



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 25.01.2022	Date of Pronouncing Judgment 04.02.2022
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CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.46 of 2021
and
C.M.P.Nos.7480 & 1157 of 2021

1.M. Shanthi
2.M. Senthil
3.Gayathri @ Shylaza ...Appellants/Respondents/Defendants

.Vs.

1.M. Poornima
2.Minor - R. Sai Keeirthi
3.Minor - R. Sai Sneha
4.S. Manimegalai ...Respondents/Appellants/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 09.09.2020 on the file of II Additional District Judge, Vellore at Ranipet in A.S.No.46 of 2017 (A.S.No.187 of 2017 on the file of the Principal District Court, Vellore) reversing the judgment and decree dated 18.04.2017 passed by the Subordinate Judge, Arakkonam in O.S.No.73 of 2015.

For Appellants : Mr.K.Bijai Sundar
For Respondents : Mr.N.Manokaran
for M/S.P.Krishnan

J U D G M E N T

This second appeal is filed challenging the judgment of II Additional District Judge, Vellore at Ranipet in A.S.No.46/2017 reversing the judgment of the trial Court in O.S.No.73/2015 on the file of Subordinate Judge, Arakkonam.

2. The respondents filed the suit claiming a sum of Rs.6,08,133/- with future interest on Rs.2 lakhs at the rate of 24% per annum from the date of suit till the date of preliminary decree and thereafter, at the rate of 6% per annum till the date



of realisation on the basis of a mortgage, and on default to make payment, the sale of mortgaged property with liberty to proceed against the defendants under Order 34 Rule 6 for the deficiency, if any, and for costs.

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3. The case of the respondents is that the first respondent is the wife and respondents 2 and 3 are the daughters of one R.Venkatesh Rao. The first appellant is the wife of late G.Mohan and other appellants are his children. For a full and valid consideration received from Venkatesh Rao, Mohan and first appellant jointly executed a registered mortgage deed on 23.11.2005 for Rs.2 lakhs. They promised to pay interest at 24% per annum. Mohan paid interest up to December' 2006. Thereafter, Mohan and the 1st appellant did not pay any amount towards the mortgage debt. Venkatesh Rao issued a notice on 27.12.2008 to Mohan and first appellant. They did not send any reply. Mohan died on 19.11.2010 leaving the appellants as his legal representatives to succeed to the suit property. Venkatesh Rao died on 24.07.2011 leaving the respondents as his legal heirs to succeed to the suit amount due on the mortgage deed.

3(i). On 05.11.2011, respondents issued a notice to the appellants to pay the amount due on the mortgage deed and decree amount in O.S.No.10/2009 and O.S.No.13/2009. Appellants paid the amount due on the above suit but did not pay the mortgage loan amount. Respondents 1 to 3 executed a registered madeover deed in favour of 4th respondent in respect of the suit mortgage deed. Fourth respondent issued a notice to the appellants on 11.01.2015 and that was refused. In the said circumstances, the suit was filed for the reliefs aforesaid.

4. It is seen from the written statement of the appellants that they admitted the execution of mortgage deed dated 23.11.2005 for Rs.2 lakhs by G.Mohan and first appellant/Shanthi, in favour of R.Venkatesh Rao and creating an equitable mortgage relating to the suit property. It is the case of the appellants that on the same day of execution of mortgage deed, Venkatesh Rao obtained the signature of the first appellant and Mohan in a few blank promissory notes. Venkatesh Rao was collecting interest from Mohan at 1.5% and Mohan paid interest up to September' 2008. Venkatesh Rao is a financier and was doing money lending business. He instituted two suits in O.S.No.10/2009 and O.S.No.13/2009 on the file of District Munsif Court, Arakkonam against Mohan for recovery of money by using the blank promissory notes given by Mohan at the time of executing the mortgage deed.



4(i). When it was questioned, Venkatesh Rao promised to discharge the liability created on the basis of suit property by equitable mortgage. The decree amount in both the suits were paid by the appellants. Fourth respondent has also filed a suit in O.S.No.257/2007 on the file of District Munsif Court, Arakkonam on the basis of one of the promissory note jointly executed by first appellant and Mohan. First appellant paid the entire amount in all the above suits, but the respondents refused to discharge the liability on the suit property created by mortgage. There is no subsisting liability attached to the mortgage deed. After executing a madeover document in favour of the fourth respondent, the suit filed by all the respondents is not maintainable. Therefore, the suit is liable to be dismissed.

