



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.1574 of 2021

and

C.M.P.(MD) No.8604 of 2021

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B.Geetha .. Petitioner/Respondent/
Plaintiff

-vs-

K.Sujatha Lakshmi .. Respondent/Petitioner/
Defendant

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and ex-order dated 03.09.2021 passed in I.A.No.1 of 2021 in O.S.No.16 of 2018 on the file of the Additional District Court, Dindigul, Dindigul District.

For Petitioner : Mr.N.S.Karthikeyan
For Respondent : Mr.A.K.Gopalan
for Mr.G.Ramapandian

ORDER

The plaintiff in the suit in O.S.No.16 of 2018 on the file of the Additional District Judge, Dindigul is the petitioner before this Court challenging the order dated 03.09.2021, passed in I.A.No.1 of 2021 in and by which, the learned Judge has directed the suit in O.S.No.171 of 2018 filed by the respondent herein against the petitioner's husband one S.Sathishkumar to be tried jointly with the suit in O.S.No.16 of 2018.

2.The suit in O.S.No.16 of 2018 has been filed by the petitioner herein against the respondent for recovery of a sum of Rs.41,68,975/- together with interest at 18% per annum on the sum of Rs.18,50,000/-, which was said to have been given as loan to the respondent herein on 03.02.2011. As a security for the said loan, the respondent herein had executed a registered deed of simple mortgage in favour of the petitioner. Since payments had not been coming, a legal notice dated 28.01.2015 was issued by the petitioner to the respondent to which, a reply dated 21.02.2015, making false allegations, has been sent by the respondent herein. Therefore, the plaintiff had come forward with the above suit.

3.As a defence to the said suit, the respondent herein had



contended that there was no mortgage given to the petitioner on the contrary, the petitioner's husband, who is the defendant in the suit in O.S.No.171 of 2018, had taken on lease the respondent's properties for running his coir business. The suit property, which belonged to the respondent, had a coir factory with all machinery, equipments, fittings etc. The petitioner's husband had taken this factory on lease.

4.It was the case of the respondent that the factory was already mortgaged to the Central Bank, Ellis Nagar Branch, Madurai and the petitioner's husband wanted to ensure his continued occupation of the premises in the event of the Bank taking action to recover the loan. With this intention, the petitioner's husband had requested the respondent to execute a mortgage deed dated 03.02.2011. Believing the words of the plaintiff's husband and the plaintiff, with whom the respondent had a friendly relationship, the alleged mortgage deed was executed. However, no amounts have been extended by the petitioner under this deed. The petitioner's husband is running a factory in the said premises in pursuance of the lease deed dated 07.01.2011. It is also the case of the respondent that the said S.Sathishkumar is in arrears of rent.

5.The respondent herein had filed O.S.No.171 of 2018 against the said S.Sathishkumar seeking recovery of possession and for a recovery of a sum of Rs.35,38,898/- being the rental arrears due from August, 2018. The pleadings in the said plaint are more or less similar to the defence, which have been made to the suit in O.S.No.16 of 2018 to which, the respondent had added that the plaintiff's husband is in arrears of rent and therefore, he had to handover vacant possession of the property.

6.After the trial had commenced in the suit in O.S.No.16 of 2018, with the plaintiff examining herself as P.W.1, and marking the documents on herself, the respondent herein has come forward with the impugned application seeking a joint trial of the suits in O.S.Nos.16 and 171 of 2018. The petitioner herein had filed a counter stating that the relief sought for in both the suits were totally different and the plaintiff is not a party to the suit in O.S.No.171 of 2018 and therefore, there was no question of a joint trial being ordered. The learned Additional District Judge, Dindigul, after perusing the records and hearing the parties, has passed an order directing joint trial. The basis on which the learned Judge has passed the said order is to avoid repetition of evidence, since the defence of the respondent to O.S.No.16 of 2018 would form the basis of the chief examination in the suit in O.S.No.171 of 2018. Aggrieved by the said order, the petitioner



is before this Court.

7.Learned counsel appearing for the petitioner would submit that the petitioner herein has nothing to do with the suit in O.S.No.171 of 2018 and neither is the petitioner the tenant under the respondent. The cause of action for filing the suit in O.S.No.16 of 2018 is the non-payment of the mortgage money by the defendant, whereas the cause of action for filing the suit in O.S.No.171 of 2018 is an alleged lease agreement between the petitioner's husband and the respondent herein and the relief claimed is one for recovery of rental arrears and for evicting the defendant therein from the property.

8.Learned counsel for the defendant would submit that the object of a joint trial is to reduce the evidence to be let in, avoid multiplicity of proceedings and conflicting judgments and therefore, the order does not deserve to be re-written.

9.Heard the learned counsels and perused the records.

10.Admittedly, the suit in O.S.No.16 of 2018 is a suit for recovery of money based on a mortgage deed. The defence to this suit is that the mortgage deed has been offered as sham and nominal one to preserve and protect the continued possession of the defendant in the suit in O.S.No.171 of 2018 of the suit property as a tenant. The suit in O.S.No.171 of 2018, on the other hand, is one to evict the tenant on the ground of default of rents. Therefore, it is clear that the cause of action and the relief sought for in the both the suits are totally different and the only common factor in both these matters is the fact that the respondent's defence to the suit on mortgage is the leasing of the property to the petitioner's husband and the creation of the documents to protect his continued possession as a lessee. Therefore, this Court is of the opinion that the learned Additional District Judge erred in ordering a joint trial. However, considering the similarity in the pleadings of the respondent herein in both the suits in O.S.No.16 and 171 of 2018, the trial of both the suits can be held simultaneously on the same day, since witnesses may be common in the two suits.

11.In the result, the Civil Revision Petition is allowed and the order of the learned District Judge, Dindigul is modified to the extent that the trial will not be a joint trial, but a simultaneous one. Considering the fact that evidence taking has commenced, the learned Judge shall endeavour to dispose of both the suits simultaneously as expeditiously as possible, not later than a period of four months from the date of receipt of a copy of



this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS III)

/ /2021

Sub Assistant Registrar (CS)

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Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Additional District Court, Dindigul,
Dindigul District.

+3 CC to M/s.AK.GOPALAN, Advocate (SR-35749[F] dated 24/11/2021)
+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-35962[F] dated 25/11/2021)

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24.11.2021

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