

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2019

PRONOUNCED ON : 06.12.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.18 of 2013

and

C.M.P. No.5071 of 2018

1. S.Umamaheswari
2. S.Dheepak
3. S.Sudha

.... Appellants/Plaintiffs

Vs.

P.Murugesan

.... Respondent/Defendant

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code as against the judgment and decree dated 17.11.2012, passed in O.S.No.10008 of 2010 by the III Additional Judge, City Civil Court, Chennai.

For Appellants : Mr. K.V.Subramaniam, Senior Counsel
for M/s. K.V.Subramaniam Associates

For Respondent : Mr. S.Parthasarathy, Senior Counsel
for M/s. H.Rajasekar

JUDGMENT

Aggrieved over the judgment and decree dated 17.11.2012, passed in O.S.No.10008 of 2010, on the file of the III Additional Judge, City Civil Court, Chennai, the plaintiffs have preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money based on a mortgage.

4. Inasmuch as the plaintiffs have preferred a petition in C.M.P.No. 5071 of 2018 for amending the plaint and as I intend to allow the petition for the reasons stated infra, in my considered opinion, it is unnecessary to dwell into the facts of

the case as well as the merits of the contentions of the parties in respect of the matter.

5. Suffice to state that the suit laid by the plaintiffs had been resisted by the defendants on various grounds including the plea of the absence of territorial jurisdiction of the Court at Chennai. On a perusal of the lis preferred by the plaintiff, it is found that originally the suit had been laid at High Court, Madras and thereupon, on the enhancement of the pecuniary jurisdiction, the suit had been transferred to the City Civil Court, Chennai.

6. Based on the materials placed on record by the respective parties, both oral and documentary, it is found that the trial Court had proceeded to determine that the Court at Chennai has no territorial jurisdiction to try the suit and also further proceeded to hold that the defendant had not created any mortgage with reference to the suit properties and resultantly, chose to dismiss the plaintiffs' suit. Impugning the same, the present first appeal has been preferred.

7. As above noted, during the pendency of the appeal, the plaintiffs have preferred the petition to amend the suit. The relief that had been sought for by the plaintiffs in the suit against the defendant is as follows:

"direct the defendant to pay to the plaintiffs a sum of Rs.17,84,106/- (Rupees Seventeen Lakhs Eighty four thousand one hundred and six only) together with interest at 15% compounded quarterly from the date of plaint till the date of realization and failing which to sell the schedule property through Court and adjust the sale proceeds to the payment of decreed amount after deducting the expenses by passing a preliminary decree."

8. As above pointed out, the trial Court had determined that the defendants had not created any mortgage with reference to the suit properties and also held that the Chennai Court has no territorial jurisdiction to try the suit, accordingly, directed the dismissal of the plaintiffs' suit. In the petition for amendment, the plaintiffs have averred that when the matter was listed for hearing before the Honourable Division Bench of this Court, they were advised to amend the prayer in the main suit by restricting the prayer only for passing of a simple money decree and accordingly, put forth that they are not pressing the prayer in respect of passing of the preliminary decree on the basis of the mortgage and accordingly prayed that it is just and necessary that the amendment sought for should be allowed and by

way of the same, no prejudice would be caused to the respondent and accordingly, sought the deletion of the original prayer made in the plaint in para 11 (a). By way of the amendment, the plaintiffs had prayed for the substitution of the following prayer in para 11 (a), namely,

"To pass a simple money decree a sum of Rs.17,84,106/- (Rupees Seventeen Lakhs Eighty four thousand one hundred and six only) together with interest at 15% compounded quarterly from the date of plaint till the date of realization of the plaint."

9. By way of the abovesaid amendment petition, it is evident that the plaintiffs, instead of continuing the suit based on the mortgage, had chosen to prosecute the suit as a simple money suit and accordingly, prayed for the money decree against the defendant based on the transactions entered into between the parties as put forth by them in the plaint.

10. The abovesaid petition for amendment has been resisted by the respondent/defendant contending that the proposed amendment is barred by limitation and on that ground alone, the petition is liable to be dismissed and contended that the suit laid by the plaintiffs had been dismissed after a strong contest put forth by the respondent/defendant and further also averred that the suit had been laid in the year 2008 and nearly after the lapse of 10 years, the petitioners have come forward with the amendment petition and when the respondent/defendant had specifically taken the plea in the written statement that no cause of action had arisen at Chennai and even thereafter, the plaintiffs have not endeavoured to take any steps to transfer the suit to the appropriate territorial Court for proper adjudication and thereafter, very belatedly, they have come forward with the amendment petition to amend the plaint for a simple money decree instead of the mortgage decree and in any event, according to the respondent/defendant, as the abovesaid proposed amendment had been prayed for at a very belated stage and barred by limitation as such and there is no cause of action for the suit, for all the above reasons, according to the respondent/defendant, the petition is liable to be dismissed.

11. Considering the contentions put forth by the respective parties in the matter by way of the plaint and the written statement and the way in which the trial Court had disposed of the suit, particularly, on the point of lack of territorial jurisdiction as well as on the point that the plaintiffs had not established the mortgage, accordingly, it is found that the plaintiffs have been necessitated to seek the relief against the defendant based on the original cause of action i.e., by way of a simple money decree against the defendant and accordingly, not

pressing the prayer of passing of the preliminary decree on the basis of mortgage claimed by them, had chosen to come forward with the abovesaid petition for amendment seeking for the passing of the simple money decree against the defendant and sought for the appropriate amendment in the plaint.

12. The main contention put forth by the respondent/defendant for resisting the amendment petition is that the proposed amendment is barred by limitation. Per contra, according to the plaintiffs' counsel, the proposed amendment is not barred by limitation as it is based on the original cause of action and on that footing, the plaintiffs would be entitled to seek the simple money decree against the defendant.

