



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.537 of 2010

Sp.Ramanathan

..Plaintiff

Vs

G.Kaliaperumal

...Defendant

Prayer:- This Civil Suit is filed under Order XXXVII Rule 2 and Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC and Order XXXIV Rule 1 of CPC.

For Plaintiff

: Mr.L.Palanimuthu

for M/s.AL.Ganthimathi

For Defendant

: Set Exparte

JUDGEMENT

This civil suit has been filed to pass a judgement and decree, against the Defendant:-

a) directing the Defendant to pay to the Plaintiff a sum of Rs.22,80,000/- (Rupees twenty two lakhs and eighty thousand only) with interest on Rs.20,00,000/- from the date of filing the plaint till the date of payment, in default, the suit property may be sold and the proceeds thereon may be adjusted



towards the said amount.

WEB COPY

b) if such proceeds shall not be sufficient for the said payment, directing the Defendant to pay to the Plaintiff the amount of deficiency with interest thereon at 6% p.a., till realisation.

c) directing the Defendant to pay to the Plaintiff a sum of Rs.37,00,000/- (Rupees thirty seven lakhs only) with interest at 24% p.a. on Rs.30,00,000/- from the date of the plaint till realisation.

d) directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The case of the Plaintiff, in a nutshell, as set out in the plaint, is as follows:-

a. The Defendant is the Proprietor of Sami Thirai Arangam, Mannarkudi who had borrowed a sum of Rs.20,00,000/- (Rupees twenty lakhs only) from the Plaintiff through fund transfers by RTGS on 9.1.2009, 13.1.2009 and 28.1.2009, by executing a mortgage deed, dated 28.1.2009, creating mortgage over the said Sami Thirai Arangam, in favour of the Plaintiff and agreeing to repay the said amount with interest at 1% per month, within three years, registered as Document No.172 of 2009, on the file of the Sub-Registrar, Mannargudi. Again, the Defendants had borrowed a further sum of Rs.20,00,000/- (Rupees twenty lakhs only), through fund



transfers by RTGS on 6.2.2009, 13.2.2009 and 21.2.2009 and through a cheque on 3.3.2009 and by cash on different dates, by executing a lease agreement, dated 3.3.2009, leasing out the said Sami Thirai Arangam for a period of three years to the Plaintiff on a monthly lease rent of Rs.5000/-, registered as Document No.614 of 2009, on the file of the Sub Registrar, Mannargudi. However, the Defendant did not hand over possession of the said Sami Thirai Arangam pursuant to the said lease agreement.

b. Even thereafter, on the hope that the said amounts can be recovered by running the Theatre, the Plaintiff had advanced a further sum of Rs.20,00,000/- (Rupees twenty lakhs only) to the Defendant, by executing a promissory note dated 6.4.2009, which was to be repaid with interest at 24%. The Defendant had informed the Plaintiff that in view of the dispute with the Trichy Tanjore Area Film Distributors, possession of the Theatre could not be handed over to the Plaintiff and hence, the Plaintiff again had advanced a further sum of Rs.2,29,095/- (Rupees two lakhs twenty nine thousand ninety five only) to the Defendant. In spite of the repeated demands made by the Plaintiff, the Defendant did not come forward to comply with the obligations under the said lease agreement or to repay the amounts borrowed by him. After mediation in the presence of his friend S.Ravindran on 10.2.2009, the Defendant, by confirmation letter dated 10.2.2009, had admitted the borrowal of



Rs.52,29,095/- as stated above from the Plaintiff and agreed to repay the same with interest at 24% p.a. within two months. Even then, since the Defendant did not come forward to settle the dues, the Plaintiff had issued a legal notice of demand on 20.4.2010, for which, there was no response from the Defendant. The Plaintiff is not aware of any encumbrances on the property mortgaged and leased out to him. In all, the amount due and payable by the Defendant to the Plaintiff is Rs.59,80,000/-. In such circumstances, for recovery of the said sum, this civil suit has been filed for the reliefs as stated above.

