IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2025	Pronounced on:21.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.407 of 2022

N. Dhanabagyam, F/53 years,
W/o.A.Nagarajan,
Old No.1/16, New No.1/102,
Mariamman Koil Street,
Chinniampalayam, Sulur Taluk,
Coimbatore.
Now at 1/114 D-1,
Siva Siva Garden,
S.S. Kulam Via, Kattampatti Post,
Annur Taluk, Coimbatore District. ... Appellant /Defendant

/versus/

1. J. Rajeswari, F/48 years,
W/o. Late. Jaganathan,

2. J. Selvapriya, F/28 years,
D/o.Late.D.Jagannathan,
Both are residing at
147/167, Karumbill Thottam,
Andakkapalayam,
Vellanaipatti, Coimbatore.
Now at 223/2, Siva Garden,
Kattampatti Post, Coimbatore - 641 107. ... Plaintiffs/Respondents

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, to set aside the Judgement and Decree in OS No.458 of 2014, dated 20.04.2022 on the file of the learned I Additional District Judge, Coimbatore and allow the appeal.

For Appellant : Mr.N.L.Rajah, Senior Counsel,
for Mr.A.Tamilarasan

For Respondents : Mr.P.Tamilvel

JUDGMENT

The appeal by the defendant, who suffers money decree in O.S.No.458 of 2014 on the file of I Additional District Court, Coimbatore for Rs.9,47,000/- with interest at the rate of 15% p.a., from 01.05.2014 to 04.09.2014 and thereafter, interest at the rate of 12% p.a., from the date of the suit till the date of decree (20.04.2022) and 6% p.a., interest from the date of decree till the date of realisation.

2. The plaint averments:

The plaintiffs are wife and daughter of late Jaganathan. The defendant on

11.09.2013 borrowed loan of Rs.10 lakhs from Jaganathan and executed a bond captioned as mortgage deed acknowledging the receipt of Rs.10 lakhs with undertaking to repay it within 3 years with interest at the rate of 15% p.a. The title document of the property was also handed over to Jaganathan. The said Jaganathan died on 24.07.2014. Taking advantage of his demise, the defendant and others came to the house of the plaintiffs and demanded back the Bond and title document without repaying the debt. Hence, the first plaintiff gave a police complaint on 25.08.2014. During the enquiry, on her complaint, she came to know that to escape the liability, the defendant had instituted a suit in O.S.No.1794 of 2014 before the District Munsif Court, Coimbatore, for injunction, claiming that the plaintiffs and men and agent, trying to dispossess the defendant from the peaceful possession of the suit property. The contention of the defendant that she borrowed only Rs.1,20,000/- from Jaganathan and paid interest and part principal to him during his life time. Only a sum of Rs.52,748/- is due and payable, which she is ready to pay, is incorrect.

3. Written statement:

The defendant never borrowed Rs.10 lakhs from Jaganathan on 11.09.2013 or any other date. She had not executed bond on that day. She borrowed only Rs.1,20,000/- from Jagannathan. At that time, signatures in blank stamp papers were obtained from her. Forging documents to extract more money from the defendant, the suit is filed. She had already paid part of the loan amount, she borrowed and only a sum of Rs.52,748/- is due. She is willing to pay that amount. When she and her husband went to pay the balance amount and get back the documents, the plaintiffs threatened them and also gave a false complaint to the police. Immediately, the defendant had given complaint, paper publication and lawyer notice placing the true facts and also instituted suit O.S.No.1794 of 2014 to protect her possession in the property. The suit based on the alleged unregistered mortgage deed by claiming it as Bond without necessary stamp duty is inadmissible and unenforceable. The plaintiffs are not entitled to maintain the suit.

4. The Trial Court, framed issues and examined the witnesses. Based on the evidence partly allowed the suit and passed the following decree:

1.Whether the plaintiffs are entitled to the suit amount?

2.Whether it is correct to state that the defendant has to pay a sum of Rs.52,748/- alone to the plaintiffs?

3.To what other relief?

5. The Learned Senior Counsel representing the appellant, contended that, the trial Court failed to take note of the fact that the plaintiffs in their plaint had given a specific undertaking that they will file the succession certificate in the due course. However, they have not filed the succession certificate. To maintain a suit as legal heir of Jagannathan based on the alleged Bond marked as Ex. A-1. Under Section 214 of the Indian Succession Act, succession certificate is mandatory. If this document to be treated as mortgage as its caption indicates, then it ought to have been registered. The suit for recovery of money is substantially based on Ex.A-1. However, the trial Court has relied on Ex.A-1 to fasten liability on the appellant which is contrary to law and dictum of the Courts.

6. On facts, the learned Senior Counsel for the appellant argued that through the oral evidence of DW-1 and DW-2 as well as the documentary evidence Ex.B-1 to Ex.B-8, particularly, the bank account entries, the appellant had established that the loan transaction was only for Rs.1,20,000/- and out of that substantial amount already repaid and only Rs.52,748/- was due. The appellant had at the earliest

called upon the respondents to return the documents and receive the balance amount vide Ex.B-4, dated 23.08.2014. While so, the trial Court ignoring these documents had erred in allowing the suit.

