



WEB COPY

SA No. 913 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 913 of 2015

The Madras Purasawalakam
Hindu Janopakara Saswatha Nidhi Ltd., Rep By Its
Managing Director/ Commissioner, No.168,
Vellala St, Purasawalkam, Chennai-84.

..Appellant(s)

Vs

Sri Balaji
Intercontinental Rep By Its Partner Mr. Ashok
Kumar Murarkas, S/o. G.B.Muruarka, No.22,
Kolandai St., Chennai-3.

..Respondent(s)

PRAYER: This Second Appeal is filed under Section 100 of the CPC to set aside the Judgment and Decree dated 05.02.2015 passed in AS.No.94 of 2011 by the IV Additional City Civil Court, Chennai which confirmed the Judgment and Decree dated 24.06.2008 passed by the X Judge, XV Assistant Court, I/C City Civil Court, Chennai in OS.No.1168 of 2003.

For Appellant(s): Mr A.Ramakrishnan 265/2017
S.Balajiraja 1168/2021

For Respondent(s): Mr. V.Manohar

JUDGMENT

This Second Appeal has been preferred as against the decree and Judgment passed by the IV Additional Judge, City Civil Court, Chennai, in Appeal Suit No.94 of 2011 dated 05.02.2015. The Respondent is the plaintiff

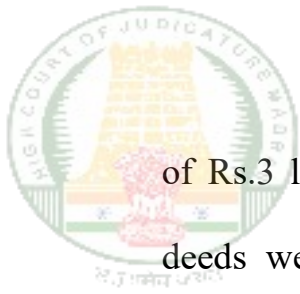


who filed the suit for redemption of mortgage and the suit was decreed by directing the plaintiff to deposit a sum of Rs.1,72,550/- with subsequent interest @ 6% on or before 31.08.2008. Upon such payments, the plaintiff has delivered all the documents and to execute necessary documents for discharge. If the plaintiff failed to deposit the abovesaid amount, there will be a final decree for sale. Aggrieved by the said decree and judgment, the defendant has preferred Appeal Suit in AS.No.94 of 2011 on the file of the IV Additional Judge, City Civil Court, Chennai. The first appellate court also confirmed the decree and judgment of the trial court and dismissed the appeal. Aggrieved by the said decree and judgment, the present Second Appeal has been filed by the defendant.

2. For the sake of convenience and brevity, the parties are referred to as per their ranking in the trial court.

3. The brief averments of the plaint before the trial court are as follows:-

The plaintiffs is the partnership firm and they are owning the schedule mentioned building suit property. The plaintiffs borrowed money from the defendant under various heads and executed a various simple mortgages and also executed a promissory notes in blank. On 30.08.1995, borrowed a sum of Rs.6 lakhs by executing the mortgage deed. Thereafter, borrowed sum of Rs.3 lakhs and executed mortgage deed dated 04.12.1996 and again borrowed a sum



of Rs.3 lakhs on 12.06.1996 and executed a mortgage deed. Those mortgage deeds were executed by the firm and the partners. In addition to the said amounts, the plaintiff borrowed money to the sum of Rs.34 lakhs by executing promissory notes which are undated and the same were executed in or about in June 1996 and the said promissory notes are barred by limitation. The plaintiffs also executed the letters of hypothecation of title deeds borrowed dated 13.06.1996. By that time, no document of title was deposited. The documents alone were executed in blank format. The documents of title were deposited with the defendant long ago. Even in the year 1995 at the time when the first mortgage was created, the defendants have taken number of blank papers duly signed without dates with ulterior motive. It was agreed between the plaintiff and the defendant that the amounts borrowed on simple mortgages would be returned in equal monthly instalments as stated in the mortgage deeds. The defendants are not entitled to invoke provisions under Section 69 of the Transfer of Property Act for the money borrowed under the promissory notes. But they erroneously invoked the provisions under Section 69 of the Transfer of Property Act advertising the property for sale in public auction. The plaintiff filed a suit in OS.No.849 of 1997 and the same is still pending. The plaintiff filed a suit for permanent injunction and the same is still pending.

