



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-02-2026

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**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

AS No. 276 of 2020 and CMP.No.3426 of 2020

A.Vivek Anand

Appellant(s)

Vs

1. K.Padmanaban

2.K.V.Kothandaraju

Respondent(s)

PRAYER: Appeal Suit filed under Section 96 of Code of Civil Procedure, 1908 to set aside the Judgment and Decree dt. 11/11/2019 made in OS NO. 10/2013 as regards clauses 1 and 3 of the decree on the file of the IInd Additional District court Vellore @ Ranipet.

For Appellant Mr.Y.Jyothish Chander
For Respondent(s): T.P.Prabakaran

JUDGMENT

(Judgment delivered by N.Sathish Kumar J.)

During the earlier hearing on 28.01.2026, it was represented by the learned counsel for the respondents that the first respondent died, therefore, we directed to file a memo indicating the date of death of the first respondent. Today, the learned counsel for the respondents submitted that representation made in the last hearing as to the death of the first respondent is wrong, both the respondents are still alive.



2. Such view of the matter, our earlier direction dated 28.01.2026 directing to file memo indicating the date of death of first respondent is recalled.

3. Challenging the decree and judgment of the Trial Court negating the relief of grant of preliminary decree to proceed against the property and granting only personal money decree to recover the plaint amount with interest and cost, the present appeal has been filed by the unsuccessful plaintiff.

4. The parties herein are arrayed to as per their own ranking before the Trial Court.

5. Brief background in filing the appeal are as follows:-

5.a. It is the case of the plaintiff that the first defendant has borrowed a sum of Rs.25,00,000/- from the plaintiff on 16.09.2009 for the purpose of development of his school and its building and executed a promissory note in his favour and also handed over the title deed described in the B Schedule pertaining to the plaint A schedule mentioned property to the plaintiff at Kancheepuram town on 17.09.2009 with an intent to create a valid equitable mortgage by deposit of title deeds in respect of his right and title over the plaint



A schedule mentioned property as a security for the repayment of the above amount borrowed and for all the future advances to be made and the same was also confirmed by his Confirmation Letter dated 18.09.2009. Further, he again borrowed a sum of Rs.15 lakhs on 17.10.2009 and executed another promissory note. Later, in order to defraud the creditors and the dues of the plaintiff, the first defendant seem to have executed a sham and nominal settlement deed settling all his properties in favour of his own brother the 2nd defendant under a Registered Settlement deed dated 09.03.2010 which is invalid and does not bind the plaintiff. As the amount is not repaid, the plaintiff has issued a legal notice dated 14.08.2012 calling upon the defendants to repay the above dues, since, they have failed to discharge the above dues and did not send any reply. Hence the suit.

5.b. The defendant has disputed the borrowal of sum of Rs.25 lakhs either on 16.09.2009 and another Rs.15 lakhs on 17.10.2009 and contended that the defendant never executed any pronote as alleged by the plaintiff nor deposited any title deed by executing memorandum. It is the contention that the defendant's son and the plaintiff were doing real estate business and they were also indulging in all vices. At that time, this defendant's son had handed over the original partition deed to one N.Ravi of Kancheepuram, a close friend of the plaintiff for the purpose of sale of property to raise money for their real estate



business. As some dispute arose between the parties, the suit came to be filed.

5.c. On the basis of pleadings and evidence, the Trial Court framed the following issues:

1. Whether it is true that the 1st defendant has not borrowed any amount from the plaintiff and executed A and B marked promissory notes in favour of the plaintiff ?

2. Whether the Settlement Deed executed by the 1st defendant in favour of 2nd defendant is a valid document ?

3. Whether the suit as framed by the plaintiff is maintainable ?

4. Whether the suit suffers due to non joinder of necessary parties ?

5. Whether the plaintiff is entitled to recover the suit amount as prayed in the plaint?

6. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

7. To what other reliefs the plaintiff is entitled?

5.d. On the side of plaintiff, PW1 and PW2 were examined and Ex.A1 to A9 were marked. On the side of defendants DW1 was examined and no documents were marked.



5.e. After appreciation of evidence, the Trial Court granted personal money decree to recover the plaint amount with interest and cost and declined the relief of grant of preliminary decree on the ground that Ex.A2, confirmation letter which is an unregistered instrument does not create any mortgage by deposit of title deeds in respect of the suit property and the memorandum of deposit of title deeds is required to be registered under the provisions of Indian Registration Act. Aggrieved over the same, the present appeal has been filed by the unsuccessful plaintiff.

6. It is the contention of the learned counsel for the plaintiff that admittedly the memorandum of deposit of title deed was created as early as on 18.09.2009 and the borrowal as well as the deposit of title deed, confirmation letter/Ex.A2 are clearly established on record and PW1 and PW2 have clearly spoken in this regard. Therefore, once the execution of the documents have been established, the Trial Court on an erroneous ground has rejected the preliminary decree on the ground that the document is not registered. The learned counsel would further submit that compulsory registration of the memorandum of deposit of title deeds was made only with effect from 01.12.2012 by way of amendment brought under Tamil Nadu Act 29 of 2012, therefore, prior to that for creating deposit of title deeds, the registration is not mandatory. The Trial



Court has ignored this position of law and negated the relief of preliminary decree. Hence, seeks for allowing of this appeal suit.

