



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.1943 of 2014 and

MP(MD).No.1 of 2014

WEB COPY

1.Khajamydeen
2.Ayisha Begam

... Petitioners

-Vs-

R.P.Chellaiah

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.04.2014 passed in I.A.No.101 of 2013 in O.S.No.20 of 2011 on the file of the Sub Court, Periyakulam.

For Petitioners : Mr.A. Arumugam

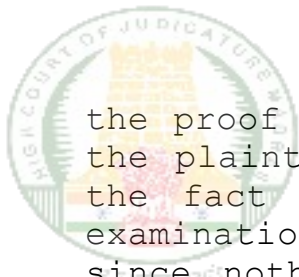
For respondent : Mr. C. Vakeeswaran

O R D E R

The Civil Revision Petition has been filed against the fair and decreetal order, dated 25.04.2014 passed in I.A.No.101 of 2013 in O.S.No.20 of 2011, on the file of the Sub Court, Periyakulam.

2. The revision petitioners are defendants 1 and 2. The respondent / plaintiff has filed a suit in O.S.No.20 of 2011, on the file of Sub Court, Periyakulam for recovery of a sum of Rs.7,78,230/- in respect of a mortgage alleged to have been entered into by the petitioners / defendants and the respondent / plaintiff. During the course of trial, the petitioners had sought permission to mark the original sale deed, dated 09.12.1985, which was mortgaged debt.

3. During the course of trial the defendant filed I.A. No.101 of 2013 seeking leave to receive and mark the original sale deed dated 09.12.1985 as evidence. The petitioners have stated that the original documents were unable to be filed along with the written statement since it got mixed up with other old documents. The respondent/plaintiff had filed counter stating that it was not the claim of the petitioner/defendant that the documents were returned by the plaintiff. The plaintiff had further contended that the defendant had not stated anywhere in



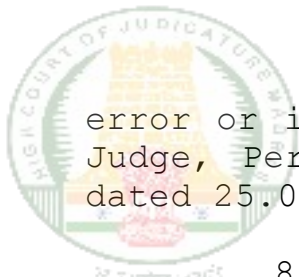
the proof affidavit and there is no whisper in the statement that the plaintiff had returned the sale deed to the petitioners and the fact was also not put to the plaintiff during the cross examination. It was the further contention of the plaintiff that since nothing had been mentioned and the sale deed reached the hands of the plaintiff the document cannot be received as evidence and further the suit is based on registered mortgage and not on claim of the deposit of title deeds and that there is no need for the plaintiff to receive the document from the defendant. The Trial Court by an impugned order dated 25.04.2014 dismissed the application stating that the documents is not relevant, against which the present revision has been filed.

4. The learned counsel for the revision petitions would submit that the Trial Court erred in not deciding the relevancy and necessity of the documents and the Trial Court ought to have permitted the petitioners to mark the documents since the relevancy and the necessity of the documents can be tested only at the time of the trial and thereby he seeks to set aside the order.

5. Per contra, the learned counsel for the respondent/plaintiff would submit that the suit is for recovery of amount on a registered mortgage . it is not the case of the plaintiff or defendant that the loan was obtained by deposit of title deeds and that the documents were returned by the plaintiff after payment of money. The defendants have not anything as if the documents were deposited with the plaintiff and nothing have been elicited during the course of examination with regard to the same. Strangely the defendants attempted to make out the case as if the loan was obtained by depositing title deeds and that the documents were returned after discharge of loans. The Trial Court rightly finding that the it is not the suit of deposit of title deed had rightly dismissed the petition stating that the documents are not relevant for the suit. He would further submit that there is no error of infirmity in the order passed by the Trial Court.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The suit has been filed for recovery of debt on a registered mortgage. The defendant had not stated anything in the written statement as if the loans were discharged and the documents were returned to him. Further nothing has been elicited during cross examination as if the documents were returned by the plaintiff. The Trial Court rightly finding that it is not the case of mortgage by deposit of title deed and an attempt has been made by the defendant to introduce the new plea had dismissed the petition. The Trial Court had further stated that the documents are not necessary and relevant. Hence this Court does not find any



error or infirmity in the order passed by the learned Subordinate Judge, Periyakulam in I.A.No. 101 of 2013 in O.S.No.20 of 2011, dated 25.04.2014.

8. Accordingly, the Civil Revision Petition stands dismissed. Since the suit is of the year 2011, the Sub Court, Periyakulam is directed to dispose of the suit in O.S.No.20 of 2011 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Trp

To:

The Judge,
Sub Court,
Periyakulam.

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-28804[F] dated
13/09/2021)

C.R.P. (MD) No.1943 of 2014 and
MP (MD) .No.1 of 2014
09.09.2021

RK/JGB(15/11/2021) 3P 3C