3.1. Before filing of this suit, the plaintiff had paid sum of Rs.835296/-on the various dates between 1995 and 1998 to the defendant. During pendency of



the suit, the plaintiff had paid a sum of Rs.3 lakhs through court. Thus the plaintiff had totally paid a sum of Rs.1135296/- which includes the principal and interest and they are liable to pay a sum of Rs.3,30,507.48/- as on 31.12.2012. The plaintiff is also ready to deposit the above said amount. But the defendants claimed the entire amount which compraised of borrowal through the promissory notes which is barred by limitation. Therefore, the plaintiff filed the suit.

4. The brief averments of the written statement filed by the defendant are as follows:-

The defendant denies all the averments and allegations levelled in the plaint and the plaintiff has to prove the allegation except those are specifically admitted hereunder. The suit is misconceived and is liable to be dismissed as not maintainable either in law or on facts. The mortgages in question as well as the other documents have all been signed by the firm and partners individually and in their capacity as partners of the firm and the suit is instituted by the firm alone is not maintainable. The suit is hit by Order 2 Rule 2 as only a part of relief has been sought for without seeking the relief of another. The plaintiff having come forward with a suit for redemption, the property itself to be redeemed and the entire amount due under various mortgages would have to be cleared. The averments in the plaint that the amounts were borrowed on promissory notes is incorrect. The said amount has also been lent on the basis of



equitable mortgages. The defendants are entitled to the benefit under Section 69 of the Transfer of Property Act, the plaintiff is liable to pay sum of Rs.1,58,19,533.70/- payable as on 25.08.2003. The amount mentioned by the plaintiff allegedly payable Rs.330507/- is due towards the mortgage are not correct. Therefore, the suit is liable to be dismissed.

5. Based on the aforesaid pleadings and after hearing both sides, the trial court framed the following issues for trial :-

- 1) *Whether the mortgages dated 30.08.96 , 14.02.96 and 12.06.96 have been discharged by the plaintiff?*
- 2) *Whether the plaintiff is entitled to declaration as, prayed for by him?*
- 3) *Whether the plaintiff is entitled to mandatory injunction as prayed for by him?*
- 4) *Whether the suit is not maintainable?*
- 5) *To what relief is the plaintiff entitled?*

Additional issues:

- 1) *Whether this court has ample jurisdiction or not?*

6. Before the trial court, on the side of the plaintiff, PW1 was examined and marked Ex.A1 to Ex.A10 . On the side of the defendants, DW1 was examined and marked Ex.B1 to Ex.B6. After analysing the evidences on both sides, the trial court decreed the suit. Aggrieved by the said decree and judgment, the defendant has preferred the appeal in AS.No.94 of 2011 on the file of the IV Additional City Civil Court, Chennai on various grounds



7. The first appellate court has framed the following points for determination:-

i) whether the decree and judgment of the trial court is liable to be set aside?

ii) What other points available in this appeal?

8. The first appellate court after hearing both sides and perusing the records, dismissed the appeal by confirming the decree and judgement passed by the trial court. Aggrieved over the decree and judgment of the first appellate court, the appellant /defendant has preferred this Second Appeal. This court at the time of admitting the second appeal framed the following substantial questions of law:-

a) Whether the appellate court below are right in coming to the conclusion that Ex.B2 to B5 series are not record of the transaction and mortgage deeds by themselves which inadmissible since they are compulsorily registrable documents and insufficiently stamped instruments?

b) Whether the admission by the plaintiff regarding the deposit of title deed in the facts of the case constitute mortgage by deposit of title deed?

c) Whether the transaction prior to Ex.A1, A2 and A3 are saved by the proviso to Section 48 of the Registration Act?



9. The learned counsel for the appellant would submit that the respondents who filed a suit for redemption of mortgage, borrowed a sum of Rs.46 lakhs by way of 3 simple registered mortgage deeds dated 30.08.1995, 14.02.1996, 12.06.1996 respectively. Thereafter, they borrowed a sum of Rs.34 lakhs by way of equitable mortgage deeds by executing memorandum of title deeds dated 02.09.1995, 22.09.1996 and 01.07.1996 respectively. Since the plaintiff is a defaulter, the defendant issued notices contemplated under Section 69 of Transfer of Property Act and initiated recovery proceedings by bringing the mortgage property for sale. The mortgaged property is lodging house and therefore the loan is a commercial transaction. The plaintiff stalled the sale proceedings by filing suits one after the another. The plaintiff without furnishing any details or statement of accounts or payment receipts, they simply stated the due amount Rs.330507.48/- in respect of the registered mortgages. The mortgage deeds are admitted by the plaintiffs. The defendants have marked Ex.B5 and Ex.B6 which are covered by bankers book evidence Act and there is a presumption attached to those documents under evidence Act. The plaintiff ought to have deposited admitted claim. There is no pleadings in respect of the discharge of equitable mortgages. On the date of filing the suit, the plaintiff was due to a sum Rs.1581953.70/- as on 25.08.2003. The trial court decreed the suit for redemption in respect of three simple mortgages directing the plaintiff to pay only a sum of Rs.172550/- towards the suit mortgages whereas admitted



