THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 30.01.2026	Judgment pronounced on : 13.03.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.337 of 2023
& CMP.No.11892 of 2023

L.Padmanaban (Died)
Bhuvaneshwari (Died)
1.Megala (Major)
2.Lakshmi .. Appellants
[1st appellant (Megala) declared as major and 2nd appellant (Lakshmi) discharged from the guardianship vide Court order dated 18.12.2025 made in CMP.No.27284 & 27288 of 2025 in A.S.No.337 of 2023]

Vs.

A.Sakthivel .. Respondent

Prayer: Appeal Suit filed under Order XLI Rule 1 and Section 96 of CPC, to set aside the judgment and decree dated 26.07.2022 made in O.S.No.500 of 2013 on the file of III Additional District Judge, Coimbatore.
[Accepted the cause title vide order of the Court dated 24.04.2023 made in CMP.No.9178 of 2023 in AS.SR.No.6817 of 2023]

For Appellants : Mr.V.Ananda Moorthy

For Respondent : Mr.R.Malaichamy

JUDGMENT

The 3rd defendant in a suit for recovery of money is the appellant, aggrieved by the decree passed by the trial Court in O.S.No.500 of 2013.

2.Pleadings:
The Plaint in brief:

The 1st defendant, L.Padmanaban borrowed Rs.8,70,000/- from the plaintiff to meet urgent family needs and promising to repay the same together with interest at 24% per annum and executed an equitable mortgage deed on the same day. The defendant deposited his original sale deed with the plaintiff. The 1st defendant, under the mortgage deed, agreed to pay a penal interest of 30% on failure to pay the agreed principal and interest. The 1st defendant committed default even in the first month and he has rendered himself liable to pay penal interest. The plaintiff caused a lawyer's notice on 18.09.2013, demanding repayment. The 1st defendant sent a reply with false allegations. Hence, the suit.

3.Written statement filed by the 1st defendant in brief:

(a) The 1st defendant did not borrow Rs.8,70,000/- on 26.03.2013 and there was no question of any promise to repay the same as contended in the plaint. The 1st defendant did not execute any mortgage deed and he also did not deposit the sale deed with the plaintiffs. The 1st defendant had no necessity to borrow any money. The defendant had only executed a power of attorney in favour of the plaintiff in respect of the property and without the defendant's knowledge, the plaintiff entered into a sale agreement with his brother-in-law one, S.Sakthivel on 05.07.2012, attempting to sell the property for a throw away price. On coming to know of the same, the 1st defendant cancelled the power of attorney executed in favour of the plaintiff. On coming to know of the cancellation, the plaintiff and his brother-in-law threatened the defendant. The 1st defendant's wife lodged a police complaint with Vadavalli Police Station. During police enquiry, the plaintiff and his brother-in-law agreed to cancel the agreement of sale and accordingly, the same was also cancelled.

(b) At the time of cancellation of the agreement of sale fraudulently, the plaintiff has obtained signatures of the 1st defendant in the mortgage deed. The defendant signed documents under the impression that he was only signing for cancellation of the earlier documents. When the 1st defendant asked the plaintiff for returning the original sale deed, the plaintiff did not return the same, giving some excuse or the other. The plaintiff and his brother-in-law promised to return the documents and the defendant believed their words. Only after receiving pre suit notice, the defendant came to know about the fraud played by the plaintiff and his brother-in-law. There is no consideration for the mortgage deed and the suit is liable to be dismissed.

4.Written statement filed by the 2nd defendant:

(a) One of the relatives of the plaintiff by name Chandra Sakthies borrowed Rs.1,70,000/- from the plaintiff and at that time, the plaintiff took cheque leaves and promissory notes as security. The plaintiff wanted the said Chandra Sakthies to also hand over the title deed with respect to the suit property, as additional security and only in order to help the said Chandra Sakthies, the defendant handed over the original sale deed. The plaintiff, after advancing the loan to Chandra Sakthies, insisted that the defendant should execute a power of attorney of the suit property, assuring that he would not misuse the power of attorney and it was only for security purposes. At the request of Chandra Sakthies, the defendant executed a power of attorney in favour of the plaintiff under the bonafide impression that it was only being executed for security purposes.

