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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2025

Pronounced on : 08.08.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.480 of 2022
and
C.M.P.No.17396 of 2022

1.B.Muthuvadivel
S/o Balasubramanian

2.B.Prabhu
S/o Balasubramanian

Both are residing at
Door No.33, North Jai Nagar,
Near Vidhya Vihasini School,
Rakkiyapalayam Pirivu,
Nallur Village, Tiruppur Taluk,
Tiruppur District. .. Appellants/2nd & 3rd Defendants

/versus/

1.Sree Karthick
S/o Nallasamy,
Door No.18/453, Kongunagar,
Vellakovil, Kangayam Taluk,
Tirupur District.

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2.P.Ramasamy Gounder,
S/o Periyasamy Gounder,
No.497 Madhaiyan Nagar,
Chikkadahasam Palayam,
Mettupalayam,
Coimbatore District. .. Respondents/1st and 2nd Plaintiffs

Appeal Suit has been filed under Section 96 of Civil Procedure Code, 1908, to set aside the judgment and decree in O.S.No.160 of 2018 on the file of the Hon'ble learned Principal District Judge, Tiruppur dated 17.03.2022.

For Appellants :Mr.S.Saravanan Kumar

For Respondents :Mr.K.Myilsamy for R1 and R2

JUDGMENT

The Appellants are the legal heirs of the deceased first defendant in the suit filed for recovery of money arising on a mortgage loan.

2. The plaintiffs had laid a suit based on the registered mortgage deed dated 05.09.2014 executed by the first defendant (since deceased) for the loan of Rs.9,00,000/- borrowed on the same day, with an undertaking to clear the loan within 24 months with interest at the rate of 18% per annum.

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3. On failure to discharge the loan amount, the plaintiffs caused legal notice on 31.05.2017 calling upon the first defendant to repay the loan with interest. The defendant received the notice on 10.06.2014, but neither reply, nor repay the mortgage amount due to the plaintiffs. Hence, the suit.

4. The defendant filed a written statement denying the averments made in the plaint. The plaintiffs are accused for suppression of several material facts. The defendant Sathyavani (since deceased) is residing in the suit property along with her two sons. For purchase of the suit property, she wanted financial assistance. Through a mediator by name Thangavel, she got finance of Rs.6,00,000/- from "Vetrivel Auto Finance" at Rakkiyapalayam, Kangayem Road, Tiruppur Town, owned by the N.Sri Karthick, P.Ramasamy Gounder, P.Nallasivam and others. For the loan, the partners of the finance company asked the defendant to execute a mortgage deed to secur the loan of Rs.6,00,000/- for 27% interest per annum. On 05.09.2014, the financiars themselves prepared the mortgage deed in the

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name of their partners Sri Karthick and Ramasamy for Rs.9,00,000/- and got the mortgage registered. The purchase of the property followed by the mortgage of the said property happened on the same day one after another. When the defendant questioned why the mortgage deed was registered for Rs.9,00,000/- instead of Rs.6,00,000/- and why it is in the name of the plaintiffs, instead of the finance company, the plaintiffs assured that they will demand Rs.9,00,000/- and it is suffice for her to pay Rs.6,00,000/- only.

5. The original title deed registered on 05.09.2014 was not handed over to the plaintiffs on the date of mortgage registration as found in the mortgage deed. The sale deed was pending registration for valuation check up. The defendant was regularly paying the monthly interest of Rs.27,000/- for the loan amount for few months and later, informed the plaintiffs, she will pay the principal and interest together in lump sum during the month of July, 2015. She let out the ground floor portion for usufructuary mortgage to one K.S.Palanisamy for a sum of Rs.6,00,000/-. After excluding the earlier rental amount of Rs.50,000/-, the balance of Rs.5,50,000/- received from

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K.S.Palanisamy on 01.07.2015 was in turn paid to the financiers on 08.07.2015. A calculation sheet prepared by the financiers showed only Rs.1,90,000/- further payable towards the loan transaction, after the receipt of Rs.5,50,000/- on 08.07.2015.

6. The defendant was not able to mobilise Rs.1,90,000/- immediately, so, started paying interest for Rs.1,90,000/- for few months and after mobilising the money, she approached the financiers and expressed to clear the loan as One Time Settlement and sought for concession. The plaintiffs demanded a sum of Rs.2,50,000/- to cancel the mortgage, otherwise will not cancel the mortgage. On receipt of the notice from the plaintiffs containing averments contrary to the orally agreed terms, she went and questioned the plaintiffs. It culminated in verbal exchange. A police complaint was given against the plaintiffs in this regard. During the police enquiry, the plaintiffs admitted receipt of Rs.5,50,000/- before the Police Commissioner, Thiruppur. Thereafter, though the defendant was ready to clear the loan by paying the balance amount of Rs.1,90,000/- with interest, the plaintiffs did

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not come forward to the mortgage, after receiving the balance due.

7. Suppressing all these facts, Vetrivel Financiers through the plaintiffs had filed vexatious suit, out of greed to grab the suit property to gain illegally. The defendant is no way liable to pay the suit claim. To cheat an illiterate lady, documents created and signature obtained from the defendant.

