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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2025

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THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

C.S.No.808 of 2014

Mr. R.Ravinder Kumar

.... Plaintiff

Vs

Mr. T. Selvadurai

...Defendant

Prayer: Complaint filed under Order IV, Rule 1, Rules of the High Court, 1994 r/w.Order XXXIV, Code of Civil Procedure, 1908 praying for a decree against the defendant for the following

(a) a preliminary decree declaring the amount of Rs.90,00,000/- (Rupees ninety lakhs only) as due as of 07.11.2014 and directing the defendant to pay into Court the above mentioned amount along with further interest within such time as the Court may fix, failing which the plaintiff shall be entitled to final decree of foreclosure against the defendant and all persons claiming through under him debarring them from all right to redeem the mortgaged property more fully described in the schedule hereunder; or in the



alternative.

WEB COPY(b) A preliminary decree declaring the amount of Rs.90,00,000/- (Rupees Ninety Lakhs only) as due as of 07.11.2014 and directing the defendant to pay into court the above mentioned amount along with further interest within such time as the Court may fix, failing which the plaintiff shall be entitled to final decree of sale of the mortgaged property more fully described in the schedule hereunder and the proceeds of the sale be dealt with, in the manner provided in sub-rule (1) of Rule 4 of Order XXXIV of the code of Civil Procedure, 1908; and

c) in case the proceeds of sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for an order for the balance;

d) directing the defendants to pay costs of the suit and practitioner's fee;

e) for such further or other reliefs;

For Plaintiff : Mr. Aravind Subramanian Senior counsel
(for Mr. M. Nandakumar)

For Defendant : Mr.A. Ganesan



JUDGMENT

WEB COPY The Plaintiff filed the above suit against the defendants seeking the above said reliefs.

2. The case of the plaintiff, as set out in the plaint is as follows;

(a) The defendant approached the plaintiff for taking a loan and in pursuance thereof, he executed a promissory note dated 16.06.1994 in favour of the plaintiff. The defendant received a sum of Rs1,80,000/- from the plaintiff at the rate of 2.5% interest per month, which can be compounded if there is any delay or default in payment of interest or repayment of the principal amount. The defendant, as security for the borrowed amount, has deposited with the plaintiff, his original sale deed bearing Document No.2697 of 1989, dated 10.07.1989 pertaining to the property situate in Maduravoyil Village, Chennai.

b) Ever since the receipt of the loan amount, the defendant neither paid the interest, nor paid the principal amount. Hence, in order to secure the plaintiff, the defendant executed a written memorandum dated 12.01.2004, reduced to writing, recording the completed act of deposit of title deeds with the plaintiff while admitting the total debt of Rs.30,00,000/-, as it stood then by way of compound interest on the principal amount of Rs.1,80,000/-.

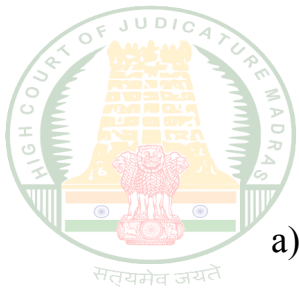


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Thereafter, the defendant neither paid the principal amount nor paid the interest. Failure to redeem all the monies along with interest thereto subjected the plaintiff to much more irreparable loss and severe hardship. Since the defendant has acknowledged and admitted in writing the total debt owed by him as of 12.01.2004 and have also with free consent has recorded the deposit of his title deeds with the plaintiff as recent as of 12.01.2004 by way of memorandum and therefore the suit for foreclosure and sale is being filed well within the period of limitation prescribed under the Limitation Act.

c).The total amount recoverable by the plaintiff from the defendant amounts to a sum of Rs.7,58,09,578/- as on 07.11.2014 from 16.06.1994 calculated at the agreed rate of interest at 2.5% per month (compounded) for 244 months and 22 days. However, the plaintiff taking note of the present circumstances of the case is willing to claim only Rs.90,00,000/-. Although the mortgaged property is situated in Maduravoyil Village, since promissory note and memorandum of deposit of title deeds have been executed at T.Nagar and the residence of the defendant is at Vysarpadi, the whole cause of action has arisen within the jurisdiction of this Court. Hence, this suit.