(b) In September 2012, when the defendant applied for

Encumbrance Certificate, he was shocked to find an agreement of sale dated 05.07.2012 with one Sakthivel. The defendant only then realized that the plaintiff had played fraud upon the defendant and immediately, he has cancelled the power of attorney. The defendant approached the plaintiff and sought for cancellation of the agreement of sale as well. However, the plaintiff started threatening the defendant with dire consequences. L.Padmanaban, the defendant was an alcoholic and he was mostly under the influence of alcohol and he did not have any regular avocation. Taking advantage of the same, the plaintiff has brought about the mortgage deed, without any consideration. It is the usual practice of the plaintiff to obtain blank cheques and pro notes from borrowers and guarantors and fill up the same for exorbitant amounts and file criminal complaints and suits for extracting money. Instances of such cases are pending in various Courts in Coimbatore. There is absolutely no cause of action for the suit and the suit is liable to be dismissed.

5.Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

01.Whether the deceased 1st defendant borrowed Rs.8,70,000/- from the plaintiff on 26.03.2013 by creating mortgage over the suit schedule property?

02.Whether the plaintiff is entitled for the mortgage decree as prayed for?

03.Whether the defendants are liable to pay the suit claim to the plaintiff?

04.For what other reliefs?

6.Trial:

At trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one S.Sakthivel was examined as P.W.2 and Ex.A1 to Ex.A7 were marked. On the side of the defendants, the 2nd defendant was examined as D.W.1 and one Chandra Sakthies was examined as D.W.2 and Ex.B1 and Ex.B6 were marked.

7.Decision of the trial Court:

The trial Court found that the mortgage deed was a true and genuine document and decreed the suit, directing the defendants 2, 3 and 4 to pay the suit claim, within three months and in default, permitted the plaintiff to initiate final decree proceedings.

8.Present appeal:

Challenging the order of the trial Court, the present appeal suit has been filed.

9.I have heard Mr.V.Ananda Moorthy, learned counsel for the appellants and Mr.R.Malaichamy, learned counsel for the respondent.

10.<u>Arguments of the learned counsel for the appellants:</u>

(a) Mr.V.Ananda Moorthy, learned counsel appearing for the appellants would state that the trial Court has failed to appreciate that the categorical and consistent case of the defendant was that the plaintiff was a total stranger to the defendant, L.Padmanaban and that the defendants had satisfactorily explained as to how the original sale deed relating to the suit property went into the hands of the plaintiff. He would further state that the trial Court has failed to see that on coming to know about the unlawful and greedy intentions of the plaintiff and his brother-in-law, S.Sakthivel, the defendants had immediately cancelled the power of attorney, which should have led to the inference that the case of the defendant, as projected before the trial Court was factually true and acceptable. He would further state that when the defendant, L.Padmanaban was admittedly addicted to alcohol, the plaintiff, having brought about Ex.A1, mortgage deed, was burdened with the proof of genuineness of Ex.A1.

(b) The learned counsel for the appellants would further state that when the plaintiff and his brother-in-law who was also examined as P.W.2 had admitted to their misdeeds and cancelled the agreement of the version projected by the plaintiff ought not to have been believed by the trial Court. He would also state that the conduct of P.W.2 in filing a criminal complaint, based on dishonour of cheque, also ended in acquittal and the trial Court failed to see that the *modus operandi* adopted by the plaintiff and his brother-in-law were exposed by the mere factum of the filing of the criminal complaint, based on a dishonoured cheque. The learned counsel for the appellants would therefore state that the plaintiff has also not come to Court with clean hands and has suppressed various material facts and circumstances in the plaint and therefore the plaintiff was not entitled to any relief.

11.<u>Arguments of the learned counsel for the respondent:</u>

Per contra, Mr.R.Malaichamy, learned counsel appearing for the respondent would contend that the trial Court has judiciously analyzed the oral and documentary evidence in line with the pleadings and rightly found that the mortgage deed was for consideration and the defendants cannot wriggle out of their liability, alleging that the 1st defendant was an alcoholic and that he was duped into the signing the agreement of sale. He would refer to cross examination of P.W.1 and P.W.2 and also cross examination of D.W.2 to contend that the plaintiff had established the mortgage transaction, which is the cause of action for filing of the suit. He would also state that Sections 91 and 92 of the Indian Evidence Act would also come in the way of the defendants to contend that the mortgage deed was a sham and nominal document. He would further state that there is no evidence adduced on the side of the defendants in this regard as well. In support of his contentions, the learned counsel for the respondents would rely on the decision of the Hon'ble Supreme Court in ***Smt.Gangabai W/o Rambilas Gilda Vs. Smt.Chhabubai w/o. Pukharjji Gandhi***, reported in ***(1982) 1 SCC 4*** and ***Vimal Chand Ghevarchand Jain and others Vs. Ramakant Eknath Jadoo,*** reported in ***(2009) 5 SCC 713***.

