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A NO. 5065 c



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-01-2025

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THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

A. No. 5065 of 2024

in

CS No. 834 OF 2012

M.Subadra And 2 Others
Proprietrix, R.M.S.Petroleum Products, Perambalur Taluk,
Perambalur District 621 212. and 2 Others

Applicant(s)

Vs

Shanthilal Kothari
S/o.Dhanraj Kothari, 140, Govindappa Naicken Street, Chennai
600 001.

Respondent(s)

For Applicant(s):

Mr.S.N. Ravichandran

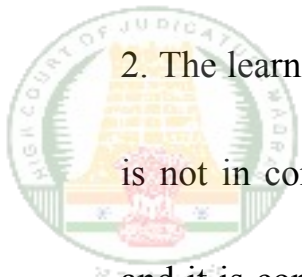
For Respondent(s):

Mr.R. Thiagarajan

M/s. Shah and Shah

ORDER

This application is filed to rectify the Arithmetical Error in the decree in C.S. No.834 of 2012 dated 13.03.2024 and delete the Schedule of Properties contained in the decree and thereby suitable correct Paragraphs 5 and 6 thereof and thus render Justice.



2. The learned counsel for the applicant has submitted that the Decree drafted by the Registry is not in consonance with the Judgement dated 13.03.2024 rendered by this Hon'ble Court and it is contrary to the finding arrived by this Hon'ble Court. Hence, Paragraphs 5 and 6 in

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the Decree need to be suitably rectified and the Schedule of the Property should be deleted from the Decree. Secondly, this Court directed the Applicants/Defendants herein to pay a sum of Rs.62,00,000/- together with interest of 24% per annum from the date of Plaint, till the date of the Decree.

3. It has further been submitted that the Registry has wrongly calculated the interest of 24% per annum from the date of the plaint till the date of the judgment as Rs.2,05,45,041 instead of Rs.1,66,16,000/-. As such, the total sum owed was determined by the Registry as Rs.2,67,45,041 instead of Rs.2,28,16,000/-. As there is a difference of Rs.39,29,041/-, he prays this Court to give necessary direction to rectify same in the Decree as prayed in the application.

4. The learned counsel for the respondent has submitted that if there is any error in calculation, this Court may correct the same by virtue of powers under section 152 of the code of civil procedure, either by his own motion or on application of any of the parties.

Further, if this Hon'ble Court negated the relief of mortgage, it is factually incorrect.



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5. It has been further submitted that the applicant M. Subadra is not living in the address mentioned in the affidavit and she has not furnished her present address evidently fearing attachment and sale of the property who have not come to the court with clean hands with cogent fact and figures. Hence, they are not entitled to seek for amendment of the decree under the guise of difference of Rs.39,29,041/- in the calculation while arriving at the liability of the defendants as per Judgment dated 13.03.2024. Under the guise of correction of the decree, the applicants/defendants seeking for variation of the decree which is impermissible in law. Hence, the application is not maintainable in law and fact and the same is liable to be rejected and dismissed with costs.

4. Heard both sides and perused the materials available on record.

5. On perusal of the Judgment dated 13.03.2024 in the Issue No.6 and 7 in Para 21

and in the Issue No.3 & 4 in Para 22, it is observed as follows:

21.....“Further, the defendants have not proved that they have not borrowed a sum of Rs.62,00,000/- from the plaintiff by way of oral and documentary evidence. Once the signatures put by the 2nd defendant and 3rd defendant in each promissory notes are not disputed, the content of the each promissory notes shows that 2nd



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defendant has borrowed a sum of Rs.62,00,000/- from the plain

Hence, the plaintiff has proved that the defendants have borrowed a sum of Rs.62,00,000/- from the plaintiff as loan. Accordingly, Issue Nos.6 and 7 are answered.

22. Even though the promissory notes executed by the defendants have been proved by the plaintiff, the plaintiff has not proved the equitable Mortgage said to have been created by the parties by virtue of oral and documentary evidence.

24. Having considered the facts and circumstances of the case and the promissory notes have been proved by the plaintiff, the plaintiff is entitled for the interest from the date of plaint till the date of decree @ 24% and thereafter, 6% till the date of realization. The defendants shall pay the amount within a period of three months from the date of receipt of copy of this Judgment.”

6. In view of the aforesaid observations, it makes clear that the applicants/defendants are liable to pay only Rs.62,00,000/- along with interest @24% p.a. from the date of plaint till the date of decree and thereafter, 6% till the date of realization and they shall pay the amount within a period of three months from the date of receipt of copy of the Judgment. Further, the suit is not proved as the equitable Mortgage by the respondent/plaintiff, the Registry is directed to delete the Schedule of the property and to draft the decree accordingly as the

Respondent/Plaintiff is not entitled for the interest which accrued prior to filing of the plaint .



7. In the result, the Application stands allowed with the aforesaid terms. No costs.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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