13. Considering the rival claims put forth by the respective parties, at this stage of the matter, without going into the question as to whether the proposed amendment is barred by limitation or not, in the interest of justice, I am of the opinion that the plaintiffs should be provided with an opportunity to continue the suit based on the amendment prayed for by them and by way of the same, no serious prejudice, as such, would be caused to the defendant as the defendant would be entitled to resist the plaintiffs' suit by way of filing the additional pleas as per law.

14. However, the counsel for the defendant contended that in the event of this Court entertaining the amendment petition, the Court should hold that the amendment shall be deemed to be incorporated in the plaint only from the date of the presentation of the petition and not from the date of the original plaint and accordingly, prayed for the passing of the appropriate orders in the petition. The abovesaid contention of the defendant's counsel merits acceptance. It is found that the present amendment petition has been laid by the plaintiffs only for the disposal of the suit by the trial Court and when the first appeal is pending in this Court, that too, it is found that the amendment petition has been preferred only in the year 2018 by the plaintiffs, nearly 5 years after the institution of the appeal. In the light of the abovesaid factors, when there is no sufficient cause projected by the plaintiffs for the delayed submission of the amendment petition and the abovesaid belated filing of the petition not to be easily discarded, in the interest of justice, I deem it fit to direct that the proposed amendment shall be deemed to be incorporated in the plaint only from the date of the amendment petition and not from the original date of the filing of the suit.

15. For the reasons aforesaid, the amendment petition laid by the plaintiffs is allowed and the proposed amendment shall be deemed to be incorporated in the plaint only from the date of the amendment petition and accordingly, the petition is allowed.

16. Inasmuch as I have proceeded to allow the amendment petition and as the plaintiffs by way of the proposed amendment had endeavoured to continue the suit based on the relief of the claim of simple money decree against the defendant qua the case put forth by them in the plaint and when with reference to the abovesaid case projected by the plaintiffs, by way of the proposed amendment, the defendant should be given an opportunity to file the additional written statement and furthermore, when the parties would also be required to adduce further evidence with reference to the proposed amendment and their respective cases, in such view of the matter, I deem it fit and proper to remit the matter back to the trial Court to take further steps including the carrying out the amendment in the plaint and enabling the defendant to file additional written statement and accordingly, the suit is remitted back to the trial Court with a direction to the trial Court to take further steps as per law following the entertainment of the amendment petition as above pointed out and proceed to dispose of the suit in accordance with law by enabling the parties to adduce further evidence in support of their respective cases and dispose of the suit in accordance with law.

17. In the light of the abovesaid reasons, consequent to the ordering of the amendment petition filed by the plaintiffs as above, the plaintiffs' suit is remitted back to the trial Court with a direction to the trial Court to take further steps pursuant to the entertainment of the amendment petition as above pointed out and proceed to dispose of the suit in accordance with law by enabling the parties to adduce further evidence in support of their respective cases and dispose of the suit in accordance with law. Accordingly, the first appeal is disposed of. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The III Additional Judge,
City Civil Court, Chennai.

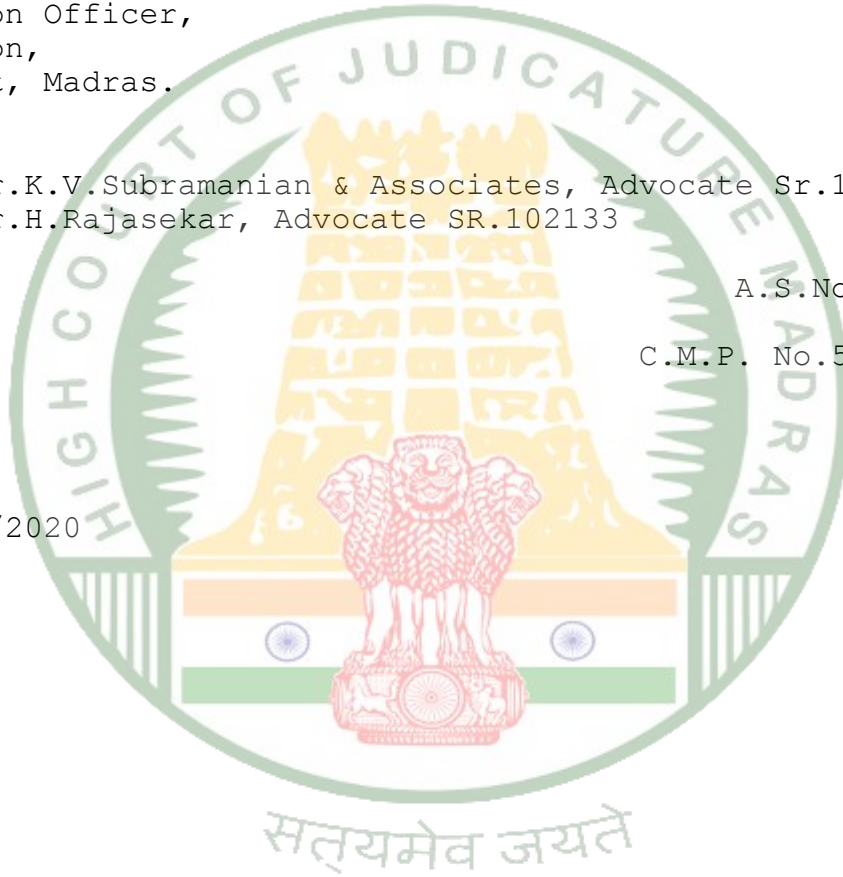
Copy to:

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

+2cc to Mr.K.V.Subramanian & Associates, Advocate Sr.102026
+1cc to Mr.H.Rajasekar, Advocate SR.102133

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