

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 22ND DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.78 of 2017
and
A.No.8067 of 2017
in
A.No.4604 of 2017

Mr.J.Selvaraj
S/o. Mr.Jayaraj
No.3/132-A, Pachaiyappan 2nd Street
Periyar Salai, Palavakkam,
Chennai 600 041.

: Applicant/Plaintiff
(in A.No.8067 of 2017)

Vs.

1. Mr. K.Kumar
S/o. Mr.Karuppan

2. Mrs.K.Jothibai
W/o. Mr.K.Kumar

Both residing at
No.1710, E.W.S.(A)
T.N.H.B., Velachery,
Chennai.

: Respondents/Defendants
(in A.No.8067 of 2017)

C.S.No.78 of 2017

Civil suit praying that this Hon'ble Court be pleased to pass a judgment and decree against the defendant:

a) for the recovery of money directing the defendant to pay a sum of Rs.27,07,960/- (Rupees Twenty Seven lakhs Seven Thousand Nine Hundred and sixty only) together with interest at 30% per annum on the principal sum of Rs.18,79,120/- (Rupees Eighteen lakhs seventy nine thousand one hundred and twenty only) from the date of plaint till the date of realization.

b) for the cost of the suit;

A.No.8067 of 2017

Application praying that this Hon'ble Court be pleased to set aside the order dated 14.11.2017 made in Application No.4604 of 2017 in C.S.No.78 of 2017 passed by the Learned Master.

A.No.4604 of 2017:

1. Mr. K.Kumar
S/o. Mr.Karuppan

2. Mrs.K.Jothibai
W/o. Mr.K.Kumar

Both residing at
No.1710, E.W.S.(A)
T.N.H.B., Velachery, Chennai. : Applicants/Defendants

-Vs.-

Mr.J.Selvaraj
S/o. Mr.Jayaraj
No.3/132-A, Pachaiyappan 2nd Street
Periyar Salai, Palavakkam,
Chennai 600 041. : Respondent/Plaintiff

Civil Suit along applications coming on this day before this court for hearing the court made the following order:-

A.No. 8067 of 2017 has been filed by the plaintiff in the suit.

2. The suit had been filed seeking Judgement and Decree against the defendants for a sum of Rs.27,07,960/- and for costs.

3. The suit had been filed based on a deed of mortgage dated 03.12.2011, on which date, the plaintiff had lent a sum of Rs.10/- lakhs to the defendants. Subsequently, when a legal notice was issued, the defendants had executed a promissory note on 03.08.2015

and permitted the plaintiff to retain the original title deeds after taking back the mortgage deed executed earlier. Since the amount lent was not be paid, the suit had been filed for recovery of money as stated above.

4. The suit had actually been filed under the Provisions of Order 37 Rule 1 of the Code of Civil Procedure.

5. On service of suit summons, the defendants, after entering appearance, filed A.No. 4604 of 2017 seeking grant of unconditional leave to defend the above suit. In the affidavit filed in support of the said application, the defendants had stated that they had not executed promissory note in favour of the plaintiff. It had been stated that there was no necessity to execute promissory note.

6. On the other hand, it had been further stated that there was no necessity because even according to the plaintiff, an unregistered mortgage deed had already been entered into to secure the loan. It had been stated that there was no cause of action for institution of the suit and it was therefore prayed that leave must be granted to contest the suit.

7. The learned Master by order dated 14.11.2017 had relied on ***State Bank of Hyderabad Vs. Rabo Bank*** reported in ***(2015) 10 SCC 521*** and held that if the Court is satisfied that the defendants have good defence and had raised triable issues, leave can be granted. Consequently, the learned Master had allowed A.No. 4604 of 2017. As

against the said order, the present application in A.No. 8067 of 2017 has been filed.

8. In the affidavit filed in support of the present application, the applicant/plaintiff had stated that the learned Master should have taken note of the fact that the respondents/defendants had not disputed borrowing money. They have only disputed the rate of interest. It had been stated that the learned Master had erred in allowing the application in A.No. 4604 of 2017.