7. The learned Senior Counsel pointing out that the trial Court after considering the rival contention had observed that, the parties have not come out with true facts before the Court and this Court could not understand, when the entire sale consideration paid by the defendant and what are the compelling circumstances to advance a loan of Rs.10,00,000/- on the same day. If the claim of the defendant that she borrowed only Rs.1,20,000/- during the month of December, 2014 what made her to sign the mortgage deed dated 11.09.2013. After observing the doubtful nature of the claim, the suit ought to have been dismissed.

8. The counsel contended that, the above observation was made, because the alleged money transaction (i.e) loan of Rs.10 lakhs between Late Jagannathan and the defendant Dhanbakiyam is dated 11.09.2013. On the same day, the first plaintiff, Rajeswari, W/o Jagannathan had sold the property to the defendant for Rs.7,25,000/-. The factum of registration of the sale is incorporated in the

mortgage deed (Ex.A-1), but the mortgage deed not registered, when the statute requires registration. The reason for wife selling her property for Rs.7,25,000/- and for that the vendor's husband lending loan of Rs.10,00,000/- . Taking that property for mortgage as security for the loan, the purchaser depositing the title document to the mortgagee are questions left unanswered by the parties on either side. While so, the plaintiff, who failed to prove the facts averred has to suffer and not the defendant.

9. The two point for determination in this appeal would be whether the non production of succession certificate will non-suit the plaintiffs and whether the unregistered document (Ex.A-1) captioned as Mortgage deed and considered as mortgaged deed by the Court Below is actually a bond relied for collateral purpose and not for substantial purpose?

10. Succession certificate:-

The line of judgments rendered by the Courts regarding the application under Section 214 of Indian Succession Act indicates that the object of taking out the Succession Certificate under Section 214 of Indian Succession Act, is to ensure security for the debtors while paying the debt due to the deceased and thus to facilitate the collection of debt by the successor.

11. The purpose of provision is not to enable the litigation parties to have an opportunity of litigating contested question of title to property and the Courts have consistently held that in case of mortgage suit, the succession certificate is not required, since it is not for recovery of debt, but for enforcement of the terms of mortgage.

12. In ***Akula Rangappa v. Narayana Swamy reported in [MANU/AP/0255/1988]***, while construing the scope of Section 214(1)(b) of the Indian Succession Act, the High Court of Andhra Pradesh at Hyderabad has held:

> "If a fresh application has to be filed then it is necessary that the legal representatives should obtain the succession certificate as enjoined under S. 214(1)(b) of the Act. The golden rule that runs through the decisions of this Court are thus:
>
> (1) Where a decree-holder himself files an execution application and he dies before executing the decree and recording the full satisfaction the legal representatives are

entitled to come on record without obtaining a succession certificate as required under S. 214(1)(b) of the Act.

(2) Where the legal representatives themselves are seeking to execute the decree obtained by the deceased decree-holder, then it is mandatory under S. 214(1)(b) of the Act to obtain a succession certificate and then to have the decree executed."

13. In ***A.Ramaswami v. K.Venkamma reported in [AIR 1963 AP 135]***, the Hon'ble High Court of Andhra Pradesh held:

> "**12.**Thus, there is a strong current of authority in favour of the opinion that Section 214 does not govern decrees for enforcement of mortgage rights. It may be different with reference to a personal decree for debt. But, here, the personal remedy is not sought to be enforced. The mere fact that the personal remedy is still available to the mortgagee would not make any difference. It is open to the judgment-debtor to raise such an objection as and when such remedy is sought to be availed of. It follows that the contention urged on behalf of the appellant has to be put aside."

14. In the instant case, though the plaintiff rely upon the mortgage deed and call it as a bond, admittedly, had not produced the succession certificate inspite of giving an undertaking in the plaint. However, the defendant has not taken this plea

in the trial Court, but in the appeal, this defect is highlighted. Nowhere the maintainability of the suit for want of succession certificate has been raised as a plea before the trial Court. Neither it is the case of the defendant that the plaintiffs 1 and 2 are not the legal heirs of late Jagannathan.

15. Section 214 of the Indian Succession Act, 1925 reads as below:-

> **214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.—** (1)No Court shall—(a)pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or (b)proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of—(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or(ii)a certificate granted under section 31 or section 32 of the Administrator- General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or(iii)a succession certificate granted under Part X and having the debt sepcified therein, or(iv)a certificate granted under the Succession Certificate Act, 18891 (7 of 1889), or(v)a

certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein.

(2)The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

16. The High Court of Andhra Pradesh, in ***Koduri Sitarama Rao and Ors. v. Matangi Vicoria and Ors. reported in [MANU/AP/1398/2024]***, has held that the money suit for recovery of debt should not be dismissed for non-production of Succession Certificate, but the Court should grant reasonable time to enable the party to produce it.

17. The harmonious reading of the Section shows that the purpose of the provision is to ensure that the debtor pays to the correct representative of the creditor. So, in view of this Court, non-production of Succession Certificate will not non-suit the plaintiff to file the suit. Only when enforcement of the decree, the succession certificate to be produced. This is a simple suit for recovery of money based on a document (Ex.A1) which read as mortgage deed. Strangely in this case, the plaintiff wants to rely upon Ex.A1 deed as a Bond. Even though it is

captioned as a mortgage loan deed.