amount is Rs.330507.48/-. The trial court has rendered findings that the equitable mortgage are time barred and outside the scope of the suit. The first equitable mortgages were created 30.08.1995 and the same expires only on 30.08.2007 but the suit itself filed in September, 2003, whereas the defendant made a claim as per the plaint document No.10 Auction Notice dated 03.08.2006. The calculation arrived by the trial court is in respect of only the account borrowed Rs.6 lakhs, the remaining Rs.3.3 lakhs was simply left out. The decree is passed only based on the above mis-calculation. The trial court also scale down the interest without any reasonable cause. There is no discussion or reasoning by the appellate court in respect of scale down the interest. Unless the loan amount due in respect of the equitable mortgages are paid, the documents cannot be delivered or handed over to the mortgagor. The courts below failed to comply with Order 34 Rule 7 of CPC. The appellant is entitled to contractual interest and the same cannot be reduced for scaling down.

9.1. The observations with regard to the enforcement of claim under Ex.B2, 34 are liable to be set aside. The mortgagee did not file any suit and the suit is only for redemption by the mortgagor, Therefore the question of limitation would arise only if a suit is filed by mortgagee. Therefore, the findings of the courts below that Ex.B2, 3, 4 are time barred and no claim will lie under those documents which is totally incorrect and liable to be set aside. As per the terms of the equitable mortgage, Ex.B2, B3 and B4, only after



redeeming equitable mortgages the registered mortgages shall be redeemed or otherwise only after full discharge of the equitable mortgage, the regular registered mortgage shall be discharged. The defaulter company has become bankrupt because of non-payment of defaulters. The defendant has been initiated recovery proceedings only in terms of the orders passed by this court and therefore, the decree and judgment passed by the courts below are liable to be set aside by allowing this Second appeal.

10. The learned counsel for the respondent would submit that the plaintiff borrowed a sum of Rs.12 lakhs from the defendant under 3 mortgage deeds dated 30.08.1995, 14.02.1996 and 12.03.1996 respectively. The plaintiff paid a sum of Rs.8,35,296/- prior to the suit and during the pendency of the suit, paid a sum of Rs.3 lakhs, totally he paid a sum of Rs.11,35,299/-. The balance payable is Rs.330507.48/- and the plaintiff is ready to redeem the said loan. But the defendant is claiming a sum of Rs.15819533.70/- by clubbing the another loan borrowed by the plaintiff based on the pro-notes to the tune of Rs.34 lakhs. The trial court rejected the claim of the defendant in respect of the amount of Rs.34 lakhs and the appellate court also confirmed the same. The Ex.B2 to Ex.B5 are unregistered documents. The agreements are barred by limitation. Hence, they cannot be clubbed with the suit mortgages. The defendant has not filed any counter claim or suit for the claim amount of Rs.34 lakhs. The mortgage deed should be registered and the memorandum requires



registration and stamp duty. When the debtor deposits with the creditor the title deed of property with an intention to create security. The law implies a contract between the parties to create the mortgage and the parties chose to reduce the contract in writing, then the document is the sole evidence of his terms. The deposit of documents form an integral part of its transactions and it requires registration. As per Section 49 of the Registration Act, an unregistered document cannot be received as evidence. Under Section 35 of the Stamp Act, unstamped document or under stamped documents cannot be looked into for any purpose. Therefore the courts below have correctly decreed the suit. As far as the calculation of amount is concerned, there is a typographical error and this court can correct that error and the respondents/plaintiff is ready to deposit the money as per the mortgage deeds. The courts below have correctly applied the law and there is no perversity or illegality in the judgments passed by the courts below. There is no any substantial question of law involved in this case and the Second Appeal is liable to be dismissed.