3. The written statement filed by the defendant, in brief, reads as follows:

The averment stating that the plaintiff was introduced to the defendant by S.Ravindran is false. As the entire loan of Rs.8,00,000/- was unsettled, the bank filed a suit for recovery of money. Before the expiry of 3 years, he cannot file a suit for mortgage money as there is no cause of action arose. On hearing that the plaintiff did not started the renovation work even after withdrawing around Rs.15,00,000/- the defendant arrived from Singapore on 11.05.2009 and the statement of account is a piece of evidence against the plaintiff. The suit for mortgage money cannot be clubbed together with another cause of action arises out of lease deed dated 03.03.2009. The averment that the plaintiff paid Rs.10,00,000/- in cash is false. The cause of action arose at Mannarkudi but not



WEB COPY

at Chennai and therefore, this court got no jurisdiction to entertain this suit.

The executing a promissory note at Virugambakkam for a sum of Rs.10,00,000/- on 06.04.2009 is a forged document created by the plaintiff with the help of the said Arivalagan. The alleged document dated 10.02.2010 is fabricated one and he has not received any legal notice dated 20.04.2010 or 21.04.2010 from the counsel of the plaintiff. The statement of account given in paragraph No.11 of the plaint is incorrect. Hence, he prays either to reject the plaint or dismiss the suit for misjoinder of causes of action.

On 10.07.2018, issues were framed by this court as follows:

“1. Whether the defendant is liable to pay a sum of Rs.22,80,000/- (Rupees Twenty Two Lakhs Eighty Thousand only) with interest on Rs.20,00,000/- to the plaintiff?

2. Whether the defendant executed a promissory note on 06.04.2009?

3. Whether the plaintiff is entitled to decree on Mortgage, pursuant to the Mortgage deed dated 28.01.2009 executed by the defendant in favour of the plaintiff?

4. Whether the plaintiff is entitled to a decree of Rs.37,00,000/- (Rupees Thirty Seven Lakh only) with interest at 24% p.a on Rs.30,00,000/- borrowed by the defendants on various dates?

5. Whether this court have jurisdiction to try the suit?



6. To what other reliefs the parties are entitled?

WEB COPY

4. Thereafter the matter was listed before the Additional Master III for evidence. On 05.09.2018, additional issues were framed by this court in A.No.6146 of 2018 as follows:

“Whether the suit is bad for misjoinder of causes of action?”

5. Though the name of the defendant was printed in the cause list and again it was set exparte on 22.03.2022.

6. The Plaintiff had filed the proof affidavit for his chief examination and receipt of 6 documents as documentary evidence to prove the suit claim. In the Evidence, the Plaintiff examined himself as PW.1 and marked Exs.P1 to P6 as documentary evidence in order to prove the suit claim. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P6 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim.

7. In the result, the civil suit is decreed as prayed for by granting three months time for payment. No costs.

07.07.2022

Index: Yes/No



Web:Yes/No

gv

WEB COPY

List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 – Sp.Ramanathan

List of Exhibits Marked on the side of the Plaintiff:-

S.No.	Exhibit	Description	Date
1.	Ex.P. 1	Original sale deed of mortgage	28.01.2009
2.	Ex.P. 2	Original lease agreement	03.03.2009
3.	Ex.P. 3	Original Promissory note	06.04.2009
4.	Ex.P. 4	Original letter of confirmation	10.02.2010
5.	Ex.P. 5	Office copy of the legal notice sent by the plaintiff	20.04.2010
6.	Ex.P. 6	Original Encumbrance certificate	04.05.2010

1. List of Witnesses Examined on the side of the defendant:-Nil

2. List of Exhibits Marked on the side of the defendant:-Nil

gv

07.07.2022



WEB COPY



A.A.NAKKIRAN, J.

gv

C.S.No.537 of 2010



WEB COPY



07.07.2022