IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 16.03.2026	PRONOUNCED ON 05.06.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 26 of 2017

1.Omana George

2.O.Ganesan

3.S.Gnanasekaran

4.S.Sriram … Appellants

Vs

M/s.Southern Auto & General Finance Pvt., Ltd.,
Rep., by its Managing Director,
Having Principal Office at No.839, Anna Salai,
Chennai – 600 102.

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 of the Code of Civil Procedure, to set aside the Judgement and decree dated 20.11.2015 passed by the Principal District Judge, Kancheepuram District at Chengalpattu in O.S.No.10 of 2014.

For Appellant(s): Mr.Ravikumar Paul Sr., counsel for M/s.Paul & Paul

For Respondent(s): No Appearance

JUDGMENT

The present First Appeal has been filed to set aside the judgement and decree dated 20.11.2015, passed by the learned Principal District Judge, Kancheepuram, in O.S.No.10 of 2014.

2. The case of the Plaintiffs is that, the 1st plaintiff who was owner of the Schedule- A property by the virtue of the registered Sale Deed dated 21.11.1985 and was running a business in the name and style of "M/S.Samaritans Granites", had borrowed a sum of Rs.1,75,000/- from the defendant company for developing her business, pursuant to which a Deed of Mortgage by the Deposit of Title Deeds, details of which set out in the Schedule-B, was executed on 04.03.1987 and registered as Document No.962 of 1987 at SRO Pallavaram. Thereafter the 1st plaintiff executed a Power of Attorney in favour of one Mr.V.K.Rajan, with respect to the Suit Schedule- A property. The said Power Agent of the 1st plaintiff inturn executed two separate Sale Deeds on 09/10/2006 and 04/06/2006 in favour of the 2nd and 3rd plaintiffs, who inturn sold the property to the 4th Plaintiff, under the Sale Deed dated 12/06/2007.

3. When the first plaintiff was the owner, she made all efforts to discharge the debt and recover the original title deeds of the suit property. Even after the subsequent purchases, the other plaintiffs also made efforts to retrieve

the documents, but their attempts proved to be futile as the defendant could not be traced. It is the case of the plaintiffs that the mortgage amount due to the defendant company has become time-barred. Hence, the plaintiffs instituted the present suit seeking a declaration, that the mortgage deed dated 04.03.1987, created by deposit of title deeds, more fully described in Schedule B with respect to the immovable property described under Schedule-A, has become unenforceable by efflux of time, and for a consequential injunction directing the defendant to return the original title deeds to the Plaintiffs. On the other hand the Sole Defendant remained ex parte despite the substituted service being effected as per the orders of the Court.

4. Upon Considering the pleadings made by the Plaintiff's side, the learned Trial Court determined single point for Consideration before them, viz.,

"Whether the Plaintiff is entitled to the relief prayed for ?"

5. The plaintiffs' side examined the 4th Plaintiff as PW1 and had marked as Ex.A1 to Ex.A7 as the evidence of the Plaintiffs' side.

6. The learned Trial Judge, after hearing the arguments on behalf of the plaintiffs and upon perusing the oral and documentary evidence on record, noted that although the plaintiffs were ready and willing to discharge the

mortgage debt, the defendant company could not be traced. It was further observed that the plaintiffs had not produced any document or any to the admissible evidence to establish that the defendant company was no longer in existence, nor had they taken out any summons to the Registrar of Companies to determine the status of the defendant company. In this context, the learned Trial Court placed reliance upon the provisions of the Section 15(3) of the Limitation Act, wherein it stipulates that in computing the period of limitation with respect to the proceedings of the company, the time during which proceedings are pending before a liquidator or an Official Liquidator in the course of winding up of a company is liable to be excluded.

7. However, in the present case, as the status of the defendant company remained uncertain and the possibility of liquidation proceedings could not be ruled out, the learned Trial Court held that it would not be appropriate to order that the mortgage debt was barred by limitation and issue a blanket order. At the same time, the learned Trial Court also held that the plaintiffs could not be made to wait indefinitely, considering that the encumbrance continued to subsist on the record with respect to the suit property and that the plaintiffs were actually willing to discharge the liability.

