IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2026

CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

C.S.No.80 of 2022 &
O.A.No.292 of 2022

1. Hamsalakshmi
2. R.Krishnakumar ... Plaintiffs

Vs.

1. S.Chandar

2. Sri Raj & Co.,
   Auctioneer,
   No.7, Sunkurama Chetty Street,
   1st floor, Chennai – 600 001 ... Defendants

Prayer:

Plaint filed under Order XXXVII Rule 2 of Original Side Rules R/w Order IV Rule 1 of Original Side Rules r/w Order XXXIV Rule 7 of CPC to pass a Judgment and Decree (a) That an account may be taken of the amount due to the first defendant for actual principal, interest and costs (b) that upon payment of the same by the plaintiffs, the 1st defendant may be directed to deliver to the plaintiffs the mortgage instruments and all the documents in his possession or power relating to the property (c) to execute and register an acknowledgement in writing to the effect that the interest created by the mortgage has been extinguished (d) grant permanent injunction restraining the defendants from alienating the schedule mentioned property (e) by directing the defendants to pay the costs. (f) to pass such other suitable orders.

For Plaintiffs : Mr.R.Sreedhar

For Defendants : Mr.Devendran for D1

J U D G M E N T

This suit has been filed by the plaintiffs for the relief of redemption of mortgage and to take account of the amount due to the 1st defendant for actual principal, interest, costs and upon payment of the same by the plaintiffs, the 1st defendant may be directed to deliver the plaintiffs the mortgage instruments and all the documents in his possession or power relating to the property and to execute and register an acknowledgement in writing to the effect that the interest created by the mortgage has been extinguished and to grant permanent injunction restraining the defendants from alienating the schedule mentioned property and for costs.

2. The brief averments of the plaint are as follows:-

(i) The plaintiffs are running a Jewellery Shop in the name and style of M/s Radha Gold Jewellers and prior to 30.09.2016, the plaintiffs had borrowed a sum of Rs.30 Lakhs on various dates from the 1st defendant, for that, he charged exorbitant interest at the rate of 36% per annum and he claimed a sum of Rs.56 Lakhs and insisted the plaintiffs to pay the said amount or to execute mortgage in respect of the property. The 1st defendant assured to pay a sum of Rs.50 lakhs, in addition to the earlier loan amount and insisted the plaintiffs to execute a mortgage deed. The 1st defendant never paid a sum of Rs.1,06,00,000/-, as per mortgage deed and every month, the 1st defendant, collected a sum of Rs.53,000/- towards interest after the execution of mortgage deed, till the month of April, 2022. The 1st defendant insisted the plaintiffs to sell mortgaged property instead of paying interest, therefore, the 1st defendant issued notice dated 23.04.2022 to the plaintiffs demanding to repay the amount of Rs.1,06,00,000/- and the same was suitably replied on 14.05.2022. In the said notice, the 1st defendant failed to mention about the outstanding amount as on date of said legal notice and he simply stated to repay Rs.1,06,45,000/- and Rs.45,000/- towards documentation charges at the rate of 18% interest.

(ii) After receipt of reply notice, the 1st defendant, instructed the 2nd defendant to auction the immovable property and the 2nd defendant also sent a letter dated 17.05.2022 to the plaintiffs and called upon the plaintiffs to pay the entire dues within a week. The 1st defendant having received the entire interest as of April, 2022, had taken steps to auction the property would definitely infringe legal right of the plaintiffs. The plaintiffs are ready to repay the agreed principal amount and the amount mentioned in the mortgage deed is not the actual principal amount and the 1st defendant had intentionally made use of the ignorance of the plaintiffs and got mortgage deed registered in his favour. An ordinary prudent man would not wait for six years for payment of interest. As per conditions stipulated in the mortgage deed, if the plaintiffs failed to pay the interest for three consecutive months, he can take legal action, but the 1st defendant had not taken any steps and only issued notice in the year 2022, even in the said legal notice, he does not whisper about the outstanding amount, therefore, the 1st defendant after receipt of interest till the April, 2022, not entitled to receive the amount, therefore, the plaintiffs filed the suit.