5. On the basis of the aforesaid pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for the recovery of a sum of Rs.6,08,133/- with interest as prayed for on mortgage.

2. Whether the defendants have settled the amount to the first plaintiff's husband as stated?

3. To what other reliefs?

6. During the course of trial, P.W.1 and P.W.2 were examined and Exs.A1 to A10 were marked on the side of the respondents/plaintiffs. D.W.1 and D.W.2 were examined and Exs.B1 to B7 were marked on the side of the appellants/defendants.

7. On considering the oral and documentary evidence, the learned trial Judge found that the respondents have not proved the consideration for the suit mortgage deed and therefore, dismissed the suit. In appeal filed by the respondents in A.S.No.46/2017, the learned appellate Judge, on reconsideration of oral and documentary evidence found that respondents proved the mortgage debt and therefore, decreed the suit. Challenging the said judgment, this second appeal is filed.

8. At the time of admission of the second appeal, the following substantial questions of law were framed:

1. Whether the appellate Court is right in reversing the well considered trial Court judgment by allowing the appeal contrary to the express provision of Section 214(1)(a) of the Indian Succession Act, 1925?

2. Whether the appellate Court was right in allowing the appeal, by accepting the suit when all



the respondents have admitted that they have filed the suit jointly only to avoid technical objection which proves that none of them had a right to sue?

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3. Whether the appellate Court was right in ordering interest at the rate of 24% p.a., which is contrary to the provisions of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 and read with Money Lenders Act, 1957?

9. Learned counsel for the appellants submitted that the suit filed by the respondents without getting succession certificate under Section 214 of Indian Succession Act, is not maintainable. The appellants filed I.A.No.1/2020 and I.A.No.2/2020 to receive additional documents. After allowing these petitions and receiving the documents, the appellate Court discussed about these documents without examining any witness and marking the documents. Therefore, the additional documents cannot be relied. The fourth respondent is the close relative of respondents 1 to 3. Respondents have colluded together in filing the suit after the discharge of loan amount borrowed by Mohan and the first appellant. The interest charged at 24% p.a., is against the provisions of Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 r/w Money Lenders Act, 1957. Ignoring the payments made by the appellants in the suits filed by respondents for recovery of money towards the money borrowed, the first appellate Court wrongly set aside the judgment of the trial Court and decreed the suit. Therefore, the learned counsel for the appellants prayed for setting aside the judgment of the first appellate Court and for allowing this appeal.

10. Per contra, the learned counsel for the respondents submitted that the appellants have clearly admitted in the written statement about the borrowing of Rs.2 lakhs and execution of mortgage deed. They pleaded discharge, but the discharge is not proved. The promissory notes filed by the respondents have no connection with the suit mortgage money transaction. Both are different transaction. Appellants have only discharged the loan amounts covered in the suits filed on the basis of promissory notes. They have not paid the loan amount covered under the mortgage deed and they have not proved the case of discharge of mortgage loan amount. Succession certificate is not necessary in mortgage suits. Interest was appropriately reduced by the first appellate Court. The first appellate Court rightly considered the issues involved in the case and decreed the suit. Therefore, the learned counsel for



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which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal."

In 2007(3) CTC 59 (T.Tamilarasan Vs. Arokkiasamy and others), it is observed as follows:

"13. Therefore it is clear that when in the Appellate Court it is established that notwithstanding due diligence such evidence could not be produced during the trial stage or in cases where the Appellate Court requests the document to be produced for pronouncing judgment or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined. It is also made clear that in cases where the Appellate Court takes a decision to allow the additional evidence, it is to direct the Court from whose decree the Appeal is preferred, or any other Subordinate Court, to take such evidence and to send it to the Appellate Court for decision. Therefore, there are two steps when additional evidence is filed before the Appellate Court namely:

(1) When the Appellate Court is satisfied when such additional evidence is required to be produced the appellate Court shall pass an order with giving reasons.