8. After filing the above written statement, the defendant Satyavani died. Her son and daughters were brought on record as defendants 2 and 3.

9. Based on the above pleadings, the Trial Court framed the following Issues:-

1.Whether preliminary decree is to be passed directing the defendants to deposit into the Court a sum of Rs.14,90,400/- with 18% interest as prayed for by the plaintiffs?

2.To what other relief?

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10. PW-1 to PW-2 for the plaintiffs as witnesses and four documents as Ex.A-1 to Ex.A-4 marked for support of the plaintiffs. For the defendants, DW-1 and DW-2, and Ex.B-1 to Ex.B-9 were marked as exhibits for the defendants.

11. The Learned Counsel for the appellants raises the following Points for determination:

The Trial Court erred in not holding that the transaction between the parties was only loan transaction. The defendant borrowed loan only from the Finance Company and not from its two partners. The suit is bad for suppression of material facts and liable to be dismissed for playing fraud on the Court. No plausible reason was given by the plaintiffs, why the first defendant on the date of the purchase of the property should mortgage it to the plaintiffs. The Trial Court failed to take into consideration the suspicious circumstance that even before the completion of the purchase of the property, it is subjected to mortgage. Whether it is permissible to

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mortgage a property, even before the title deed is released by the Registrar Office. Though in the mortgage deed Ex.A-1, it is stated that the title deed was given in possession of the plaintiffs on 05.09.2014, the original document was not handed over to the purchaser on the date of agreement.

12. The passing of consideration is not proved. Contrarily, the first defendant had produced the calculation sheet, receipt Ex.B-1 and recorded conversation in the CD, which proves the liability arose only towards loan transaction of Rs.6,00,000/-. After repaying the principal with interest substantially, only Rs.1,90,000/- remains to be paid. The Trial Court erred is not considering the CDs marked as Ex.B-6 and Ex.B-8, for improper compliance of the mandate under Section 65B of the Indian Evidence Act, 1872. Ignoring Ex.B-7 and Ex.B-9, which are the certificates under Section 65-B of Indian Evidence Act,1872.

13. The specific case of the plaintiffs is that the defendant for purchase of the suit property was in need of finance, hence, availed loan of

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Rs.9,00,000/- and executed the mortgage deed dated 05.09.2014. The mortgage deed duly registered at SRO, Nallur as DocumentNo:3232 of 2014. As per the terms of the mortgage, the defendant should redeem the mortgage within 24 months, after paying the principal with 18% interest per annum. To prove this contention, Ex.A-1 is marked. PW-2-the witness to the mortgage deed is examined and he had deposed about the loan and mortgage.

14. The contra case of the defendants is that, the deceased first defendant borrowed only Rs.6,00,000/- as loan. She repaid it substantially after letting it out loan for lease to one Palanichamy for Rs.6,00,000/-. Only Rs.1,90,000/- is due and payable.

15. To substantiate this version, Muthuvadivel, (second defendant) and Prabhu (third defendant), both sons of the deceased first defendant (the borrower) examined as DW-1 and DW-2. Totally, 9 documents are marked. The defendants heavily rely on Ex.B-1 the lease deed with Palanisamy and

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Ex.B-2, a hand written slip, the receipt signed by the partners of Vetrivel Finance. Further, the conversation discreetly recorded in the cell phone when the negotiation talks held in the Police station are copied in CD's marked as Ex.B-6 and Ex.B-8.

16. The electronic documents Ex.B-6 and Ex.B-8 were rightly not taken into consideration by the Trial Court. The devise used for capturing the content of the CDs not mentioned and produced. The certificate under Section 65 B of the Indian Evidence Act, 1872 is not from the person, who is the custodian of the devise from which the content of the CD copied. DW-2 in his cross examination has admitted that in the year 2021, after institution of the suit, there was negotiation in the Police Station and at that time, without the knowledge of the plaintiffs, he recorded the event in his cell phone. He admits that he had not disclosed about the recording in his written statement. He has not stated about the details of the devise in which he recorded the event found in the CDs. DW-1 in the cross examination had deposed that , the CDs were copied in a shop by name Saravana Nest cafe.

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He had not obtained any certificate from him about the authenticity of the content of the electronic document namely Ex.A-6 and Ex.A-8.

17. In so far as the hand written chit Ex.B-1, it is not an account kept in the usual course of business transaction. It is unstamped receipt validated by collection stamp duty penalty. The details of the signatory to the receipt not spoken by the witness, except to say it was issued by the partners of the finance company. To whom it was given and for what it was given is not found in the document, neither explained by the witness. Any thing said about the defendant is not out of his personal knowledge nor corroborated by any other independent witness. Aadhar card and bank books marked on behalf of the defendants are only to show that they are residents in the suit property and nothing more. While the loan of Rs.9,00,000/- secured through a simple mortgage deed Ex.A-2 proved through the oral evidence of the PW-1 and PW-2, the contra plea of discharge as explained above not established from the oral and documentary evidence adduced by the defendants.

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18. As a result, **the Appeal Suit stands dismissed**. The judgement and decree of the trial court stands confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

08.08.2025

Index:yes/no
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To

1.The Principal District Judge,Tiruppur.

2.The Section Officer, V.R.Section,High Court, Madras.

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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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