18. Ex.A1 engrossed on a hundred rupees stamp paper entered on 11.09.2013 if it is a mortgage, it ought to have been registered. If it is to be considered as Bond, *ad valorem* stamp duty must have been paid. There are catena of judgments, which says even an unregistered document which compulsorily should be registered, can be considered for a collateral purpose.

19. In one of the judgments of this Court reported in ***Selvan v. Mohamad Gani*** reported in ***[2008 (5) CTC 206],*** when receipt of unregistered mortgage deed was opposed, the Court held that in a suit for recovery of money unregistered mortgage deed can be marked.

> "5.As rightly contended by the learned counsel for the petitioner, the suit is merely one for recovery of money. It is not a Suit for fore closure. Therefore, the petitioner wanted to rely upon the document in question, just for the purpose of establishing the loan transactions between the parties. In such circumstances, when the petitioner is not suing on an unregistered mortgage deed, the Court below ought to have accepted the document to

be marked in evidence. This is a settled position in law. Therefore, the Court below was wrong in rejecting the Application."

20. Therefore, in the case in hand, since the plaintiffs have not instituted suit on mortgage and only for recovery of money and the document Ex.A1 sought to be treated as Bond, it is sufficient to find out whether Ex.A1 an unregistered deed can be looked into for a collateral purpose or it stands for substantial purpose.

21. The difference between the collateral purpose and the substantial purpose has been explained by the Hon'ble Supreme Court in ***K.B.Saha and Sons Private Limited v. Development Consultant Limited reported in [(2008)8 SCC 564]:***

> "**34.** From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:
>
> *1.* A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
>
> *2.* Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

> *3*. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
>
> *4*. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.”
>
> *5*. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

22. The recital of the document Ex.A1 contains details about the property,

(i) How the defendant got title over the property?

(ii)Receipt of Rs.10,00,000/- against mortgage with a promise to pay interest at the rate of Rs.1.25 per hundred rupees per month? and

(iii)to redeem the mortgage within a period of three months. It also states about the handing over the original title deed.

23. The purpose for which the document relied by the plaintiff is to prove

the loan of Rs.10,00,000/- and promise to repay it with interest at the rate of 1.25 per hundred rupees per month. The content of the Ex.A1 is not the collateral to the relief sought. It is to be noted that for enforcing the debt, there is no other document relied by the plaintiff other than Ex.A1.

24. In such circumstances, Ex.A1 cannot be considered as a document relied by the plaintiff for the collateral purpose. It is for the substantial purpose of proving the loan transaction Ex.A1 is sought to be relied upon. Though the plaintiff had termed it as a bond, the trial Court had considered Ex.A1 only as a mortgage deed and not as a bond. If it is to be considered as a bottomry bond under Article 15 of the Indian Stamp Act, 1899, value of the document is Rs.10 lakhs, the Stamp Duty payable exceeds Rs.100/-. The Court below should have impounded the document as contemplated under Section 35 of the Indian Stamp Act, 1899, for the deficit stamp duty.

25. That apart, as pointed out by the learned Senior Counsel appearing for the appellant, the trial Court itself had expressed its view regarding the document placed by the parties and recorded that they have not come with true facts and

explanation for executing the mortgage deed on the same day as purchase of the property from the wife of the mortgagee. On 11.09.2013, the first respondent sold the property to the appellant for Rs.7,25,000/-. The very same property was mortgaged to the husband of the first respondent on the same day for Rs.10 lakhs when the property is worth only about Rs.7,25,000/-. The husband of the first respondent has given Rs.10,00,000/- as a loan to the appellant by taking the property as mortgage security, which sold by the wife for Rs.7.5 lakhs.

26. The mysterious transaction adds grave suspicion, when the first respondent claims that the appellant borrowed only Rs.1,20,000/- during the month of December 2013 from the husband of the first respondent. If that is so, under what circumstances, she executed Ex.A1 on 11.09.2013 remain unexplained. Especially, when the plaintiff's case for recovery of money lacks adequate proof, the lapse on the part of the defendant cannot be taken advantage. The plaintiffs have to stand or fall on their own legs. Out of the documents marked as Ex.A1 to Ex.A6, if Ex.A1 is eschewed from consideration for not being registered and not adequately stamped, the remaining documents does not prove the substantial fact of borrowing of Rs.10 lakhs.

27. In the result, ***the Appeal Suit is allowed with costs throughout*** and the judgment and decree of the trial Court in O.S.No.458 of 2014 dated 20.04.2022 is liable to be set aside. The judgment of the trial Court in O.S.No.458 of 2014 dated 20.04.2022 stands dismissed.

21.07.2025

Index :Yes
Neutral citation :Yes/No.
ari

To,

1. The I Additional District Judge, Coimbatore.

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

Dr.G.JAYACHANDRAN,J.

ari

delivery judgment made in

Appeal Suit No.407 of 2022

21.07.2025