(2) Thereafter, either the Appellate Court itself can take evidence or direct the Subordinate Court to take evidence for proving the additional documents and sent the report so as to give a final decision in the present case."

The Supreme Court, in the case of Corporation of Madras and Another Vs. M.Parthasarathy and Others, observed as follows:

"14) In our considered opinion, the first Appellate Court committed two jurisdictional errors in allowing the appeals.



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15) First, it took into consideration the additional piece of evidence while deciding the appeals on merits without affording any opportunity to the appellants herein (who were respondents in the first appeals) to file any rebuttal evidence to counter the additional evidence adduced by the respondents (appellants before the first Appellate Court). This caused prejudice to the appellants herein because they suffered the adverse order from the Appellate Court on the basis of additional evidence adduced by the respondents for the first time in appeal against them. (See Land Acquisition Officer, City Improvement Trust Board vs. H.Narayanaiah & Ors., (1976) 4 SCC 9, Shalimar Chemical Works Ltd., vs. Surendra Oil & Dal Mills (Refineries) & 7 Ors., (2010) 8 SCC 423 and Akhilesh Singh which the first Appellate Court failed to resort in disposing of the appeals. This also involved a question of jurisdiction.

17. Having allowed the CMP No.1559/1993 and, in our opinion rightly, the first Appellate Court had two options, first it could have either set aside the entire judgment/decreed of the Trial Court by taking recourse to the provisions of Order 41 Rule 23A of the Code and remanded the case to the Trial Court for retrial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or second, it had an option to invoke powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the Trial Court for limited trial on particular issues arising in the case in the light of additional evidence which was taken on record and invite findings of the Trial Court on such limited issues to enable the first Appellate Court to decide the appeals on merits.

18. The first Appellate Court failed to take note of both the above mentioned provisions and proceeded to allow it wrongly."

14. In reply, the learned counsel for the respondents relied on the judgment reported in 2014 (2) CTC 113 for the proposition that it is not necessary that in every case, parties to be examined and documents to be marked when received as additional evidence. In the case before hand, the appellants, themselves marked the petition copies in E.P.Nos.11/8, 15/2010



and 16/2010. Respondents had only produced before the first appellate Court only the petition and orders in E.P.No.14/10, plaint in O.S.Nos.10/2009 and 13/2009. Appellants and respondents are parties to these proceedings and therefore, they cannot deny the existence of these records. The examination of witnesses for marking these documents is not necessary. The omission to mark these documents is a procedural lapse committed by the first appellate Court. However, all the documents marked in the case were considered and reasoned judgment was pronounced. Merely because there is a procedural lapse of marking the documents, there is no necessary to set aside the judgment on this score, when the documents were considered by the first appellate Court.

15. It is observed in the judgment reported in 2014 (2) CTC 113 (K.M. Thangavel and others vs. K.T. Udayakumar and another), that,

"25. The above said procedure is not without any exception. There is one exception for the proposition that in cases wherein the Appellate Court grants permission to a party to adduce additional evidence, there must be a separate order on the Application filed under Order 41, Rule 27, which should be followed by recording of evidence. The exceptional case is where the parties to the Appeal concede the prayer of the other side for adducing additional evidence and also give their consent for marking those documents as additional exhibits. Even in cases wherein the Application under Order 41, Rule 27 would have been resisted initially, on the expression of the view of the Court that such an Application deserves to be allowed, if the opposite parties may give their consent for the marking of those documents, there would not be any need to adduce oral evidence for the proof of the documents. In such cases alone, the Appellate Court can incorporate an order allowing the Application and also mark the documents by consent and proceed with the pronouncement of the judgment in the Appeal."

16. Admittedly, the parties to this appeal are also parties to the suits in O.S.Nos.10/2009, 13/2009, E.P.No.14/2010 and therefore, the appellants cannot have any objection for production of these documents as additional evidence. Admittedly, the petitions filed to receive the additional documents were allowed on payment of costs. Therefore, it is



not open to the appellants to raise the issue of reception of additional documents before this Court. True it is that the additional documents have not been marked as exhibits. It is a procedural lapse committed by the first appellate Court. However, the documents received by way of additional evidence and the documents already marked were considered by the first appellate Court. Therefore, merely because there is a procedural lapse in omitting to mark the additional documents, it is not necessary to set aside the judgment and remand the appeal to the Court below for marking the documents.

