



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2023

PRONOUNCED ON : 01.10.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S. Nos. 49 of 2010 & A.No.3637 of 2023

and

C.S. No. 787 of 2010

1. C.S. No.49 of 2010:

The Purasawakam Santhatha Sanga Nidhi Ltd.,
rep by its Trustee, N.Sankaranarayanan,
having office at No.49, Vellala Street,
Purasawalkam, Chennai-84.

...Plaintiff

..Vs..

1.Mrs.W.S.Rajalakshmi, (Deceased)
2. Dr.A.C.Subramaniam, (Deceased)
3. C.S. Balakrishnan
4. C.S. Rupendra Kumar,

... Defendants

(Defendants 3 & 4 are brought on record as L.Rs of the deceased 2nd
defendant as per order dated 04.01.2011 in A.No.7312 to 7314 of 2010 and
time extended as per order dated 06.06.2023 in A. No.2460 of 2023)



2. C.S. Nos.787 of 2010:

1. Mrs. W.S. Rajalakshmi, (Deceased)

2. C.S. Balakrishnan

4. C.S. Rupendra Kumar,

...Plaintiffs

..Vs..

The Purasawakam Santhatha Sanga Nidhi Ltd.,
rep by its Trustee, N.Sankaranarayanan,
having office at No.49, Vellala Street,
Purasawalkam, Chennai-84.

..Defendant

(Plaintiffs 2 & 3 are brought on record as L.Rs of the deceased Sole plaintiff
as per order dated 21.02.2022 in A.No.522 of 2022 and time extended as per
order dated 22.03.2022)

Prayer in C.S. No.49 of 2010 : Complaint filed under order VII rule 1 C.P.C
and order IV rule 1 of O.S. Rules:

a) Directing the defendants to pay jointly and severally to the plaintiff
on or before the date to be fixed by this Court a sum of Rs.70,53,791.10
together with interest @ 21.6% p.a. from the date of complaint till the date of
realization and costs within the time stipulated by way of passing
preliminary decree.

b) In default of payment of the said amount within the time granted,
this Court may be pleased to order for sale of the Schedule mentioned
property and proceed later defraying thereabout the expenses of the sale
applied towards the payment of the said principal, interest, penal interest,
interest tax and cost of the suit by way of passing final decree.

c) A direction that in the above case if the proceeds of the sale of the
Schedule mentioned property are found to be insufficient for payment of the
decree amount in full, the defendants may be ordered jointly and severally to



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pay the plaintiff the amount of such deficiency with interest and cost till realization by way of passing a personal decree against them.

d) directing the defendants to pay the cost of the suit; and to pass such further order.

Prayer in C.S. No.787 of 2010 : Complaint filed under order VII rule 1 C.P.C and order IV rule 1 of O.S. Rules:

a) That an account may be taken of the amount due to the defendant for principal, interest and costs.

b) that upon the payment of the said amount by the plaintiff, the defendant may be directed to deliver to the plaintiff mortgage instrument and all the documents in their possession, and execute and register an acknowledgment in writing to that effect that interest created by the mortgage has been extinguished.

c) Directing the defendant to pay the cost of the suit

For Plaintiff/s	: Mr. J. Nandagopal
For Defendant/s	: Mr. Balu
	For M/s. G. Appavu

Vice Versa in both cases

COMMON JUDGMENT

When the matter came up on 13.12.2023 for hearing, the learned counsel for the defendants submitted that the defendants were ready to settle the matter by filing the Calculation Memo and at that time, the learned counsel for the plaintiff would not accept the same and thereafter he



filed a calculation memo for consideration of this Court on 18.12.2023.

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2. After scrutinizing the entire records, it is seen that the defendant has borrowed to the tune of Rs.11,00,000/- @ 21.6% @ p.a. on mortgage of the suit property. Out of 78 months instalments, a sum of Rs.26,400/- for 77 months and Rs.19,140/- for final instalment is agreed. This Court by Judgment dated 30.07.2021, the suit in C.S. No.49 of 2010 is partly decreed for Rs. 26,58,236/- leaving the balance amount as claimed by the plaintiff herein to be adjudicated after the Trial.

3. Having considered the facts and circumstances of the case and the Judgment and Decree dated 30.07.2021 in C.S. No.49 of 2010 passed by this Court, it is seen that as per the Decree and Judgment in C.S.No.49 of 2010, the plaintiff Nidhi Company is entitled to Rs.8,30,698/- along with interest @21.6% p.a. However, the plaintiff claims Rs.73,53,791/- with interest @15% p.a. from the date of suit till the date of decree as per contractual interest.



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4. Having considered the Judgment and Decree dated 30.07.2021 passed by this Court and Calculation Memos filed by both the parties, this Court came to understand that the defendants have not paid the Decree amount of Rs.26,58,236/- as per Judgment and Decree passed by this Court on 30.07.2021. Further, the plaintiff cannot claim interest over the interest amount. Hence, the Defendants are directed to pay a sum of Rs.8,30,698/- along with interest @21.6% p.a. from the date of the suit till the date of this Judgment and thereafter @12% p.a from the date of this Judgment till the date of realization. Time for payment 2 months.

5. In view of the aforesaid terms, the preliminary decree is passed in C.S. No.49 of 2010 and Accordingly, C.S. No.787 of 2010 is dismissed. Consequently, A.No.3637 of 2023 in C.S. No.49 of 2010 is also dismissed.

01.10.2024

Index : Yes/No
Internet : Yes/No
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A.A. NAKKIRAN, J.

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