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C.S.NO.647 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.NO.647 OF 2019

1.M.Anand Kumar
2.M.Kishore Kumar

.. Plaintiffs

Versus

1.V.Selvaraj alias V.Kakkanan
2.V.Muthuraman alias Muthuvel
3.Vijayalakshmi

.. Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of Civil Procedure Code praying for the judgment and decree against the defendants as follows:

(a) Directing the first, second and third defendants to pay to the plaintiff, a sum of Rs.1,13,24,000/- (Rupees One Crore Thirteen Lakhs and Twenty Four Thousand Only) along with interest @ 24% p.a., on the principal amount of Rs.37,00,000/- and further interest till the date of realisation of amount, and in default, directing for sale of the properties morefully mentioned in the Schedule “A” and Schedule “B” to this Suit through Court Auction, after defraying the expenses of sale and in event of the sale proceeds found to be insufficient to permit the plaintiff to recover from the defendants personally;

(b) Directing the first, second and third defendants to pay cost of this Suit.



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For Plaintiffs : Mr.B.Divakaran
For Defendants : No appearance

J U D G M E N T

The Suit has been filed for a direction to the defendants to pay a sum of Rs.1,13,24,000/- (Rupees One Crore Thirteen Lakhs and Twenty Four Thousand Only) to the plaintiffs along with interest @ 24% per annum on the principal amount of Rs.37,00,000/- and further interest till the date of realization of amount and in default, for a direction for sale of the properties morefully mentioned in the Schedule “A” and Schedule “B” to this Suit through Court Auction, after defraying the expenses of sale and in event of the sale proceeds found to be insufficient to permit the plaintiffs to recover from the defendants personally;

2.It is the case of the plaintiffs that the first defendant approached the plaintiffs during the month of November 2003 for a loan and obtained loan of Rs.10,000/- (Rupees Ten Thousand Only) initially and executed a Simple Mortgage Deed. Thereafter, in continuation of the loan transactions, the plaintiffs availed loans on different occasions totalling for a



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sum of Rs.37,00,000/- and a fresh bond was executed by the first defendant agreeing to repay the said loan amount of Rs.37,00,000/- along with interest at the rate of 24% per annum and the security created earlier by a registered Simple Mortgage Deed and the second Mortgage created by way of deposit of Title Deeds was agreed to be continued for this loan. Besides this, they have also executed a Promissory Note for the said loan amount and agreeing to pay interest at the rate of 24% per annum. It is the contention of the plaintiffs that the defendants are liable to pay a sum of Rs.1,13,24,000/- (Rupees One Crore Thirteen Lakhs Twenty Four Thousand Only) towards principal as well as interest and hence, they filed the present Suit.

3. Admitting that he has borrowed a sum of Rs.10,000/- from the plaintiffs in the year 2003, the first defendant had executed a Mortgage Deed on 03.11.2003. It is the contention of the defendants that they have received another sum of Rs.7,00,000/- from the plaintiffs in the year 2009 and also handed over the documents. The cheques were handed over in the year 2003 itself. Hence, it is the contention of the defendants that the Suit is barred by limitation.



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4. Based on the above pleadings, the following issues were framed by this Court on 08.02.2022:

“1. Whether the plaintiffs are entitled to the amount claimed by them?

2. Whether the defendants are entitled to ask for the dismissal of the Suit?

3. Whether the plaintiffs are entitled for proper amount?

4. And what relief the plaintiffs are entitled?

5. Whether the defendants are entitled for the cost?

5. The issues are now recast as follows:

(i) Whether the plaintiffs are entitled to recovery of the Suit amount as prayed for?

(ii) Whether the defendants have received the amount and created the equitable mortgage by depositing Title Deeds?



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(iii) Whether the defendants had executed a Promissory Note for the amount received from the plaintiffs?

(iv) To what other relief, the parties are entitled?