17. As already said, the case of the appellants is that they discharged mortgage loan by paying the amounts covered in O.S.Nos.10/2009, 13/2009, 257/2007 which were filed on the basis of blank promissory notes signed and given by first appellant and Mohan at the time of execution of mortgage deed. However, the evidence of D.W.1 is totally contrary to what is pleaded in the written statement. It is claimed in the proof affidavit that the suit mortgage deed was executed as a security for the amount of Rs.2 lakhs borrowed through promissory notes. This is totally contrast to the pleadings made in the written statement.

17(i). During the course of cross examination, she admitted that it is shown in the mortgage deed that a sum of Rs.2 lakhs was borrowed on 23.11.2005. She also admitted that O.S.Nos.10/2009 and 13/2009 filed by Venkatesh Rao against her husband and they paid the amount in the suits. She admitted that there is no written undertaking from Venkatesh Rao or Ramachandra naidu or Bharathi to cancel the mortgage towards the payment made in the suits. It is also her admission that she has not sent any reply to the notice sent by Venkatesh Rao, his wife and children and fourth respondent. Thus, it is clear that the loan transaction concerned in O.S.Nos.10/2009, 13/2009 and 257/2007 have no connection with the suit mortgage loan. Though the appellants discharged the loans covered in these suits, they have not proved the discharge of loan covered under the suit mortgage deed.

17(ii). The next important submission of the learned counsel for the appellants is that, when the suits filed without the succession certificate under Section 214 of Indian Succession Act, is not maintainable. He relied on the following judgment in support of his submission, which reads as follows:-

1. I.Basha Khan Vs. K.Selvaraj and Ors., in C.R.P.No.3599 of 1993 dated 11.11.1998, the relevant portion reads as follows:

6.K.Ramaswamy, J., as he then was as puisne Judge of the Andhra Pradesh High Court, in the decision in Akula Rangappa v. Narayana Swamy,



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MANU/AP/0255/1988: AIR 1988 AP 314, while construing the scope of Section 214(1)(b) of the Indian Succession Act, has held as follows (para 2):--

If a fresh application has to be filed then it is necessary that the legal representatives should obtain the succession certificate as enjoined under Section 214(1)(4) of the Act. The golden rule that runs through the decisions of this Court is thus:--

(1) Where a decree-holder himself files an execution application and he dies before executing the decree and recording the full satisfaction the legal representatives are entitled to come on record without obtaining a succession certificate as required under Section 214(1)(b) of the Act.

(2) Where the legal representatives themselves are seeking to execute the decree obtained by the deceased decree-holder, then it is mandatory under Section 214(1)(b) of the Act to obtain a succession certificate and then to have the decree executed".

17(iii). However, the learned counsel for the respondents relied on the following judgments for the proposition that it not necessary to obtain succession certificate for enforcing the mortgage right. They are as follows:

1. A.Ramaswami Vs. K.Venkamma reported in AIR 1963 AP 135, the relevant paragraphs, which reads as follows:

7. We do not think that we can accede to this proposition. It is true that the case cited above countenances this proposition but we are not inclined to share the view expressed by the Allahabad High Court in that case. In our considered opinion, the debt contemplated by Section 214 of the Indian Succession Act would not govern a decree for the enforcement of the mortgagee's right as against the mortgaged property, as it is not a decree for debt. This is the view which the Madras High Court had taken in Ammanna v. Gurumurthy ILR Mad 64 and Palaniyandi Pillai v. Veerammal ILR Mad 77. These two rulings have stood the test of time for over half a century.

8. In ILR Mad 64 it was ruled by a Bench of the Madras High Court that a succession certificate under Section 4 of Act VII of 1889, which corresponds to Section 214 of the Indian Succession Act 39 of 1925, was not necessary for obtaining a decree for foreclosure or sale by the heirs of the mortgagee, as, in such a case, the suit could not be regarded as one



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to recover the debt. In ILR ALL 259(FB), the ruling of the Madras High Court cited above was distinguished on the ground that the relief prayed for in that case was foreclosure. We do not think that distinction is really valid.

