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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2015

CORAM

THE HONOURABLE MRS. JUSTICE **S.VIMALA**

C.S.No.629 of 2012

L.Munishwar Ganesan

... Plaintiff

Vs.

1. P.Ramesh Kumar

2. P.Jagdish Kumar

.. Defendants

PRAYER: Plaint filed under Order XXXVII Rule-2, Order IV Rule 1 of Original Side Rules r/w. Order VII Rule 1 of C.P.C. praying for (a) directing the defendants to pay to the plaintiff the said sum of Rs.31,50,164/- with such further interest as may accrue between the date of filing of the plaint and the date of payment and in default that the said property may be sold and proceeds (after defraying there out the expenses of the sale) applied in and towards the payment of the amount of the said principal, interest and cost; (b) if such proceeds shall not be sufficient for the payment in full of such amount, the defendant may be ordered to pay to the plaintiff the amount of the deficiency with interest at the rate of six



per cent per annum until realization and (c) the cost of the suit.

For Plaintiff : Mr.Nithysh Sekhar

JUDGMENT

The suit is based on the mortgage by deposit of title deeds and an instrument of deposit of title deed was executed by both the defendants in favour of the plaintiff on 18.04.2012 for a sum of Rs.15 lakhs. The deed was registered as Document No.2326/2012 in the office of the Sub-Registrar at Madhavaram. The parent document of title has also been filed before the Court. Apart from executing an instrument for deposit of title deed, both the defendants had executed a promissory note in favour of the plaintiff for a sum of Rs.7,50,000/-. The promissory notes have also been relied upon as documents.

2.The second loan was borrowed on 23.04.2012 for valuable consideration and both the defendants duly executed a promissory note in favour of the plaintiff. The details of mortgage deed are furnished hereunder:

3.



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Date of mortgage	18.04.2012
Mortgagor	First and Second defendants
Mortgagee	Plaintiff
Amount Borrowed	Rs.15,00,000/- (Rupees fifteen lakhs only)
Interest stipulated	18% per annum
Property Mortgage	Described in the schedule

3. The defendants Company even after receipt of summons did not appear before this Court and therefore, defendants have been set ex parte on 20.08.2014.

4. On the side of the plaintiff, P.W.1 to P.W.4 have been examined and documents Exs.P1 to P10 have been marked to prove the claim.

5. The only point for consideration is whether the plaintiff is entitled to the suit claim as prayed for.

6. In order to prove the suit claim, the documents executed by the defendants in favour of the plaintiff have been marked through P.W.1 and P.W.2. The deed evidencing the deposit of title deed has been marked as Ex.P1. The promissory notes executed by both the defendants were marked as Exs.P6 and P7 in respect of the first loan. The promissory notes executed in respect of the second loan have been marked as Exs.P8 and P9.



6.1. The oral and documentary evidence produced before the Court establishes the case of the plaintiff.

6.2. When the defendant did not appear before this Court and contest the proceedings even after receipt of summons, the only inference is that they have no case to contest and therefore, this Court is expected to take adverse inference. Drawing adverse inference and relying upon the documents exhibited by the plaintiff, this Court holds that the suit claim stands proved.

7. In the result, the suit is decreed as prayed for with costs. Time for payment is four months (4 months).

sd/.S.V.J

10.02.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/10.06.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.