3. The brief averments of the written statement filed by the 1st defendant are as follows:-

The suit is not maintainable and the averments made in the plaint are denied as false and the plaintiffs have to prove the allegations levelled in the plaint except those that are specifically admitted by the 1st defendant. The averments made in the plaint with regard to receipt of Rs.30 Lakhs on various dates and charging exorbitant interest at the rate of 30% per annum and again, the 1st defendant demanded a sum of Rs.56 Lakhs and execution of mortgage deed for that amount, are all denied. In fact, prior to execution of mortgage deed dated 30.06.2016, the plaintiffs by their letter dated 21.06.2016, admitted their liability to the total amount of Rs.1,05,00,000/- and on the date of execution of mortgage deed, further, amount of Rs.1,00,000/- was received by the plaintiffs, thereby executed mortgage deed dated 30.06.2016 was executed to the tune of Rs.1,06,00,000/-, The plaintiffs have not come to the Court with clean hands. The plaintiffs handed over the original documents at the time of mortgage, therefore, after receipt of money, they mortgaged the property. The plaintiffs are liable to pay the suit amount of Rs.1,06,00,000/- towards principal and Rs.1,12,89,000/- being arrears of interest at the rate of 18% per annum on the principal amount from 01.10.2016 up to the date of filing of the plaint together with compound interest 18% and also defaulted interest amount of Rs.45,000/- received for the documentation expenses. Unless the plaintiffs pay the above said amount to the 1st defendant, the plaintiffs are not entitled to redemption of the mortgage or any other reliefs as prayed for, therefore, the suit is liable to be dismissed.

4. Based on the above said pleadings, this Court framed the following issues for trial:-

"1. Is it true that the plaintiffs have not received the mortgage money as per the terms of the contract?

2. Whether the plaintiffs are entitled to the reliefs as prayed for in the suit?

3. To what other relief parties are entitled?"

5. In order to prove the case on the side of the plaintiffs, they examined P.W.1 and marked Exhibits, P.1 to P.6 and Ex.D.1 was marked through the cross examination of P.W.1 and on the side of the defendants, D.W.1 was examined and except Ex.D.1, no other documents were marked.

6. The learned counsel appearing for the plaintiffs would submit that there was a money transaction between the plaintiffs and the 1st defendant, prior to 30.09.2016, the plaintiffs borrowed a sum of Rs.30,00,000/- from the 1st defendant and the 1st defendant charged exorbitant interest at the rate of 36% per annum after calculating exorbitant interest and the principal, the 1st

defendant, claimed a sum of Rs.56,00,000/- and insisted the plaintiffs to execute mortgage deed and also the 1st defendant agreed to pay a sum of Rs.50,00,000/- in addition to the amount borrowed earlier, thereby the plaintiffs executed a mortgage deed dated 30.09.2016 for a sum of Rs.1,06,00,000/- In fact, the said money to the tune of Rs.1,06,00,000/- was ot at all received by the plaintiffs, thereafter, the plaintiffs paid interest of Rs.53,000/- from the date of mortgage deed, viz., 30.09.2016 till the month of April, 2022. Thereafter, the 1st defendant issued notice dated 23.04.2022 to the plaintiffs demanding to pay principal amount with interest without mentioning outstanding balance amount, therefore, the plaintiffs are ready to pay the amount and thereby filed the suit. In order to prove the case of the plaintiffs, P.W.1 was examined and marked exhibits, Ex.P.1 to P.6 and on the side of the defendants, D.W.1 was examined and Ex.D.1 was marked. Through the evidence of P.W.1, and exhibits Ex.P.1 to P.6, the plaintiffs have proved their case, therefore, prayed to decree the suit.

7. The learned counsel appearing for the 1st defendant would submit that the plaintiffs approached the 1st defendant, demanded money and the 1st defendant also paid a sum of Rs.1,06,00,000/- and for that, the plaintiffs had executed mortgage deed dated 30.09.2016 for the amount of Rs.1,06,00,000/- agreeing to pay the interest at the rate of 18% per annum. After execution of the mortgage deed, the plaintiffs have not repaid either principal or the interest, therefore, the 1st defendant issued notice dated 23.04.2022 calling upon the plaintiffs to pay interest and the principal amount, but the plaintiffs

issued reply notice dated 14.05.2022 with false allegations. Therefore, if the plaintiffs pay the principal as well as the interest amount, they have no objection to decree the suit. Further, the plaintiffs after receipt of the suit amount, executed the mortgage deed, therefore, they are liable to pay the amount of the mortgage deed along with the agreed interest, therefore, this Court can pass appropriate orders by directing the plaintiffs to pay the mortgage amount along with agreed interest.

8. Heard the learned counsel appearing for the plaintiffs and the learned counsel for the 1st defendant and perused the entire documents placed on record.

9. Since all the issues are interlinked, they are taken up together for discussion :-

(a) The plaintiffs have filed the suit for redemption of mortgage, according to the plaintiffs, they borrowed a sum of Rs.30 Lakhs from the 1st defendant and the 1st defendant charged exorbitant interest and also calculated a sum of Rs.56 Lakhs. The 1st defendant insisted the plaintiffs to execute the mortgage deed for that amount and also agreed to pay a sum of Rs.50 Lakhs in addition to the earlier amount of Rs.56 Lakhs, therefore, the plaintiffs executed the mortgage deed dated 30.09.2016 for a sum of Rs.1,06,00,000/- and no amount was paid through the mortgage deed. Therefore, the plaintiffs are ready to pay the above said amount borrowed by them.