3. The Written Statement filed by the defendant is as follows:



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a) The plaintiff has come to this court with clean hands and he filed the above suit using forged and fraudulent documents and suppressing the real facts with a malicious intention to grab the property of the plaintiff and also recover money from him illegally. The defendant never resided at Vyasarpadi, as mentioned in the suit which is fake address wantonly given by the plaintiff to get favourable order in his name without serving notice to the defendant and by cheating this Court, he also got ex parte order in C.S.No.808 of 2014 in the absence of the defendant.

b) Earlier, he resided at Kosapettai, Chennai from 1986 to 1990 and later, he shifted his residence to Pattalam, Chennai, and resided there till 2003 and finally, he shifted his residence to his present address at M.K.B.Nagar, Chennai and living there permanently till this date. No notice or summon was served to the defendant till this date. The defendant is the absolute owner of the suit schedule property measuring 1308 sq.ft. and he purchased the same from one Mrs.Chinnammal on 10.07.1989 through a registered sale deed bearing Doc. No.2697 of 1989 and since then, he has been in peaceful possession and enjoyment of the same. The sale deed bearing Doc.No.2697 of 1989 and its mother Document No.1691 of 1957 along with other relevant papers were missed on 16.07.2014 and in this regard, one complaint was lodged before the P5, MKB Nagar Police Station and a missing report was



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also published in crime and occurrence sheet No.363/2014 dated 29.12.2004 of Chennai City Police. Since it could not be traced, non-traceable certificate in RC.No.20606/PUB/CRB/2014 was issued by the said police. Also one public notice was issued in respect of the missing documents and the same was published in the English Daily on 19.08.2014. On 09.11.2014, the plaintiff filed the present suit using forged promissory note and memorandum of deposit of title deeds. On 18.12.2015, the plaintiff obtained exparte-order against the defendant in C.S. No.808 of 2014 without serving notice to him.

c) Whiles, through encumbrance certificate dated 03.10.2016, he came to know that on 09.09.2016, the suit property was conveyed to R.Ravindar Kumar through Doc.No.51 of 2016 in reference with the order passed in A.No.7986 of 2014 in C.S.No.808 of 2014. Thereafter, only he came to know that the plaintiff has filed suit against him for preliminary decree to recover Rs.90,00,000/-. The promissory note dated 16.06.1994 and Memorandum of Deposit of Title Deeds dated 12.01.2004 are forged documents and the defendant has never executed such documents in favour of the plaintiff at any point of time and the defendant's signature may be verified and compared with the forged signatures mentioned in the above said two documents. Even after the defendant's readiness to compare his signatures, the plaintiff has not initiated any legal action to send for expert's



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d) The plaintiff is alien to him and he never known about his name at any point of time and he never executed any promissory note and received loan from the plaintiff at any point of time. He never deposited any title deed with the plaintiff and not executed memorandum of deposit of title deeds in favour of him at any point of time. The promissory note dated 16.06.1994 is barred by limitation. The Memorandum of Deposit of Title Deeds dated 12.01.2004 is not a registered document and it has not been attested by witnesses, therefore, it has no legal validity and is a forged document. The entire calculations regarding interest amount is wrong and misleading. Since the mortgaged suit property is situated at Maudravoyal Village, Tiruvallur District and the restricted claim of Rs.90 lakhs, this court has no jurisdiction to take on file the suit. Since there was no transaction of loan amount and deposit of title deeds, there is no cause of action for the above suit, hence the suit is not maintainable and liable to be dismissed.