12.Point for consideration:

Upon considering the arguments advanced by the learned counsel for the parties, I frame the following point for consideration:

i) Whether the plaintiff has established the due execution of the mortgage deed, thereby entitling the plaintiff to seek recovery of the monies due under the said mortgage.?

13.Point 1:

The plaintiff's case is that the 1st defendant L.Padmanaban wanted financial assistance to meet family requirements and therefore, he borrowed Rs.8,70,000/- and executed an equitable mortgage deed, undertaking to repay the same, together with interest at 24% per annum and that even in the mortgage deed, there is a clause providing for penal interest of 30%, in the event of default committed by the defendant in repayment, as agreed. The defendant entered appearance and filed a written statement, denying any acquaintance with the plaintiff in the first place. The defendant, in his written statement, has denied not only the borrowing, but also execution of the mortgage deed. However, the defendant admits that he only executed a power of attorney in favour of the plaintiff and when the power of attorney was sought to be misused by the plaintiff by entering into an agreement of sale for a throw away price, the defendant lodged a police complaint and that at the time of cancellation of the agreement of sale, the plaintiff has fraudulently obtained the signatures of the 1st defendant in the mortgage deed.

14.The defendant has further contended that when he wanted return of the original sale deed, which was handed over to the plaintiff, at the time of execution of the power of attorney,, the plaintiff evaded the defendant on this issue and the defendant contends that he believed the plaintiff that he would return the original sale deed relating to the suit property and only after receipt of lawyer's notice from the plaintiff, he realized that the plaintiff was playing a fraud on him.

15.Curiously, after the death of the defendant and post impleadment of his legal representatives, the wife of the 1st defendant, namely, the 2nd defendant has chosen to file a written statement, attempting to improve the defence originally taken by her husband, the 1st defendant. A new case is set up that one of the relatives of the plaintiff by name, Chandra Sakthies had borrowed Rs.1,70,000/- from the plaintiff and at that time, the plaintiff, besides taking promissory notes and blank cheques, insisted on additional security for which the 1st defendant helped the said Chandra Sakthies.

16.It is further pleaded in the written statement that the plaintiff was not satisfied with the original title deed and he wanted a power of attorney as well, which too was obliged by the defendants. The 2nd defendant further pleads that the power of attorney was therefore not intended to be acted upon and in September 2011, when the 1st defendant came to know about the agreement of sale executed by the plaintiff in favour of his brother-in-law, the 1st defendant cancelled the power of attorney and on a complaint made by the 2nd defendant, the plaintiff also cancelled the agreement of sale as well. The 2nd defendant has toed the very same line of the 1st defendant with regard to the execution of the mortgage deed. The 2nd defendant has further contended that the 1st defendant was an alcoholic and the said position was taken advantage of for the purposes of creating the mortgage deed. The 2nd defendant also contends that the plaintiff is a habitual money lender by profession and doing business without any license and he is in the habit of obtaining such blank documents and cheques and hold the borrowers for ransom thereafter.

17.From the above, it is clear that when the 1st defendant, who is admittedly the executant of the mortgage deed, has projected a particular version before the Court in his written statement, the 2nd defendant, his wife, who at best claiming rights only under the 1st defendant, cannot take any different stand from what has been taken by the 1st defendant. The defence, that has not been raised or pleaded by the 1st defendant, is raised by his wife, the 2nd respondent, after the lifetime of the 1st defendant. The said defence not raised by the 1st defendant actually pertains to the 1st defendant alone. Therefore, when the 1st defendant had not chosen to plead about the same and has projected a different version altogether, it would not be open to the 2nd defendant to project a different story altogether and set up a new defence, not pleaded by the 1st defendant.

18.Be that as it may, coming to the evidence adduced by the parties, from the evidence of P.W.1 and P.W.2, the plaintiff has established the factum of execution of Ex.A1, mortgage deed, which is also a registered document. Both P.W.1 and P.W.2 have also spoken about the receipt of Rs.8,70,000/- by the 1st defendant, at the time of execution of the mortgage deed. It is the case of both the 1st defendant, as well as the 2nd defendant that at the time of cancellation of sale agreement, the signatures of the 1st defendant were fraudulently obtained in the mortgage deed. In other words, the defendants contend that the signatures subscribed in the mortgage deed were only under the impression that they were being subscribed to the cancellation document, marked as Ex.B3.