6. Heard the submissions made on either side and perused the materials available on record.

ISSUES (i) TO (iv)

7. The Suit has been laid for recovery of a sum of Rs.1,13,24,000/- with interest. It is the specific case of the plaintiffs that to run the Hotel business, the first defendant approached the plaintiff in the year 2003 and borrowed a sum of Rs.10,000/- and also executed a Simple Mortgage Deed in favour of the plaintiffs on 03.11.2003. Ex-P.3 – is the Simple Mortgage Deed filed by the plaintiffs. The execution of Simple Mortgage Deed is not disputed by the first defendant and in fact, the receipt of the amount is also not disputed in the written statement. It is the specific contention of the plaintiffs in their pleadings that after executing the Simple



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Mortgage Deed (Ex-P.3) a further sum of Rs.37,00,000/- was also paid in two installments to the defendants, in respect of which, equitable Mortgage has been created by depositing Title Deeds. Though it is denied in the written statement with regard to the above transaction, the fact that all the original documents have been handed over to the plaintiffs has not been disputed.

8.The documents viz., Exs-P.1, P.2, P.4 and P.7 are the title documents handed over to the plaintiffs by the defendants which had been marked by the plaintiffs. Ex-P.5 is the original deposit of title deed executed by the defendants dated 16.05.2009 towards the loan amount of Rs.37,00,000/- borrowed by the defendants wherein also it is clearly admitted that a sum of Rs.37,00,000/- has been received as a loan from the plaintiffs and deposited title deeds with an with an intent to create charge on the properties owned by the defendants on the properties owned by the defendants. That apart, Ex-P.6 Promissory Note was also executed for a sum of Rs.37,00,000/- with interest at the rate of 24% per annum. The execution of the Promissory Note is also not in dispute.

9.The third defendant has tendered her evidence as D.W.1. It is



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admitted by the third defendant in her cross examination and in the proof affidavit that she has received only a sum of Rs.7,50,000/- and not Rs.37,00,000/-. Further, she has stated that she has repaid the entire loan amount received from the plaintiffs. The entire evidence of the defendants and the pleadings and the documents filed by the plaintiffs makes it clear that the defendants have not discharged their onus to dislodge the legal presumption attached to the Promissory Note. That apart, the Mortgage Deed also has been filed by the plaintiffs. Execution of the documents is also not in dispute and the plaintiffs evidence also clearly proves the depositing of Title Deeds, wherein the defendants with an intent to create a charge over the properties, deposited the Title documents. Further defense of the defendants is only in the form of evasive. No materials or circumstances brought on record to dislodge a legal presumption attached to the negotiable instruments. Therefore, the plaintiffs are certainly entitled to a decree and judgment as per the documents produced before this Court.

10.Considering the Promissory Note and other documents, the



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plaintiffs have established their claim for recovery of money. Accordingly, the

Suit is decreed for a sum of Rs.1,13,24,000/- (Rupees One Crore Thirteen Lakhs and Twenty Four Thousand Only) with subsequent interest at the rate of 7.5% per annum from the date of decree till the date of realisation and a preliminary decree is passed against the defendants for payment of that amount within a period of six months from today, failing which, the plaintiffs are entitled to apply for final decree for bringing the properties of the defendants for sale.

11. Accordingly, the Suit is decreed with costs.

08.11.2023

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LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFFS

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P.W.1 – Mr.M.Anand Kumar

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFFS

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Original Settlement Deed executed in favour of the first defendant bearing Document No.644/2003	03.05.2003
2	P-2	Permanent Land Register Extract of Schedule A Property	-
3	P-3	Original Mortgage Deed bearing Document No.1039/2003	03.11.2003
4	P-4	Original Settlement Deed executed in favour of second defendant bearing Document No.633/2008	04.07.2008
5	P-5	Original deposit of title deed executed by the defendants	16.05.2009
6	P-6	Original Promissory Note executed by the defendants in favour of the plaintiffs	16.05.2009
7	P-7	Encumbrance Certificates – two numbers in respect of Schedule A and B properties	-

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE DEFENDANTS

D.W.1 – Mrs.S.Vijayalakshmi

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFFS - NIL

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N.SATHISH KUMAR, J.



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