in the schedule hereunder.

2. That there is now due to the plaintiff on the aforesaid mortgage of the property set out in the schedule hereto the sum of Rs.3,15,00,000/- (Rupees Three Crores Fifteen Lakhs only) for principal and the sum of Rs.5,13,23,561/- (Rupees Five Crores Thirteen Lakhs Twenty Three Thousand Five Hundred and Sixty One only) for interest and that, on the 19th day of November 2021, there will be due the further sum of Rs.11,59,890/- (Rupees Eleven Lakhs Fifty Nine Thousand Eight Hundred and Ninety only) for interest at the said rate of 24% per annum on the principal sum of Rs.3,15,00,000/- (Rupees Three Crores Fifteen Lakhs only) making in all the sum of Rs.8,39,83,451/- (Rupees Eight Crores Thirty Nine Lakhs Eighty Three Thousand Four Hundred and Fifty one only).

And it is ordered and decreed as follows:-

3. That the defendant shall be at liberty on or before the said 19th day of November 2021 to pay into Court the said sum of Rs.8,39,83,451/- (Rupees Eight Crores Thirty Nine Lakhs Eighty Three Thousand Four Hundred and Fifty One only).



4. That on payment as aforesaid, the plaintiff shall bring into Court all documents in their possession or power relating to the mortgaged properties set out in the Schedule hereto and all such documents shall be delivered over to the defendant or such person as he appoints, and the plaintiff shall if so required reconvey or retransfer the said property free from the said mortgage, and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and thereupon the plaintiff shall be at liberty to apply for payment out to the Court of the said sums.

5. That, in default of payment in as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged properties morefully setout in the schedule hereunder and on such application being made, the mortgaged properties or a sufficient part thereof shall be directed to be sold and the sale-proceeds shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the said sums due to the plaintiff as aforesaid together with subsequent interest at the rate of 24% per annum till the date of realisation and such further costs as may be allowed to the plaintiff by the Court, and the balance, if any, shall be paid to the defendant herein or other person entitled to receive the same.



6. That in case the said net sale-proceeds shall not be sufficient for payment in full of the amounts payable to the plaintiff as aforesaid, the plaintiff shall be at liberty to apply for a personal decree against the defendant for the amount of the balance due to the plaintiff.

7. That the further consideration of this suit do stand adjourned.

8. That Mohammed Riyaz Shareef, the defendant herein, his men, agents, servants, subordinates, or any body claiming through him, be and is hereby restrained by an order of permanent injunction from (a) in any manner creating any encumbrance with respect to the suit B-Property morefully set out in the Schedule hereunder and (b) in any manner disturbing plaintiffs peaceful possession and enjoyment over the Suit C-Property morefully set out in the Schedule hereunder.

SCHEDULE OF PROPERTY

SCHEDULE – A

All that piece and parcel of house property, ground and premises bearing Old Door No. 7/31, New Door No. 81, Millers Road, Kilpauk, Chennai – 600 010, comprised in Survey No.10, Re-Survey No.3111/2,

New Re-Survey No.3111/7(part) of Purasawakkam Village, measuring 1989

Sq.ft and bounded on the



WEB COPY

North by : Purasai Arunagiri Nadar Thirupokazh Kazhagam

South by : Passage belonging to Tharunisa

East by : Millers Road and property settled to
Mohammed Riyaz Shareef

West by : Property belonging to Tharunnisa

Situated within the limits of Chennai Corporation, Registration District of Central Chennai and Sub-Registration District of Purasawakkam.

SCHEDULE – B

[Forming part of 'A' Schedule Property]

All that built up area measuring 1800 Sq.ft situated in the first floor of the building bearing Old Door No.7/31, New Door No.81, Millers Road, Kilpauk, Chennai – 600 010, together with 1/3rd Undivided share in the land measuring 1989 Sq.ft comprised in Survey No. 10, Re-Survey No.3111/2, New Re-Survey No. 3111/7(part) of Purasawakkam Village, described in the Schedule A, situated within the limits of Chennai Corporation, Registration District of Central Chennai and Sub-Registration District of Purasawakkam.



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SCHEDULE – C

[Forming part of 'B' Schedule Property]

All that piece and parcel of Shop portion measuring 490 Sq.ft in front portion of the first floor of the building bearing Old Door No.7/31, New Door No. 81, Millers Road, Kilpauk, Chennai – 600 010, under the use and occupation of the plaintiff forming part of 'B' Schedule Property.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
24TH DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



ED
30.12.2021
WEB COPY

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C.S.No. 726 of 2019

DECREE

DATED : 24.09.2021

THE HON'BLE MR. JUSTICE
V. PARTHIBAN

FOR APPROVAL: 04/01/2022

APPROVED ON : 06/01/2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

Civil Suit No.726 of 2019

Mr.C.Madanraj,
Son of Mr.J.Champalal Jain,
Having permanent residence at
No.3/2, Maligai Kandappa Chetty Stret,
Ambur-82, Vellore District,
Having office at NO.28/81, 1st Floor,
Millers Road, Kilpauk,
Chennai - 600 010

... Plaintiff

Vs.