4. On 24.08.2017, upon perusal of the pleadings and other materials on record, this court has framed the following issues for consideration:

- 1. Whether the Memorandum of deposit of title deeds dated 12.01.2004 had been executed by the defendant or whether it is forged as claimed by the defendant?*



2. *Whether the plaintiff is entitled to a relief based on Memorandum of title deeds dated 12.01.2004?*
3. *Whether there was a promissory note dated 16.06.1994 and whether the suit can be instituted on the basis of a Memorandum of title deeds and not the promissory note dated 16.06.1994?*
4. *Whether the claim of the defendant that the title deeds were lost and that in respect of the same, paper publication has been filed, can be countenanced by this Court, in view of the fact that there has been a memorandum of deposit of title deeds?*
5. *Whether the suit is barred by limitation?*
6. *Whether the plaintiff is entitled to a preliminary decree as claimed, on the basis of Memorandum of title deeds dated 12.01.2004?*
7. *To what are the reliefs the parties are entitled to?*

5. On the side of the Plaintiff, witness PW1 was examined and exhibits Ex.P.1 to Ex.P.6 were marked and on the side of the defendant, DW1 was examined and exhibits Ex.D.1 to Ex.D.7 were marked.

6. Heard Mr.Aravind Subramanian, learned Senior Counsel appearing on behalf of Mr.M.Nandakumar for the plaintiff and Mr.A. Ganesan, learned counsel appearing for the defendant.



Issue No. 1 and 2

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7.The learned counsel for the plaintiff submitted that the defendant received a sum of Rs1,80,000/- from the plaintiff at the rate of 2.5% per month with compounded interest, for which he executed a promissory note dated 16.06.1994 in favour of the plaintiff. The defendant, as security for the borrowed amount, has deposited his original sale deed bearing Document No.2697 of 1989, dated 10.07.1989 pertaining to the property situated in Maduravoyil Village, Chennai.

8) It has been further submitted that since the defendant neither paid the interest, nor paid the principal amount, in order to secure the plaintiff, the defendant executed a written memorandum dated 12.01.2004, admitting the total debt of Rs.30,00,000/-, as it stood then by way of compound interest on the principal amount of Rs.1,80,000/-. The total amount recoverable by the plaintiff from the defendant amounts to a sum of Rs.7,58,09,578/- as on 07.11.2014 from 16.06.1994 calculated at the agreed rate of interest at 2.5% per month with compound interest for 244 months and 22 days. However, the plaintiff taking note of the present circumstances of the case is willing to claim only Rs.90,00,000/-. In support of his arguments, he has marked the documents under Ex.P1. to Ex.P3. Thus, he prays the relief



as prayed in the suit.

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9.The learned counsel for the defendant submitted that the plaintiff has not marked the account books even though it is said to have been maintained by him. No body signed as witnesses in Ex.P.1 and Ex.P.3 and no person will lend a huge amount to a quiet stranger without any security. Ex.P.1 and Ex.P3 are typed in a same typewriting machine in the year 1994 and 2004. Although the computer was brought into practice in the year 2004, Ex.P.3 was typewritten. Hence, it reveals that it was later fabricated by the plaintiff at the time of filing suit alone.

10. It has been further submitted that regarding Pro-Note dated 16.06.1994, no legal action was taken prior to 1997 and no notice was sent to recover money until 2004 even the defendant voluntarily came forward and executed Ex.P.3 for Rs.30,00,000/- instead of Rs.1,80,000/- which is not a believable one. The Ex.P5- legal notice was not served on the defendant and it seems that the plaintiff has created Ex.P.5 falsely to strengthen his false and forged claim. Further, the suit was filed in the year 2014, while the alleged pro-note Ex.P.1 was of the year 1994, ie.after 20 years. Hence, it is barred by limitation. Therefore, the suit is not maintainable and liable to be



11. In the plaint averments and evidence, the plaintiff has not whispered how he was acquainted with the defendant. On perusal of Ex.P1- it is seen that for a sum of Rs.1,80,000/-, a pro-note has been executed on 16.06.1994 @2.50% interest per month and compounded if defaulted and delayed, by affixing revenue stamps. On perusal of Ex.P3-, it is seen that the Memorandum of Deposit of Title Deeds dated 12.01.2004 has been executed to secure the loan amount of Rs.30 Lakhs. It is alleged on the side of the plaintiff that despite actual claim amount was a sum of Rs.7,58,09,578/-, the plaintiff has restricted to claim only Rs.90 Lakhs without filing proper calculation. It creates suspicion.

