IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) Nos. 2908 and 2909 of 2018
& CMP Nos.17600 & 17572 of 2018

CRP(NPD) No.2908 of 2018

1. Sakthivel
2. Udhayssooriyan ... Petitioners

Vs.

State Bank of India,
by its Branch Manager
Senthurai Village
Senthurai Taluk
Ariyalur District ... Respondent

CRP(NPD) No.2909 of 2018

Venkatesan @ Venkatachalam ... Petitioner

Vs.

State Bank of India,
by its Branch Manager
Senthurai Village
Senthurai Taluk,
Ariyalur District ... Respondent

Common Prayer: Criminal Revision Petitions filed under Article 227 of the Constitution of India against the judgment and decree dated 05.04.2018 made in O.S.Nos.113 and 114 of 2016 on the file of the Subordinate Judges Court, Ariyalur.

For Petitioners : Mr. M. Venugopal
(In both CRPs)

For Respondent : Mr.M.L. Ramesh
(In both CRPs)

COMMON ORDER

These civil revision petitions have been filed against the judgment and decree dated 05.04.2018 made in O.S.Nos.113 and 114 of 2016 on the file of the Subordinate Court, Ariyalur, thereby answered the preliminary issue with regard to territorial jurisdiction leaving rest of the issues to be answered later.

2.The petitioners are the defendants and the respondent is the plaintiff. The respondent filed the suits in O.S.No.113 of 2016 for (a).To pass a preliminary decree in favour of the plaintiff bank directing the defendant to pay the sum of Rs.8,98,419/- with future rate of interest 10.25% with yearly rests which is the contractual rate of interest from the date of plaint till the date of realization of entire amount within the time fixed by this Hon'ble Court; (b).To pass a final decree against the defendant allowing the sale of plaint scheduled mortgaged property in order to realize the decree debts, if the defendant is not making the full payment to the plaintiff bank within the period stipulated by this Honourable Court and other reliefs and the suit in O.S.No.114 of 2016 for (a).To pass a preliminary decree in favour of the plaintiff bank directing the defendant to pay the sum of Rs.2,06,716/- towards loan with future rate of interest 9.75% with yearly rests which is the contractual rate of interest from the date of plaint till the date of realization of entire amount within the time fixed by this Honorable Court; (b).To pass a final decree against the defendant allowing the sale of plaint schedule mortgaged property in order to realize the decree debts, if the defendant is not making the full payment to the plaintiff bank within the period stipulated by this Honourable Court and for other reliefs.

3. It is seen that the petitioners' objection was that the suit properties are not situated in Ariyalur District and they are situated in Perambalur District, Kunnam Taluk. Therefore, as per Section 16 of CPC, a suit on mortgage has to be filed within the territorial jurisdiction of the Court, where, the suit properties are situated. Therefore, according to the petitioners, the suits are not maintainable and the same have to be dismissed for want of jurisdiction. However, the Court below decreed the suits with regard to the first substantial question of law regarding territorial jurisdiction and aggrieved by the same, the petitioners have filed these civil revision petitions.

4.The counsel for the petitioners also would submit that the suit properties admittedly are situated within the territorial jurisdiction of Perambalur District, whereas, the suits were filed in the Subordinate Court, Ariyalur District. When a suit is filed as against the properties, Section 16 (d) of CPC would apply and the suit will lie within the Court's jurisdiction, where the property is situated. Without considering the same, the Court below decreed the suit and as such the judgment and decree passed by the Court below was without considering any territorial jurisdiction.

5.In so far as the maintainability of Civil Revision Petitions are concerned, this Court has ample power to set aside the judgment and decree under Article 227 of the Constitution of India, when the Court below has passed the judgment and decree without any territorial jurisdiction. In support of the petitioners' contention, they also relied upon the judgment ***(2005) 7 SCC 791*** reported in (***Chiman Lal Modi v. DLF Universal Ltd.,***) **para 16 is as follows:**

> ***"16. Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in***

> ***rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the defendant or by attachment of his property."***

6.Per contra, the learned counsel for the respondent would submit that the suits were not on mortgage. The suits were filed under Order VII Rule 1 CPC for recovery of money. Therefore, Section 20(c) of CPC will only apply to the present suits to be tried by the Court below.

7.Admittedly, the petitioners borrowed loan from the respondent bank, which is situated within the jurisdiction of Court below. The prayer in the suits itself is only for recovery of money and in the event of failure to pay the amount, then only attachment will have to be proceeded against the petitioners. Therefore, the suits are very much maintainable.

8.In so far as the maintainability of civil revision petitions are concerned, the counsel for the petitioners has contended that when there is a specific provision to file an appeal suit as against the judgment and decree passed by the Court below under Order 41 Rule 1 CPC, the civil revision petitions filed under Article 227 of the Constitution of India are not at all maintainable.

9.Heard the learned counsel for the petitioners as well as the learned counsel for the respondent.

10.Admittedly, the suits were filed under Order VII Rule I C.P.C for the following reliefs:

> ***"O.S.No.113 of 2016***
>
> ***(a).To pass a preliminary decree in favour of the plaintiff bank directing the defendant to pay the sum of Rs.8,98,419/- with future rate of interest 10.25% with yearly rests which is the contractual rate of interest from the date of plaint till the date***

of realization of entire amount within the time fixed by this Hon'ble Court;

(b).To pass a final decree against the defendant allowing the sale of plaint scheduled mortgaged property in order to realize the decree debts, if the defendnat is not making the full payment to the plaintiff bank within the period stipulated by this Honourable Court.

(c).To award cost to the plaintiff from the defendant and:

(d).To grant such other relief as this Honourable Court may deems fit and proper in the circumstances of this case and thus render justice."

<u>O.S.No.114 of 2016</u>

(a).To pass a preliminary decree in favour of the plaintiff bank directing the defendnat to pay the sum of Rs.2,06,716/- towards loan with future rate of interest 9.75% with yearly rests which is the contractual rate of interest from the date of

plaint till the date of realization of entire amount within the time fixed by this Honorable Court:

(b).To pass a final decree against the defendant allowing the sale of plaint schedule mortgaged property in order to realize the decree debts, if the defendant is not making the full payment to the plaintiff bank within the period stipulated by this Honourable Court.

(c).To award cost to the plaintiff from the defendant and:

(d).To grant such other relief as this Honourable court may deems fit and proper in the circumstances of this case and thus render justice."

11.Therefore, the suits are filed for recovery of money. If the petitioners fail to pay the amount, then only the attachment of property will arise. Though the property is situated within the territorial jurisdiction of Perambalur District, the respondent bank is situated within the Ariyalur District and the petitioners borrowed loan from the respondent bank. Therefore, the Court below rightly dealt with the rival contention raised by the petitioners and answered the preliminary issue. In so far as the maintainability of CRP filed against the judgment and decreed passed in the suits are concerned, when there is specific provision relief to file the appeal suit as against the judgment and decree available under Order 41 Rule 1 C.P.C, the civil revision petitions are not maintainable under Article 227 of the Constitution of India.

In view of the above, the civil revision petitions are dismissed. Therefore, the judgment relied upon by the petitioners is not applicable to this CRPs. However, the petitioners are at liberty to file an appeal in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No 05.07.2021
Internet: Yes/No
Speaking/Non-Speaking order
sms

Note: Registry is directed to return the original Judgment and decree to the petitioners.

To:

1.State Bank of India,
by its Branch Manager
Senthurai Village, Senthurai Taluk,
Ariyalur District.

2.The Subordinate Court, Ariyalur.

G.K.ILANTHIRAIYAN, J
sms

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