IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.01.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.No.67 of 2021
and
C.M.P.No.479 of 2021

Rukumani ... Petitioner

Vs.

Selvaraj ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the fair and decreetal order dated 17.03.2020 made in I.A.No.01 of 2019 in O.S.N.563 of 2017 on the file of the Sub-Court, Jayankondam.

For Petitioner : Mr.M.Senthil Vadivu

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 17.03.2020 made in I.A.No.01 of 2019 in O.S.N.563 of 2017 on the file of the Sub-Court, Jayankondam.

2. The learned counsel for the petitioner submitted that the Court below has acted contrary to law and failed to consider the legal principles in proper perspective. The reasoning given by the Court below for rejecting the petitioner's application is erroneous and contrary to the law and facts involved in the case. Further, the learned counsel submitted that the Court below ought to have noted that when the petitioner sought for simple money decree for principle and interest amount against the defendant on the basis of the unregistered mortgage deed, it could be taken as a promissory note for the limited purpose of proving the loan transaction. The Court below ought to have considered that since the mortgage deed Ex.A1 is unregistered and in the schedule column, the property details have not been shown, it cannot be enforced. Since it is a mortgage and it was executed by the respondent in the stamp paper, it can be treated as promissory note. The possession of the mortgaged property was not handed over to the petitioner because of the default of the mortgagor and therefore, the personal liability of the mortgagor to repay the amount would arise. The Court below ought to have seen and held that even though the deed is unregistered, in a suit brought for simple money debt and not for enforcement of lien or charge or for the

possession of the property, it can be received in evidence to support a claim for return of the money acknowledged to be due therein. Hence, the learned counsel for the petitioner prays to allow this petition.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. The Court below, after considering the petition and the written submissions, had dismissed the said application on the ground that there is no such contents according to the promissory note and as per Rule 4, if it is going to be a promissory note, it should be executed in a particular format and since there is no such content in the said document, the same cannot be treated as a promissory note.

5. It is seen that the plaintiff had filed the suit in O.S.No.563 of 2017 for simple money decree, wherein it is stated that the defendant had borrowed a sum of Rs.2,50,000/- in return for the land which he had rented out to the petitioner. Pending the suit, the petitioner has filed the present Interlocutory Application in I.A.No.1 of 2019 seeking to declare

the unregistered mortgage deed as a promissory note. It is stated that the respondent had not handed over the property to the petitioner and since the said property was not registered, the petitioner had sought for declaring the unregistered document as a promissory note. Per contra, the respondent/defendant, in his counter affidavit, has stated that the allegation made against him are false and that he has not received the alleged amount claimed to have been given by the petitioner.

6. On going through the averments, it is seen that the petitioner has filed the said unregistered stamp paper as a promissory note, stating that the said document has been executed by the defendant and he mortgaged the said property. But, it is seen from counter that there was no such claim made by the defendant and that the particular property has been given in possession as a security for the loan mortgaged. It is also clear that in the said document, namely Eettu Pathira Thogai, on the top, it is stated as Rs.25,000/-, but in the body of the alleged deed/stamp paper, it is stated as Rs.2,50,000/-, which is not a registered one. Since the petitioner has not adduced any valid grounds to treat the unregistered deed as a promissory note, this Court cannot pass any orders, since there

is contrary terms in the documents.

7. Accordingly, this Court is not inclined to interfere with the order passed by the Court below and comes to the conclusion that the alleged documents cannot be treated as a promissory note. In the result, the present civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.01.2021

Index:Yes/No
Speaking order/Non-Speaking Order
sbn

To
The Sub Court,
Jayankondam.

V.BHAVANI SUBBAROYAN, J.

sbn

C.R.P. (PD) No.67 of 2021

25.01.2021