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7. Whereas, the learned counsel for the respondents submitted that Ex.A2 is not only unregistered, but also not stamped, therefore, same cannot be admitted in evidence. Hence, seeks for dismissal of the appeal suit.

8. In light of the above submissions, now the following points arise for consideration:

- (i) Whether the Trial Court was right in declining the relief of preliminary decree to proceed against the property?
- (ii) To what other reliefs, the plaintiff is entitled to?

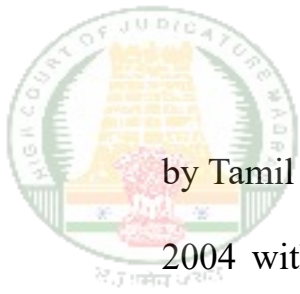
Points (i) & (ii)

9. The Trial Court has clearly found that Exs.A1 and A3 were executed by the defendant for sum of Rs.40 lakhs, that apart, Ex.A2 is also executed by defendant on 18.09.2009 confirming the deposit of title deeds with an intention to create mortgage for the said amount borrowed by the defendant. Execution of the document has been clearly established on record. PW2, witness to the document has clearly spoken about the execution of document



and the evidence has not been shattered. That apart, the signature found in the document is also found to be as that of the defendant as per the reports of the handwriting expert. Though the report of the handwriting expert has not been marked, the Trial Court has took note of the same.

10. The finding of the trial Court with regard to the execution and borrowal of the amount has not been challenged by the defendant. Therefore, the defendant has not challenged the finding of the Trial Court with regard to the execution of the document and borrowal of the amount. Therefore, without there being any cross appeal/cross objection, now the defendant namely the respondents cannot take different stand in the argument. When the evidences of PW1 and PW2 carefully scanned, we are of the view that the execution of the document by the defendant has been clearly established. That apart to prove the consideration, the plaintiff has also filed Ex.A9/bank statement to show that a sum of Rs.48 lakhs has been withdrawn from the account two days later the amount has been advanced. Therefore, when the source of money has been established by the plaintiff and the execution has been clearly proved and there is no contra evidence placed to dislodge the legal presumption attached to the pro-note, now, the respondents cannot challenge the decree and judgment of the Trial Court on the ground that memorandum namely Ex.A2, confirmation letter has not been stamped. No doubt, explanation brought under Schedule I added

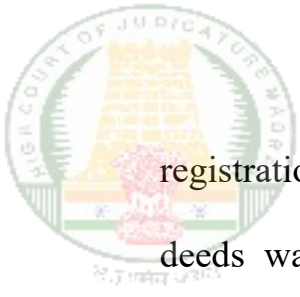


by Tamil Nadu Act No.31 of 2004, Indian Stamp (Tamil Nadu Amendment) Act, 2004 with effect from 16.12.2004 clarified the position that memorandum or writing relating to the deposit of title deeds whether written or made either before or at the time when or after the deposit of title deeds is effected, the same is required to be stamped.

11. Be that as it may, the fact remains that the document has been admitted in evidence, at that time, no objection whatsoever raised by the defendant. Therefore, in the absence of no objection raised with regard to the payment of stamp duty, such document which is already admitted in the Court of Law cannot be assailed later as per Section 36 of the Indian Stamp Act which. Section 36 of the Indian Stamp Act reads as follows:-

“36. Admission of instrument where not to be questioned.- Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.”

12. Admittedly, the respondent has not made any objection with regard to the stamp duty and allowed the document to be marked. The Trial Court has non-suited the plaintiff and negatived the preliminary decree to proceed against the property on the ground that Ex.A2 is not registered. It is relevant to note that



registration of the agreement relating to the Memorandum of deposit of title deeds was made compulsory only with effect from 01.12.2012 by way of amendment brought under Tamil Nadu Act 29 of 2012, therefore, prior to that there was no compulsory registration for the memorandum of deposit of title deeds.

13. In view of the above, we are of the view that the Trial Court is not right in declining the preliminary decree to proceed against the property as the title deeds is already deposited and Ex.A2 is already proved in the manner known to law. Such view of the matter, the Trial Court declining the relief of preliminary decree to proceed against the property is set aside.

14. Accordingly, the appeal suit is allowed and the suit in O.S.No.10 of 2013 is decreed with costs, directing the 1st defendant to pay the suit amount of Rs.68,33,000/- to the plaintiff together with the interest at 12% p.a for the principal amount of Rs.40,00,000/- from the date of presentation of the plaint till the date of decree and thereafter at 6% per annum till realization. The time for payment is 2 months. In the event of failure to pay the amount, the plaintiff is entitled to proceed against the property by seeking a final decree. Consequently, connected miscellaneous petition stands closed.



(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)
11-02-2026

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The II Additional District Judge
II Additional District Court,
Vellore @ Ranipet

2.The Section Officer
VR Section, Madras High Court



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