Mohammed Riyaz Shareef,
Son of Janab Mohammed Sulthan Shareef,
No.28/81, Millers Road, Kilpauk,
Chennai - 600 010.

...Defendant

Plaint filed under Order IV Rule 1 and Order XXXVII Rule 1 and 2 of Rules of the High Court, Madras, Original Side R/w. Order VII Rule 1 and Order XXXIV Rule 1 & 2 of the Code of Civil Procedure, 1908, praying for judgement and decree against the defendant:

(a) to pass a Preliminary Decree directing the defendant to pay to the plaintiff a sum of Rs.6,94,90,000/- (Rupees Six Crore Ninety Four Lakh and Ninety Thousand only) together with interest at the rate of 24% per annum



Lakh only) from the date of plaint till the date of realization within the time frame to be fixed by this Hon'ble Court, failing which, this Court be pleased to pass a decree for selling the suit schedule property in public auction for realizing the due amount as determined by the Court.

(b) To grant permanent injunction restraining the defendant, his men, agents, servants, subordinates or anybody claiming through him from in manner creating any encumbrance with respect to the suit 'B' schedule property.

(c) To grant permanent injunction restraining the defendant, his men, agents, servants, subordinates or anybody claiming through him from in manner disturbing plaintiffs peaceful possession and enjoyment over the suit 'C' Schedule property.

(d) To award cost of the suit

SCHEDULE OF PROPERTY

Schedule-A

All that piece and parcel of house property, ground and premises bearing old door No.7/31, New Door No.81, Millers Road, Kilpauk, Chennai - 600 010, comprised in Survey No.10, Re-Survey No.3111/2, New Re-Survey No.3111/7(part) of Puraswakkam Village, measuring 1989 sq.ft.



North by : Purasai Arunagiri Nadar Thirupokazh Kazhagam

South by : Passage belong to Tharunisa

East by : Millers Road and property settled to Mohammed

Riyaz Shareef

West by : Property belonging to Tharunnisa

Situated within the limits of Chennai Corporation, Registration District of Central Chennai and Sub-Registration District of Purasawakkam.

SCHEDULE-B

(Forming part of 'A' schedule property)

All that built up area measuring 1800 sq.ft. situated in the first floor of the building bearing old door No.7/31, New Door No.81, Millers Road, Kilpauk, Chennai - 600 010, together with 1/3rd Undivided share in the land measuring 1989 sq.ft. comprised in Survey No.10, Re-Survey No.3111/2, New Re-Survey No.3111/7 (part) of Purasawakkam Village, described in the schedule A, situated within the limits of Chennai Corporation, Registration district of Central Chennai and Sub-Registration District of Purasawakkam.

SCHEDULE -C

(Forming part of 'B' schedule property)

All that piece and parcel of Shop portion measuring 490 sq.ft. in front portion of the first floor of the building bearing old door No.7/31, New door



No.81, Millers Road, Kilpauk, Chennai - 600 010, under the use and occupation of the plaintiff forming part of 'B' schedule property.

For Plaintiff :Mr.M.Himavanth

For Defendant :Defendant set ex-parte on 19.02.2021

J U D G M E N T

The Civil Suit is filed by the plaintiff praying for judgement and decree against the defendant:

(a) to pass a Preliminary Decree directing the defendant to pay to the plaintiff a sum of Rs.6,94,90,000/- (Rupees Six Crore Ninety Four Lakh and Ninety Thousand only) together with interest at the rate of 24% per annum on the principal amount of Rs.3,15,00,000.00/- (Rupees Three Crore Fifteen Lakh only) from the date of plaint till the date of realization within the time frame to be fixed by this Hon'ble Court, failing which this court be pleased to pass a decree for selling the suit schedule property in public auction for realizing the due amount as determined by the Court.

b. To grant permanent injunction restraining the defendant, his men, agents servants, subordinates or anybody claiming through him from in manner creating any encumbrance with respect to the suit 'B' schedule property



c. To grant permanent injunction restraining the defendant,

his men, agents, servants, subordinates or anybody claiming through him from in manner disturbing plaintiffs peaceful possession and enjoyment over the suit 'C' Schedule property.

d. To award cost of the suit.

2. It is the case of the plaintiff that he was a businessman at Ambur and in Chennai. The defendant was doing leather business at Ambur and he was introduced to the plaintiff through his friends Mr.Servattulla and Mr.Rizwan. During the year 2013, the defendant approached the plaintiff and sought for loan to a tune of Rs.Four Crore to meet his business requirements. The defendant had offered the suit schedule mentioned property as collateral for the loan. However, the plaintiff informed the defendant that he will disburse the loan in instalments as lending such huge sum in one stretch may not be practically possible and the defendant had also agreed for the same.