11. This court heard both sides and perused the records.

12. The plaintiff has filed the suit for redemption of mortgage and it is admitted fact that the plaintiff borrowed a sum of Rs.12 lakhs from the defendant by executing the mortgage deeds dated 30.08.1995, 14.02.1996 and 12.06.1996 respectively and the said deeds were registered. According to the



plaintiff, he paid a sum of Rs.835296/- prior to the suit and also paid Rs.3 lakhs totally paid a sum of Rs.1135299/- and the balance payable is Rs.330507/-

The defendant also admitted the aforesaid receipt of money of Rs.12 lakhs by executing the mortgage deeds as stated above and the repayment made by the plaintiff also not denied by the defendant.

13. According to the defendant, the defendants lent money to the tune of another Rs.34 lakhs on the basis of equitable mortgages dated 02.09.1995, 22.02.1996 and on 01.07.1996. Therefore, the said entire amount has to be settled and there is a bar under Section 69 of the Transfer of Property Act. According to the plaintiff, the said amount of Rs.34 lakhs is admitted. But those amounts were borrowed based on the promissory notes and not by executing equitable mortgages. The plaintiff has filed the suit for redemption. If any amount payable by the plaintiff, the defendant ought to have taken steps for recovery of money from the plaintiff. But no any suit or any counter claim filed by the defendant.

14. Though the plaintiff admitted the receipt of Rs.34 lakhs from the defendant, it is the duty of the defendants to prove that those amounts were based on the equitable mortgage deeds dated 02.09.1995, 22.02.1996 and on 01.07.1996. as alleged by the defendants. In order to prove the same, the defendant has produced those deeds as Ex.B3 to Ex.B5. Those documents are



unregistered documents. Once the plaintiff lent money for Rs.6 lakhs and Rs.3 lakhs and another Rs.3 lakhs by obtaining registered mortgage deeds, what prevented them to get registered mortgage deeds when they money lent is the huge amount of Rs.34 lakhs has not been explained by the defendants. The defendant failed to obtain registered mortgage deeds and in the absence of any proper explanation for the non-obtaining of the registered mortgage deeds for the huge amount when they got registered mortgages even for the meager amount of Rs.3 lakhs and Rs.6 lakhs, the contention of the plaintiff is that they borrowed money from the defendant of Rs.34 lakhs by way of pro-notes is probablisise. The courts below have correctly rejected the documents Ex.B3 to Ex.B5 and therefore, the court need not interfere with the findings of the courts below. As far as the calculation arrived by the courts below are concerned, the trial court ought to have calculated the amount for the tune of Rs.330507/- but the trial court erroneously stated that the amount payable is Rs.172550/- as principal and a sum of Rs.55704/- by reducing the interest @ 6%. Once the plaintiff admitted the rate of interest and executed mortgage deed, the courts normally need not be interfered unless the interest is exorbitant. The 1st appellate court held that the default interest is usurious of factual aspect and this court need not interfere on the factual aspect. In this case, the plaintiff himself has admitted the execution of mortgage deeds and therefore, the plaintiffs have to pay a sum of Rs.330507/- along with 6% interest.



15. As far as the substantial questions of law framed by this court are concerned the defendant has relied upon the Ex B2 to B5 and those documents are mortgage deeds but those documents are unregistered documents. As far as the mortgage deeds are concerned they are compulsorily registered documents and insufficiently stamped. The plaintiffs has not admitted the deposit of title deeds for the subsequent loan of Rs. 34 Lakhs. As far as Ex A1 to A3 are concerned the suit is filed based on the loan borrowed through mortgage deeds Ex.A1 to A3 and no any claim is made prior to the execution of A1 to A3. Therefore applicability of proviso to Section 48 of Registration Act will not arise.

16. In view of the above said discussions this second appeal is partly allowed and decree and judgement of the appellate court in A.S.No.94/2011 is modified and the plaintiffs is directed to pay a sum of Rs.3,30,507/- with 6% interest as ordered by the trial court.

17. With the above modification this second, appeal is partly allowed.

25-02-2026

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

GV



To

1. Sri Balaji

Intercontinental Rep By Its Partner Mr. Ashok Kumar Murarkas, S/o.
G.B.Muruarka, No.22, Kolandai St., Chennai-3.

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



WEB COPY

SA No. 913 of 2



P.DHANABAL, J.

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SA No. 913 of 2015

25-02-2026