12. Thus, there is a strong current of authority in favour of the opinion that Section 214 does not govern decrees for enforcement of mortgage rights. It may be different with reference to a personal decree for debt. But, here, the personal remedy is not sought to be enforced. The mere fact that the personal remedy is still available to the mortgagee would not make any difference. It is open to the judgment-debtor to raise such an objection as and when such remedy is sought to be availed of. It follows that the contention urged on behalf of the appellant has to be put aside.

2. Kanchan Modi and Ors. Vs. Baij Nath Singh and Ors. reported in (1892) ILR 19Cal336, the relevant paragraphs, which reads as follows:

7. However that may be, we are of opinion that the Judge is in error in holding that Section 1 of the Succession and Certificate Act has any application to the facts of the present case. As already mentioned, no personal decree was asked for by the plaintiff's against the debtors; and the only parties before the Appellate Court being the plaintiff's on the one hand, and the assignees of the mortgaged premises on the other hand, no question whatever could arise before the District Judge in terms of Section 4 of the Succession and Certificate Act as to any decree being passed against the debtors of the deceased person for payment of the debt to the persons claiming to be entitled to the effects of the deceased person. The assignees of the mortgaged premises could not in any sense of the word be regarded as debtors. The plaintiffs have an equitable claim against them by reason of their being in possession of the property mortgaged; and upon that equitable right the plaintiffs brought their suit against them to sell the mortgaged property and to realise the money due to them.

9. A case, however, has been quoted before us by one of the learned pleaders for the respondents, Janaki Ballav Sen v. Hafiz Mohamed Ali Khan I.L.R. 13 Cal 47. But the distinction between



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that case and a case like the one before us has been pointed out by the learned Judges who decided the case of Roghu Nath Shaha v. Poresh Nath Pundar I. L. R. 15 Cal. 54 and that distinction lies in this: that in the case of Janaki Ballav Sen v. Hafiz Mohamed Ali Khan I.L.R. 15 Gal. 54a personal decree was asked for, but here no personal decree was asked for and no personal decree was given by the Court of First Instance. Section 4 says: "No Court shall pass a decree against a debtor for payment of his debt," and so on. A mortgagee might ask for a decree against the person of the debtor; but the Court is not bound to make a personal decree: It might, if the facts permit, make a decree only against the property mortgaged by the defendant; and in the circumstances of the present case it was quite open to the Court of First Instance-- In fact, it was its duty--to refrain from making a personal decree and to pass a decree charging the property in the hands of the defendants, 2nd party, for satisfaction of the claim of the plaintiffs. The relief that the plaintiffs asked for in this suit was not for recovery of the debt but, as observed by Sir Barnes Peacock in the Full Bench decision in Surwan Hossein v. Shahazdah Golan Mahomed 9 W.R. 170 it was a suit for the recovery of an interest in Immovable property. The question that the learned Judges had to decide in that case was no doubt a different question; it was one of limitation, but we take it, as it has always been understood in this Court, that a suit to enforce a charge against Immovable property is a suit for the recovery of an interest in Immovable property; and if that be the correct view to take, it seems to be obvious that the plaintiffs were entitled, notwithstanding the absence of a certificate under the Succession and Certificate Act, to sustain the decree that had been pronounced in their favour by the Court of First Instance, that being a decree charging the Immovable property in the hands of the 2nd party defendants.

3. Gopala Panicker & others Vs. Assanissa & Others reported in 1969 SCC OnLine Ker 56, the relevant paragraph, which reads as follows:

1. Two points have been pressed before me in this second appeal neither of which has been adverted to by--because, obviously, they have not



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been pressed before the Courts below. The point taken viz., that the execution of the decree in question could be allowed only on production of a succession certificate, was upheld by both the Courts because, as presented before them, it was a debt which was sought to be enforced and naturally, S. 214(1)(b) of the Succession Act applied since it was the stage of execution.