19.As already discussed, there is absolutely no nexus with regard to the version regarding the execution of the power of attorney and entrustment of original sale deed by the 1st defendant to the plaintiff. The 1st defendant, in his written statement, does not even state as to why he executed a power of attorney in favour of the plaintiff and whether at that juncture, it was necessary to hand over the sale deed in original to the plaintiff. Totally a new story is projected by the 2nd defendant after the demise of the 1st defendant, stating that one Chandra Sakthies, who was a relative of the plaintiff, borrowed Rs.1,70,000/- from the plaintiff, for which the plaintiff wanted security of immovable property and therefore, the original sale deed of the 1st defendant was handed over and further, when the plaintiff insisted on a power of attorney also, the 1st defendant again obliged Chandra Sakthies and executed the power of attorney. The defendants do not even state their acquaintance or relationship to the said Chandra Sakthies in the written statement. Therefore, if according to the 2nd defendant, Chandra Sakthies was only a relative of the plaintiff, there was no necessity for the plaintiff to insist upon production of the original sale deed by the defendant, when according to the defendants, the plaintiff was a total stranger to the defendants. Thus, the distorted version projected by the defendants 1 and 2 are mutually destructive and do not in any manner help the defendants.

20.The document, admittedly, is a registered mortgage deed and the plaintiff has discharged their initial burden, especially when the defendants do not deny the execution of the document before the Sub-Registrar. The burden thereafter shifts to the defendants to establish that the document was obtained by either fraud or undue influence, coercion or misrepresentation. There is absolutely no evidence on the side of the defendants to establish any such act having been committed by the plaintiff.

21.In fact, it is their specific case that the 2nd defendant lodged a police complaint against the plaintiff and his brother-in-law for having entered into an agreement of sale behind the back of the 1st defendant. On the said complaint, even according to the defendants, the plaintiff and P.W.2 came forward to cancel the said agreement of sale. Therefore, it is not believable that when the defendants have been so diligent and conscious in safeguarding their rights over the property, they would have signed a mortgage deed at the time of execution of the cancellation of the agreement of sale. Even assuming without admitting that the 1st defendant was addicted to alcohol, it was the wife, the 2nd defendant, who lodged a police complaint and only upon her action, the agreement of sale was cancelled. Therefore, to contend that the 1st defendant, being an alcoholic, was taken advantage of by the plaintiff also is not a version that can be bought by this Court. That apart, the plaintiff has produced earlier mortgage deeds executed by the defendants, which clearly show that the defendants are not new to execution and registration of documents and are aware of the procedures involved. Therefore, it does not lie in the mouth of the defendants to state that the 1st defendant as illiterate and that he was alcoholic and therefore, the same was taken advantage of by the plaintiff in bringing about the mortgage deed.

22.It is also contended by the learned counsel for the appellants that the plaintiff has suppressed the material facts pertaining to various other transactions. I find that the suit is filed simpliciter for recovery of money, based under Ex.A1, mortgage deed. Therefore, I do not see any requirement or necessity for the plaintiff to have pleaded about the earlier agreement of sale or cancellation of the same, which was not material for the purposes of the suit claim. The trial Court has also rightly come to the conclusion that the plaintiff cannot be held guilty of suppression of material facts. I find that the trial Court has discussed all the documents exhibited on the side of the plaintiff, as well as the defendants in a proper perspective and rightly held that the plaintiff had discharged the initial onus and thereafter, the burden shifted to the defendants to establish their case and that they have failed in their endeavor to do so.

23.Even with regard to interest, the trial Court has considered that awarding penal interest would be exorbitant, yet the defendants are liable to pay interest for the borrowing made from the plaintiff and has awarded a nominal interest of 12% alone.

24.In ***Gangabai****'s case*, (referred herein supra) the Hon'ble Supreme Court held that the bar imposed by Section 92(1) applies only when a party seeks to rely upon the document embodying the terms of the transaction and not when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is sham. This decision would, in fact, apply, as it is the case of the defendants that they never executed the mortgage deed knowing that it was a mortgage deed. Therefore is not open to the defendants to even lead evidence, taking advantage of Section 92(1) of the Indian Evidence Act.

25.In ***Vimal Chand Ghevarchand Jain****'s case*, the Hon'ble Supreme Court held that when the true character of the document is in question, extrinsic evidence by way of oral evidence is admissible. Further, such oral evidence adduced has to satisfy the Court, before the Court discharges the burden of proof on such a party. Here, the evidence on the side of the defendnats is totally lacking and found warranting For all the foregoing reasons, I do not find any merit in the appeal and the findings of the trial Court do not warrant interference. The point is answered against the appellants and in favour of the respondent.

26.Result:

In fine, the Appeal Suit is dismissed with costs. Connected Civil Miscellaneous Petition is closed.

13.03.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The III Additional District Judge,
Coimbatore.

P.B.BALAJI.J,

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Pre-delivery Judgment made in
A.S.No.337 of 2023
& CMP.No.11892 of 2023

13.03.2026