9. On the other hand, the respondents/defendants in their written arguments, have stated that the respondents/defendants had claimed that the promissory note was a fabricated document. It had been stated that the order of the learned Master is in accordance with the legal provisions. It had been stated that the plaintiff had not produced the mortgage deed or the promissory note. It had been further stated that the promissory note cannot be enforced in Court of law. It had been stated that the application must be dismissed.

10. Heard the learned counsels on both the sides.

11. The suit in C.S.No. 78 of 2017 had been filed under the provisions of Order 37 Rule 1 of the Code of Civil Procedure.

12. The plaintiff had stated that the defendants, who are husband and wife, had obtained financial assistance for payment of

tuition fees for the medical course of their daughter. The plaintiff had paid a sum of Rs.10/- lakhs. The second defendant had executed an unregistered deed of mortgage on 03.12.2011. It had been stated that however the defendants did not pay any interest for the principal sum borrowed. The plaintiff issued a legal notice, dated 18.11.2014 to the second defendant. Thereafter, the defendants came forward to negotiate the issues. Since nothing fructified, the plaintiff re-issued the legal notice to the second defendant on 17.06.2015 as a remainder. The defendants again approached the plaintiff in July 2015 along with mediators. Thereafter, on 03.08.2015 the defendants had executed a promissory note agreeing to pay interest of Rs.10/- lakhs and to capitalise the unpaid interest for the period 03.02.2011 to 02.08.2015. Consequently, the principal sum was arrive at Rs.18,79,120/-. The unregistered mortgage deed was returned to the defendants. However, the plaintiff retained the title deeds of the property. It had been stated that since the plaintiff was also put to great financial hardship and loss, the suit had been instituted seeking recovery of the money.

13. A perusal of the stand of the defendants shows that they disputed execution of the promissory note. However, it is a fact that the title deeds of the properties of the defendants are with the plaintiff. The defendants had handed over title deeds with respect to two properties, each measuring an extent of 338 sq.ft., at T.N.H.B. Town bearing S.No. 123 (Part) at Plot No. 1710 and 1711, E.W.S.(A), Velacherry in Chennai.

14. This Court had called upon the Registry to furnish the documents filed at the time of institution of the suit. A perusal of the document shows that along with the plaint, the plaintiff had filed the Office copy of the legal notice dated 18.11.2014 and another legal notice dated 17.06.2015 as Document Nos. 1 and 2. The plaintiff has also filed the Original promissory note as Document No.3. This is dated 03.08.2015. It had been signed by both the defendants. The plaintiff has also filed Document No.4 another receipt executed by the defendants dated 03.08.2015 confirming execution of the promissory note and further confirming handing over of original title deeds to the plaintiff. The Xerox copies of the title deeds has also been filed as Document No.6. The documents filed by the plaintiff confirm to a large extent the pleadings of the plaintiff. In the pleadings, it had been stated that an original unregistered mortgage deed had been executed when a sum of Rs.10/- lakhs has been paid. Thereafter, since the amount was not repaid, legal notices were issued on two separate occasions. The defendants then came forward to settle the matter and agreed to execute promissory note and to capitalise the interest which was due along with the principal and also handed over the title deeds of the property. These facts are also evident from a perusal of the documents filed along with the plaint.

15. The contentions of the defendants that they had not executed the promissory note had been raised for the first time only in the judicial proceedings. They have not stated the same, when notices were issued to them.

16. In these circumstances, grant of unconditional leave to defend is highly improper. Consequently, the order of the learned Master is set aside. However, to afford the defendants opportunity to substantiate their version of the case, I hold that in the interest of justice, the Application in A.No. 8067 of 2017 can be partly allowed, but at the same time, leave to defend can be granted to the defendants on deposit to the credit of the suit a sum of Rs.10/- lakhs, which is the original principal amount paid by the plaintiff to the defendants.

17. The Application in A.No. 8067 of 2017 is partly allowed on the above terms.

Sd./-C.V.K.J

22/02/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

jj 09/04/2018

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.