12. On perusal of Ex.P1, it is seen that it is mentioned that penal interest if any defaulted and delayed, apart from mentioning the interest @ 2.50% which differs from usual Pro note. Further, the signature of the borrower has been obtained aside in the Pro-note and not across the Revenue Stamp. It creates suspicion. The date of Ex.P3 has been mentioned as 16.06.1994 and the same seems to have been purchased from Tiruvaiyur, while the recital of Memorandum of Deposit of Title Deeds has been typed on



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the date of 12.01.2004 and the parties are residing in Chennai. Further, Ex.P3 does not have signature of attesting witnesses and contents thereof do not seems as mortgage deed. It is also not registered. It creates suspicion.

13. Ex.P.1 seems to have been typed on 16.06.1994 and Ex.P3 seems to have purchased on 16.06.1994 whereas the contents of the documents seem to have typed on 12.01.2004. Comparing the aforesaid documents, it seems that the Ex.P3 has been executed after 10 years. It creates suspicion.

14. Having regard to the aforesaid observation, this Court deems that the plaintiff has failed to prove the Ex.P3. Accordingly, issue No.1 is answered. Hence, he is not entitled to any relief as prayed in the suit. Accordingly, issue no.2 is answered.

Issue No.3 and 5

15. Regarding issue of Notice to the defendant, the plaintiff has marked Ex.P6. It is not a legal notice and sent a letter on 04.02.2013 even the money transaction was held in the year 1994. Under such circumstances, Ex.P3 cannot be taken into consideration. While considering the present case as simple money suit, the plaintiff ought to have filed the suit within a period



of three years. But, the plaintiff has filed after a lapse of 10 years. Hence, the suit is barred by limitation. Accordingly, issue No.3 and 5 are answered.

Issue No.4

16. Even though Ex.P2 is said to have been lost, it is seen from Ex.D1 that one Mr.Kumar seems to have effected the paper publication in this regard and not by the defendant. Hence, the defendant cannot rely on the same. Accordingly, issue No.4 is answered.

Issue Nos.6 and 7

17. Since issue No.1, 2, 3 and 5 are answered against the plaintiff, the plaintiff is not entitled to a preliminary decree as claimed, on the basis of Ex.P3, and is not entitled any other relief. Accordingly, issue No.6 and 7 are answered.

18. In the result, the suit stands dismissed.

08.04.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

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List of Witnesses examined on the side of Plaintiffs and Defendants:



PW1- Mr.R. Ravinder Kumar

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DW1- Mr.Selvadurai

List of Documents marked on the side of the plaintiffs and defendants:

1. Ex.P.1 is the original of the promissory note dated 16.06.1994
2. Ex.P.2 is the original title deed dated 10.07.1989
3. Ex.P.3 is the original memorandum of deposit of title deed executed by the defendant.
4. Ex.P.4 is the original encumbrance certificate dated 29.01.2023
5. Ex.P.5 is the original returned envelope dated 04.02.2013
6. Ex.P.6 is the true copy of the letter dated 04.02.2013
7. Ex.D1 is the paper publication regarding missing document dated 19.08.2014
8. Ex.D.2 is the non traceable certificate issued by police in connection with missing of the documents dated 16.01.2015
9. Ex.D.3 is the encumbrance certificate of the suit property dated 03.10.2016
10. Ex.D.4 is the vehicle registration book issued in the year 2008
11. Ex.D5 is the voter's identity card of the defendant
12. Ex.D.6 is the birth certificate of the defendant's son



13. Ex.D.7 is the Family Card of the defendant.

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A.A.NAKKIRAN, J.

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**PRE-DELIVERY ORDER
MADE IN C.S.No.808 of 2014**

08.04.2025