IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.507 of 2022
& C.M.P.No.18712 of 2022

1. M.T.Arumugam, (44 years),
S/o.Dhasappan,
Old No.281, New Door No.144-B(1),
Sathi Main Road, Veerapandi Village,
Gobichettipalayam Division,
Erode District.

2. P.Chandra, (39 years),
W/o.M.T.Arumugam,
Old No.281, New Door No.144-B(1),
Sathi Main Road,
Veerapandi Village,
Gobichettipalayam Division,
Erode District. ... Appellants/Defendants

/versus/

G.K.Karthick, (41 years),
S/O. K.K.Karuppan,
Old Door No.20,
New Door No.4,
Thirunagar, Gobichettipalayam Division,
Erode District. ... Respondent/Plaintiff

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, to set aside the Judgment and Decree in O.S.No.22/2019 passed by the Learned III Additional District and Sessions Judge, Gobichettipalayam at Erode District dated 28.06.2022 and to allow this appeal.

For Appellants : Mr.S.Parthasarathy

For Respondent : Mr.A.V.Arun

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J U D G M E N T

The appeal has been filed by the defendant, being aggrieved by the preliminary decree passed in the suit for recovery of money on mortgage.

2. Brief facts as narrated in the plaint is that:-

The plaintiff advanced a loan of Rs.7,00,000/- to the defendant on 28/01/2013 as against the mortgage of the suit schedule property. It was agreed by the defendant to pay interest at the rate of 18% per annum and to redeem the mortgage. However, despite handing over the title documents of the property and receiving the loan money, the defendant promised to redeem with interest. The defendant failed to discharge the mortgage loan. Hence, legal notice dated 13/08/2018 was issued to the defendants. The defendants received the notice on the next day but did not reply. Hence, the present suit has been filed for recovery of Rs.7,00,000/- as principal and Rs.7,57,750/- towards the interest, from the date of filing the suit and for the Cost.

3. The defendants contested the claim by filing written statement stating that the property mortgaged is their joint property, which they purchased on 25.07.2011. It is true that borrowed loan from the plaintiff on 28.01.2013, but it is not Rs.7,00,000/- as contended by the plaintiff but it was only Rs.5,00,000/-. On the direction of the plaintiff, the mortgage deed was executed by mentioning the loan amount of Rs.7,00,000/-. As agreed, the defendants were regularly paying the interest along with the portion of the principal. Receipts been issued by the father of the plaintiff acknowledging payment of interest and part principal. According to the defendants, a sum of Rs.3,78,000/- been paid and only Rs.4,00,000/- is balance to be paid. The defendants are ready to pay the money and get the mortgage redeemed. However, they claim that the plaintiff, suppressing these facts, had initiated the suit for recovery of money.

4. The trial Court based on the pleadings framed issued as under:-

(i). Whether the plaintiff is entitled for the relief of recovery of money from the defendants?

(ii) Whether the plaintiff is entitled for a preliminary decree?

(iii) Whether the plea of the defendants that they borrowed only Rs.5,00,000/- is true?

(iv) What other relief the parties are entitled to?

5. Before the Court below, the plaintiff examined as P.W.1 and five documents were marked as Ex.A1 to Ex.A5. On behalf of the defendants, the first defendant had mounted the witness box, however, no documents filed in support of his case.

6. The trial Court, on considering the evidence particularly the registered mortgage deed marked as Ex.A1 and the evidence of PW.1 and the partial admission of liability in the evidence of first defendant held that, in the absence of contra evidence to substantiate the plea of the defendants that they had borrowed only Rs.5,00,000/- and repaid a sum of Rs.3,78,000/-, the plaintiff's case stands proved. As a result, a preliminary decree for a sum of Rs.14,57,750/- with interest at the rate of 6% per annum on the principal amount of Rs.7,00,000/- from the date of suit till the date of recovery.

7. The appeal is filed challenging the judgment and preliminary decree passed by the trial Court on the ground that the Court below failed to properly appreciate the evidence of DW.1 regarding the actual loan availed and the repayment of interest along with part of the principal amount. The readiness of the defendants to pay the balance amount and get the mortgage deed cancelled ought to have been considered by the Court below.

8. The Learned Counsel appearing for the appellant submitted that the plaintiff had not established the payment of Rs.7,00,000/- as loan through any other document other than the mortgage deed. It is the duty of the plaintiff to show the payment of Rs.7,00,000/-, when the defendant has categorically denied such payment.

9. Per contra, the Learned Counsel for the respondent submitted that the oral evidence regarding payment of interest, contrary to the contents of the document had been rightly rejected by the Court below. Though, the defendants had pleaded that receipts for payment was issued by the father of the plaintiff, the said document had not seen the light of the day, which clearly exposes the defendants and their false claim of repayment.

10. Point for consideration:-

Whether the decree passed by the trial Court dated 28.06.2022 is erroneous for want of proper appreciation of evidence?

11. It is a case where an immovable property was mortgaged through a registered document for a loan of Rs.7,00,000/-. The execution of the mortgage deed is not denied by the defendants. The passing of consideration of Rs.7,00,000/- under the mortgage is disputed but no evidence to substantiate the plea raised in the written statement been put forth by the defendants.

12. The specific case of the defendants is that, towards the loan amount, they were periodically paying the interest and part of the principal amount and also got receipts from the father of the plaintiff. However, those receipts were not produced before the Court. After executing the mortgage deed (Ex.A1) on 28.01.2013, till the receipt of the notice dated 14.08.2018, as per the postal acknowledgement card marked as Ex.A4 & Ex.A5, there is no evidence to show that the defendants had made any payment towards the loan amount. That apart, the defendants made specific plea that having paid around of Rs.3,78,000/- and expressed their readiness to pay the balance amount and redeem the mortgage, in fact, they have not filed any suit for redemption or tendered the balance loan amount of Rs.4,00,000/- to indicate their intention of redeeming the mortgage.

13. In such circumstances, the trial Court has rightly passed the preliminary decree and this Court finds no error or omission in the appreciation of evidence.

14. Accordingly, this Appeal Suit stands dismissed with costs. Consequently, connected Miscellaneous Petition is closed.

16.07.2025

Index :Yes/No.
Neutral citation :Yes/No.
bsm
To,
1. The III Additional District and Sessions Judge,
Gobichettipalayam,
Erode District.

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

Dr.G.JAYACHANDRAN,J.

bsm

A.S.No.507 of 2022

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