(b) The plaintiff further states that on 19.07.2013, the defendant received a sum of Rs.50,00,000/- by executing a registered mortgage deed dated 19.07.2013 bearing document No.2986 of 2013 on the file of SRO Purasaiwakkam, by mortgaging portion of his property at Millers Road, Kilpauk, Chennai, the description of which is morefully given in Schedule



to repay the said sum together with interest at the rate of 24% per annum.

Pursuant to the mortgage, the defendant had handed over the original title deeds to the plaintiff and gave possession of a portion of the property in First Floor to the plaintiff to have his office, which is morefully referred to as Schedule 'C' forming part of Schedule 'A'. In consonance to the security already given by way of mortgage, the plaintiff had paid a sum of Rs.20,00,000/- (Rupees Twenty lakhs) through RTGS on 22.07.2013 and also paid another sum of Rs.30,00,000/- (Rupees Thirty lakhs only) on 25.07.2013. The defendant executed demand promissory note in favour of the plaintiff. On 16.07.2014, the plaintiff gave another sum of Rs.20,00,000/- through RTGS. On 19.07.2014, the defendant received a sum of Rs.40,00,000/- by cash and another sum of Rs.40,00,000/- by cash on 22.07.2014 by executing demand promissory notes as additional security acknowledging the past and present liability in addition to the mortgage already created. Further, on 19.11.2015, the plaintiff paid another sum of Rs.14,00,000/- through RTGS and Rs.36,00,000/- by cash on 22.11.2015 and the defendant had received the aforesaid sum and also executed demand promissory notes in favour of the plaintiff in addition to the mortgage already created. Subsequently, the defendant had received another sum of Rs.15,00,000/- on 25.05.2016 by executing demand promissory note and on

the same date, the defendant had acknowledged the receipt of aforesaid



payments to the tune of Rs.2,65,00,000/- in writing and agreed to repay the same together with interest at the rate of 24% per annum by deed of acknowledgement dated 20.05.2016. The defendant sought for further loan of Rs.1,35,00,000/- from the plaintiff to clear another mortgage created in respect to other portion of the suit property so that the defendant can dispose the property and assured repayment in a period of one year thereon by disposing his property. But the plaintiff paid to the defendant a sum of Rs.50,00,000/-. The defendant received the said sum on 25.07.2017 by executing demand promissory note and acknowledged the receipt of total sum of Rs.3,15,00,000/- on 25.02.2017 and agreed to repay the said sum with interest at 24% per annum. Subsequently, when the plaintiff demanded for payment, the defendant failed to repay the amount. The defendant was engaging henchmen and attempting to deprive the payments to the plaintiff. The act of the defendant is nothing but cheating and breach of trust. The defendant is attempting to create third party interest and encumbrance over the schedule property to deprive legitimate payment to the plaintiff. If the defendant is allowed to create third party interest over the property, the plaintiff will be put to great hardship and irreparable. Since the loan was availed by the defendant pursuant to the mortgage and the defendant had failed to make the payment as agreed and acknowledged by him. The



the principal amount of Rs.3,15,00,000/- together with interest at the rate of 24% per annum. After repeated demands, the defendant has neither paid the principal nor interest part of it. Hence, the present suit.

3. The defendant was called absent and set ex-parte by this Court on 19.02.2021.

4. During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-15.

5. On a perusal of the plaint averments, the evidence of the plaintiff as P.W.1 and Exs.P-1 to P-15, it is clear that the plaintiff has proved that the defendant had executed mortgage deed and promissory notes in favour of the plaintiff and not repaid the loan amount. Hence, the plaintiff is entitled to the preliminary decree.

6. Accordingly, the Suit is decreed as prayed for. The defendant shall pay the claim amount to the plaintiff within a period of eight weeks from today. No costs.

Witnesses examined on the side of plaintiff:--

P.W.1 Mr.C.Madanraj

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

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-1	19.07.2013	Original Registered Mortgage deed executed by defendant in favour of plaintiff
P-2	22.07.2013	Original Statement of account Indicating



<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
		RTGS transfer to defendant.
P-3	25.07.2013	Original Promissory Note executed by defendant in favour of plaintiff
P-4	16.07.2014	Original Statement of Accounts indicating by RTGS transfer to defendant.
P-5	19.07.2014	Original Promissory note executed by defendant in favour of plaintiff.
P-6	22.07.2014	Original Promissory Note executed by defendant in favour of plaintiff.
P-7	19.11.2015	Original statement of account indicating RTGS transfer to defendant
P-8	22.11.2015	Original Promissory note
P-9	20.05.2016	Original Promissory note
P-10	20.05.2016	Written acknowledgement
P-11	25.02.2017	Original Promissory note
P-12	25.02.2017	Written acknowledgement
P-13	05.12.2019	Photocopy of notice issued to defendant with receipt
P-14	17.12.2019	Postal cover returned
P-15	..	Original Encumbrance Certificate

Witnesses examined on the side of defendant:-- Nil

Documents marked on the side of defendant:- Nil

Court witness and Court documents : Nil

Sd./- V.P.N.J.,
24.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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