2. While I have no doubt that the Courts below have stated the correct law they have missed two aspects which have been dealt with before me at the bar. The suit was one for redemption of a mortgage, and it is obvious that neither such a suit nor an execution of a redemption decree, requires production of succession certificate.

4. Ammanna and Ors. Vs. Gurumurthi and Ors. reported in MANU/TN/0153/1892, the relevant paragraph, which reads as follows:

"3. It is next contended that the respondents are not entitled to obtain a decree without producing a certificate as required by Act VII of 1889. We are unable to accede to this contention either, as the suit was instituted before Act VII of 1889 came into force. The general rule, as stated in Wright v. Hale 6 H. & N., 227 and in Kimbray v. Draper L.R. 3 Q.B. 160 is that when an enactment takes away a vested right, it does not apply to existing rights, but when it deals with procedure or regulates practice only it applies to all actions pending as well as future. In C.M.P.416 of 1889, it was held that the Act did not apply to an application to execute a decree which was pending at the date of the passing of the Act [See "Rama Rau v. Chellayamma, I.L.R. 14 Mad. 458 Reporter's note]. In the case before us the plaintiffs had a vested right to a decision in the suit already instituted by them in accordance with the law as it existed when the suit was instituted, and that right would certainly be curtailed if the Act subsequently passed were applied to it. We may also observe that the decree appealed against is for foreclosure of the mortgage and not one for the payment of a debt. The suit would be barred if it were regarded as one to recover the debt, and the direction to pay in six months contained in the decree is given not to fix a personal liability for the debt, but to enable the



defendants to save their right of redemption and to prevent its extinction by foreclosure. This second appeal cannot be supported and we dismiss it with costs."

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5. Arumugam Pillai Vs. Valura Koundan and Ors. reported in MANU/TN/0084/1900, the relevant paragraph, which reads as follows:-

"2. The only other question is whether the plaintiff is not entitled to the decree he obtained in the Court of First Instance by reason of his not having produced a certificate of heirship. That decree is not for money due under a contract, but is in reality the assessment in money by the District Munsif of the value of the plaintiff's mortgage interest. In strictness the plaintiff was entitled to a decree for the land itself, and it was only by his consent that money was awarded in lieu of the land. The amount cannot, therefore, rightly be treated as a debt within the meaning of the Succession Certificate Act. The failure of the plaintiff to produce a certificate was, therefore, no bar to the decree he got. We accordingly reverse the decree of the Subordinate Judge, and we restore that of the District Munsif with the modification that the fifth defendant is not personally liable, nor any of his property except the mortgaged property, to the decree. The fifth defendant will pay the costs of the plaintiff in this and in the lower Appellate Court."

6. Aysha Beevi Mariya Ummal Kunju and Ors. Vs. Abdul Karim Rahuma Beevi and Ors. reported in MANU/KE/0016/1972, the relevant paragraph, which reads as follows:-

"8. For passing a preliminary decree or final decree for sale of the property or even execution of the decree thereof for the realisation of the mortgage money in a suit or its execution instituted by the legal representatives of the mortgagees, they shall not be asked to produce a succession certificate as required by Section 214 of the Indian Succession Act, 1925 as the debt defined in that Section does not include a decree for the enforcement of the mortgagee's right as against the mortgaged property."



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7. Gokal Chand Vs. Shanti Devi and Ors. reported in MANU/PH/0521/2009, the relevant paragraph, which reads as follows:-

"25. Thus, the provisions of Section 214 of the Act as a condition precedent to execute the decree has never been used in this part of the country. In fact, there is no judgment of this Court dealing with the question of applicability of Section 214 of the Act in such like cases. Of course, some recent cases are available where Section 214 of the Act was invoked after the grant of decree. Such cases though stand on different footing, still does not show the use of the provisions of Section 214 of the Act within the jurisdiction of this Court."

8. Ramasamy and Others Vs. P.Kannan Others, in S.A.No.1265 of 2019 dated 03.02.2020, the relevant paragraph, which reads as follows:-

"10. It is true that as per Section 214 of the Indian Succession Act, if the suit instituted by the creditor died, his legal-heirs can pursue the suit, only after getting succession certificate. Indisputably, in the case on hand, D.W.1 himself had admitted in the cross-examination that the plaintiffs 2 to 4 are the legal-heirs of the deceased plaintiff. Hence, the appellants are estopped from raising this issue in the present appeal. These aspects were considered by the Courts below and rejected the same, in my view, appropriately."