8. Accordingly, the learned Trial Court, by judgment and preliminary decree, directed the plaintiffs to deposit a sum of Rs.1,75,000/- together with

interest at 24% p.a. from the date of mortgage till the date of deposit. Upon such deposit, the defendant company was directed to return the original title deeds to the plaintiffs, and was held entitled to receive the deposited amount. Aggrieved by the aforesaid judgment and preliminary decree, the plaintiffs have preferred the present Appeal Suit, challenging the same, with the defendant company arrayed as the sole respondent.

9. Heard Mr.Ravikumar Paul, learned Senior counsel appearing on behalf of the petitioners.

10. The learned Senior counsel appearing for the appellants would submit that the relief sought for in the plaint was for a declaration to declare that the mortgage executed on 04.03.1987 by way of title deeds and referred to a Schedule-B to the Suit plaint had become the unenforceable due to efflux of time and grant of an order of redemption of the mortgage property and for a consequential mandatory injunction directing the defendants/respondents to deliver back the documents. He would submit that in the said case, the defendants remained exparte and the the learned Trial Court had presumed that even though 12 years limitation had lapsed, but there is an exclusion in case of a company which had underwent liquidation for exclusion of the period in which such proceedings were pending, had presumed that the defendant's company which remained *ex-parte* to have gone into a process of liquidation and

therefore, ordered a preliminary decree directing the appellants to deposit the amount for redeeming the property. He would submit that such a presumption without any valid basis is wholly arbitrary unreasonable and contrary to the facts on record. He would further submit that the Court below had passed an order of redemption to deposit the money within the defendants, who had remained *ex-parte* and had ordered them to return the original documents. He would submit that such an order could not at all be passed, as it is very impracticable in a case where the defendants remained untraced and must be set exparte. Hence, he would seek indulgence of this Court.

11. I have heard considered the submissions made by the learned Senior counsel appearing for the appellant and the respondent had remained *ex-parte*.

12. The only issue that is to be resolved in the present Appeal Suit is as to whether the Court below was right in granting a preliminary decree of redemption of a mortgage which stood time barred.

13. The Court below had noted that as per the provision of the Limitation Act 12 years period for instituting a Suit for recovery of money on the basis of mortgage had been provided, but however falling upon Section 15 of Sub-Section (3) of the Limitation Act, which excludes limitation in cases where interim Receiver had been appointed in a proceedings for adjudication of a

person as an insolvent or an appointment of a liquidator and provisional liquidator in proceedings for the winding up of a company of such period of pendency of proceedings shall stand excluded, had made a presumption that the company which remained *ex-parte* could have gone into the process of liquidation where an Official Liquidator could have been appointed which were all not known to the Court had held that a blanket order could not be passed holding that such mortgage was barred by limitation and had passed a preliminary decree of redemption of mortgage which was never a prayer in the Suit. Even assuming such a relief could be a relief which would be governed under Section 151 CPC to do complete justice, such relief could not be granted on a mere presumption of a non-existing fact.

14. It is to be noted that the mortgage deed under Ex.A2 was as early as of the year 1987 and the instant suit had been filed after 21 years and a decree came to be passed in the year 2015 i.e., almost after 24 years. Even on that day, there has been no suit that had been filed by the respondent company for recovery of money based on the mortgage. When that being so, this Court is of the view that it was an unnecessary exercise of the Trial Court to presume that such a non-existing contingency in passing the preliminary decree.

15. For the aforesaid reasons, this Court is of the view that the mortgage created under Ex.A2 had become unenforceable as being barred by law of

limitation and that there is no question of redemption of a time barred debt, which also now stands beyond the period of limitation.

16. In fine, the Appeal Suit stands allowed and the preliminary judgment and decree passed by the Trial Court is set aside and as a consequence, the Suit is decreed as prayed for. However, there shall be no order as to costs.

05.06.2026

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

Pbn

To

1. The Learned Principal District Judge, Kancheepuram District at Chengalpattu

2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

K.KUMARESH BABU, J.

PBN

A Pre-delivery judgment made in
AS No. 26 of 2017

05.06.2026