(b) The 1st defendant denied the plaint averments and in fact, the plaintiffs borrowed the money of Rs.1,06,00,000/- and executed mortgage deed agreeing to repay the amount with interest at the rate of 18% and thereby the plaintiffs are liable to pay the principal along with interest at the rate of 18% interest, in the event of payment of money with principal and interest, he has no objection to decree the suit.

(c) In order to prove the case of the parties, on the side of the plaintiffs, P.W.1 was examined and exhibits Ex.P.1 to P.6 were marked and on the side of the defendants, D.W.1 was examined and Ex.D.1 was marked through cross examination of P.W.1.

Ex.P.1 is the certified copy of the partition deed no.967 of 2000, SRO, Mylapore dated 24.04.2020

Ex.P.2 is the certified copy of the simple mortgage deed no.3174 of 2006 executed by the plaintiffs in favour of the first defendant dated 30.09.2016.

Ex.P.3 is the original legal notice issued by the 1st defendant to the plaintiff dated 23.04.2022.

Ex.P.4 is the office copy of the reply notice with original acknowledgement dated 14.05.2022 given by plaintiff counsel to 1st defendant counsel.

Ex.P.5 is the photocopy of the notice issued by the second defendant to the plaintiff dated 17.05.2022 (Subject to proof and relevancy)

Ex.P.6 is the certified copy of the encumbrance certificate from period 01.01.2000 to 18.05.2022 dated 20.05.2022.

Ex.D.1 is the undertaking given by the plaintiffs.

(d) It is an admitted fact that the plaintiffs executed mortgage deed in favour of the 1st defendant and the said mortgage deed is registered and as per the recitals of the mortgage deed, the plaintiffs borrowed a sum of Rs.1,06,00,000/- and agreed to pay interest at the rate of 18% per annum. The 1st defendant also has no objection to decree the suit, if the plaintiffs are ready to pay the principal amount along with interest at the rate of 18 % from the date of execution of mortgage deed till the date of realisation. According to the plaintiffs, they only borrowed a sum of Rs.30 lakhs and the 1st defendant charged exorbitant interest at the rate of 36% per annum and thereby the principal and interest in the earlier amount borrowed would come to Rs.56 Lakhs and apart from that, the 1st defendant agreed to pay a sum of Rs.50 Lakhs and thereby executed the mortgage deed. After the execution of the mortgage deed, the 1st defendant has not paid the remaining amount of Rs.50 Lakhs as agreed by him. While so the plaintiffs have to prove that they had not received the money as mentioned in the mortgage deed. Once the execution of mortgage deed was admitted by the plaintiffs, the burden is on the side of the plaintiffs to prove the contrary about the mortgage deed. There is no evidence adduced by the plaintiffs to prove their contention. However, the registered Mortgage Deed dated 30.09.2016 shows that the plaintiffs borrowed a sum of Rs.1,06,00,000/- agreeing to repay the amount at the rate of 18% per annum.

(e) According to the plaintiffs, they paid a sum of Rs.53,000/- per month towards interest, but no documents have been filed by them to prove the same. Once the mortgage deed is executed for a sum of Rs.1,06,00,000/-, it is the duty of the plaintiffs to prove that they paid the interest from the date of mortgage, viz., 30.09.2016 till April, 2022 as pleaded by them. However, there is no evidence and thereby the plaintiffs have failed to prove the same. As per the recitals of the mortgage deed dated 30.09.2016, if the plaintiffs failed to pay the interest for three consecutive months, the 1st defendant has to take steps to recover the money, but no steps have been taken. However, it is for the plaintiffs to prove that they paid interest for the money borrowed by them, therefore, the plaintiffs have failed to prove the payment of interest. Once the plaintiffs admitted the execution of the mortgage, they are bound by the recitals of mortgage deed and have to pay the money as agreed in the mortgage deed. Therefore, the plaintiffs are liable to pay the principal amount of Rs.1,06,00,000/-.

(f) As far as the interest for the mortgage amount is concerned, 18% has been mentioned in the mortgage deed, though the recitals shows the rate of interest is 18%, according to the plaintiffs, the 1st defendant is charging exorbitant interest. Already the plaintiffs borrowed money from the 1st defendant and again, the 1st defendant paid the money, therefore, it shows that the 1st defendant is a money lender and he is doing money lending business, such being the manner, charging exorbitant interest is nothing but usurious. As per Section 3 of the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, no person shall charge exorbitant interest and as far as the secured loan is concerned, 9% simple interest per annum is reasonable. In such view of the matter, when loan is secured and mortgage deed is executed by the plaintiffs, certainly, the 1st defendant is entitled to 9% simple interest from the date of mortgage for the principal amount of Rs.1,06,00,000/- from the date of Mortgage, i.e., 30.09.2016 till the date of realisation.