18. The consideration of the judgments relied by either parties shows that it is not necessary to obtain succession certificate for enforcing the mortgage right. Therefore, this Court is of the considered view that the suit filed by the respondents without a succession certificate is maintainable.

19. The last submission of the learned counsel for the appellants is that the interest charged at 24% p.a., is usurious and excessive. He drew the attention of the Court that the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003 and Money Lenders Act, 1957, in support of his claim. However, the learned counsel for the respondents submitted that the first appellate Court has granted contractual interest from the date of mortgage till the date of suit and at 12% p.a., on



the principal amount of Rs.2 lakhs from the date of presentation of plaint till the date of decree and thereafter, at 6% p.a., till realisation. Appellants are liable to pay the contractual rate of interest from the date of mortgage till the date of plaint and thereafter, as per the judgment of the first appellate Court.

20. In this regard, he relied on the judgment reported in 2017(4) CTC 636 (The Secretary, K.1161 Kalingarayan Palayam Primary Agricultural Co-Operative Credit Society Ltd., Bhavani Vs. Chinnusamy & Another), the relevant para, which reads as follows:-

...But, after 1929 amendment, because of the words used in the main part of Order 34, Rule 11 of CPC, namely, that "the Court may order payment of Interest", it is no longer obligatory on the part of the Court while passing Preliminary Decree to require payment on the amount due from the date of Suit till the date fixed in Decree for payment due under the Decree. The new provision gives certain amount of discretion to the Court. As has been held by the Hon'ble Supreme Court, the Court has discretion to order payment of Interest from the date of Suit under Order 34, Rule 11 of C.P.C. upto the date fixed for payment in the Preliminary Decree, the same rate agreed in the Contract or if no rate is so fixed such rate on the principal amount found is concerned."

21. It is seen from this judgment that after amendment of 1929 Act, in Order 34 Rule 11 CPC, it is no longer obligatory on the part of the Court while passing preliminary decree to order payment of the contractual rate of interest from the date of suit. Appellants have not produced any material to show that Venkatesh Rao is a professional money lender. Therefore, the provisions of Tamilnadu Prohibitions of Charging Exorbitant Interest Act, 2003 and Money Lenders Act, 1957 cannot be invoked in this case. Appellants admitted the execution of Ex.A1 mortgage deed. The contractual rate is 24%. Therefore, appellants are liable to pay contractual rate of interest at 24% p.a., from the date of mortgage till the date of filing of the suit and thereafter, as indicated by the first appellate Court.

22. For the reasons stated above, this Court finds that the first appellate Court was right in reversing the judgment of the trial Court. for the reason that it is not necessary to obtain succession certificate for enforcing mortgage right for substantial question of law No.1. When the



respondents 1 to 3 madeover the suit mortgage debt to respondent No.4 after receiving consideration, the suit should have been decreed only in favour of the 4th respondent for substantial question of law No.2. The first appellate Court was right in ordering interest at contractual rate from the date of mortgage till the date of filing the suit and thereafter, at 12% p.a., from the date of suit till the date of decree and at 6% p.a., from the date of decree till the date of reliasation. Thus, the third substantial question of law is answered.

23. In the result, the judgment and decree of the first appellate Court is confirmed with a modification that the preliminary decree is passed only in favour of the fourth respondent in view of madeover of mortgage debt in his favour by the respondents 1 to 3 through Ex.A6. Thus, the appeal is dismissed with the above modification with the costs of the fourth respondent. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

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To

1.The II Additional District Judge,
Vellore, Ranipet.

2.The Principal District Court, Vellore.

3.The Subordinate Judge, Arakkonam.

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

+2 Ccs to Mr.K.Bijai Sundar, Advocate sr 7992, 7206

+1 CC to Mr.P.Krishnan, Advocate sr 7502.

S.A.No.46 of 2021 and
C.M.P.Nos.7480 & 1157 of 2021

AK (CO)
SP (17/03/2022)