(g) At this juncture it is relevant to refer the judgment of this Court in **C.S.No.469 of 2019 (Velu Vs. P.Abusa and another) dated 11.03.2024,** wherein this Court in Paragraph No.12 held as follows:-

> *"12. Considering the above aspects, this Court is of the view that the plaintiff is certainly entitled to recovery of mortgage money of Rs.6 Crores with interest. The mortgage deed stipulates 24% interest and though the plaint is silent about money lending, but Ex.P.20 filed by the plaintiff indicate that the primary business of the plaintiff is money lending. Such being the manner, charging exorbitant interest is nothing but usurious. It is relevant to note that as per Section 3 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, no person shall charge exorbitant interest. Notes under Section 3 makes it clear that as far as secured loan is concerned, interest shall not exceed 9% simple interest per annum. Such view of the matter, when the loan is secured and the mortgage deed is executed, the plaintiff is certainly entitled to 9% interest for the mortgage money of Rs.6 Crores from the date of mortgage, ie., 08.01.2018 till the date of realisation."*

In the said case also, this Court, after referring Section 3 of Tamil Nadu Prohibition of Charging of Exorbitant Interest Act, 2003 fixed simple interest at the rate of 9% for the secured loan through mortgage, therefore, this Court is inclined to award interest at the rate of 9% per annum, therefore, the plaintiffs are directed to pay the principal amount / mortgage amount of Rs.1,06,00,000/- along with simple interest at the rate of 9% per annum from the date of mortgage, viz., 30.09.2016 till the date of realisation.

(h) As far as the prayer in respect of permanent injunction is concerned, there is no evidence that the 1st defendant is taking steps to alienate the property and his cause of action arose on the date of plaint, therefore, the said prayer is not maintainable.

10. Accordingly, the **Preliminary Decree** is passed with cost directing the plaintiffs to pay the principal amount / mortgaged amount of Rs.1,06,00,000/- along with simple interest at the rate of 9% from the date of mortgage, viz., 30.09.2016 till the date of realisation to the 1st defendant;

(1) It is hereby declared that the amount due to the 1st defendant on the mortgage mentioned in the plaint calculated upto the date of realisation of the amount, the sum of Rs.1,06,00,000/- for principal, and 9% Simple Interest on the said principal with cost.

2. And it is hereby ordered and decreed as follows:-

(I) that the plaintiffs do pay into Court on or before the 6th day of April, 2026 or any later date upto which time the payment may be extended by the Court the said sum of Rs.1,06,00,000/-

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under Rule 10, together with such subsequent interest as may be payable under Rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the 1st defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiffs or such person as they appoint, and the 1st defendant shall, if so required, re-convey or re-transfer the said property to the plaintiffs free from the said mortgage and clear of and from all incumbrances created by the 1st defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiffs quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the 1st defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale, the 1st defendant shall produce

before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the 1st defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the 1st defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under Rule 10, together with such subsequent interest as may be payable under Rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiffs or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the 1st defendant as aforesaid, the 1st defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiffs for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

The Suit is dismissed in respect of prayer of permanent injunction. Consequently, connected Original Application is closed. No costs.

06.02.2026

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

APPENDIX:

List of Plaintiffs side Witnesses:

PW1 : Mrs.Hamsalakshmi

List of Plaintiffs side Documents:

Exhibit No.	Date	Description of Documents
Ex.P.1.	24.04.2020	Certified copy of the Partition deed no.967 of 2000, SRO, Mylapore
Ex.P.2	30.09.2016	Certified copy of the simple mortgage deed no.3174 of 2006 executed by the plaintiffs in favour of the first defendant
Ex.P.3	23.04.2022	Original Legal Notice issued by the 1st defendant to the plaintiff
Ex.P.4.	14.05.2022	Office copy of the reply notice with Original acknowledgement give by the plaintiffs' counsel to the 1st defendant's counsel
Ex.P.5	17.05.2022	Photocopy of the notice issued by the 2nd defendant to the plaintiff dated 17.05.2022 (subject to proof and relevancy)
Ex.P.6	20.05.2022	Certified copy of the encumbrance certificate from period 01.01.2000 to 18.05.2022

List of Defendants side Witnesses:

DW1 : Mr.S.Chandar

List of Defendants side Documents:

Exhibit No.	Date	Description of Documents
Ex.D1	21.06.2016	Undertaking given by the Plaintiffs (Marked through cross examination of P.W.1)

06.02.2026

P.DHANABAL, J.

ssd

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