



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.03.2022
Pronounced on	11.04.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (NPD) No.2738 of 2011

Madras Financing Credit Corporation,

Rep. by its Managing Partner,

D.Devaraj

...Petitioner

Vs.

Manonmani Palamisamy

...Respondent

This Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 01.04.2011 made in E.A.No.172 of 2010 in E.P.No.104 of 2008 in C.S.No.102 of 1992 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr.R.Subramanian
for Mr.G.Jeremiah

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed, challenging the fair and decreetal order dated 01.04.2011 made in E.A.No.172 of 2010 in E.P.No.104 of 2008 in C.S.No.102 of 1992 on the file of the Subordinate Judge,



Poonamallee.

2. The learned counsel for the petitioner submitted that the petitioner/plaintiff has filed the suit in C.S.No.102 of 1992 before this Court, after obtaining appropriate leave under Clause 12 of the Letters Patent for recovery of money pertaining to the mortgaged property. It is well settled that no such suit will be numbered unless and until appropriate leave was obtained prior to filing of the suit, it is the practice been adopted by the Original Side of this Court and usually, an application for granting leave always to be filed along with a copy of the plaint prior to filing of suit along with documents and only after granting leave in the application, the suit would be entertained and numbered by the Registry.

3. Further, the learned counsel for the petitioner submitted that the above suit in C.S.No.102 of 1992, which was filed before this Court was transferred to the City Civil Court at Chennai due to raising of valuation of pecuniary jurisdiction and numbered as O.S.No.8238 of 1996 on the file of the V Additional City Civil Court at Chennai. Thereafter, the same was once again re-transferred to this Court, in view of the Division Bench Judgment of this Court in Central Bank of India Vs. Joseph & others as reported in 1997



(II) CTC (1), in which, this Court has hold that the transfer of mortgage suits from Original Side of the High Court to City Civil Court is due to enhancement of the pecuniary jurisdiction pertaining to mortgage properties which are subject matter of suit situated outside the territorial limits of the City Civil Court are liable to be re-transferred as this Court alone has such jurisdiction to try such suits under Clause 12 of Letters Patent and accordingly, the above suit was once again re-transferred to this Court and joint memo was also filed by both the counsels.

4. Subsequently, after a vigorous contest by the respondent/J.D., the above suit was decreed on 11.02.1999 by this Court and no appeal was filed on the side of the respondent/J.D., and the above decree passed by this Court in C.S.No.102 of 1992 has become final. Thereafter, an Execution Application in E.P.No.132 of 2008 was filed before this Court to transmit the decree made in the above suit in C.S.No.102 of 1992 to the file of the Sub Court, Poonamallee and accordingly, the decree was transmitted by this Court in its order dated 25.06.2008 and further, the above E.P.No.104 of 2008 was filed before the learned Subordinate Judge, Poonamallee.



5. The learned counsel for the petitioner submitted that the respondent/J.D. contended and raised an unwanted issue both in the counter in E.P.No.104 of 2008 as well as in the Section 47 of C.P.C application by raising following contentions.

It is submitted that in this regard the respondent herein has raised her contentions at para 2 of the counter in E.P.No.104 of 2008 and in para 1 of E.A.No.172 of 2010 in Section 47 application which reads as follows:

“It is clear from the Decree that the above suit is based on equitable mortgage, and that the Decree Holder prayed for the sale of the mortgage property in default of mortgage debt with interest. Therefore, this being suit for land within ambit of Clause 12 of the Letters Patent, and the property being wholly situate outside the Original Side Territorial Jurisdiction of the Hon'ble Madras High Court, the suit ought not to have been entertained at all, it follows automatically and logically that the Decree passed in such a suit is invalid and unenforceable abi initio. The Hon'ble Supreme Court's decisions are clear on this aspect: 2001 (4) CTC 39 and 2002 (4) CTC 653.

2. The Hon'ble Supreme Court's pronouncement in Kiran singh Vs. Chawan, AIR 1954 SC 340 is also clear that “a Decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sough or relied upon, and even at stage of its execution or even



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in collateral proceedings”.

6. The main ground of attack by the respondent/J.D., is that this Court has no jurisdiction at all either to entertain or to try the suit as the mortgaged properties are outside jurisdiction of this Court and further submitted that the suit on mortgage is a suit for land and being a suit for land within the ambit of Clause 12 of Letters Patent and the property being wholly situated outside of the Original Side territorial jurisdiction of this Court.

7. In view of the above, the learned counsel for the petitioner further submitted that the respondent herein cited the following decisions claiming that the very suit itself was a suit for land and not a suit for recovery of money :

(i) decision of the Hon'ble Apex Court in the case of Adcon Electronics Pvt. Ltd Vs. Daulate and Another, reported in 2001 (4) CTC 39.

(ii) decision of this Court in the case of S.K.J.Dhanasekar Vs. S.V.S.Jawaharlal, reported in 2002 (4) CTC 653.

(iii) AIR 1959 (cal) Page 616.



8. The learned counsel for the petitioner further submitted that the suit on mortgage is not a suit for land as held by the various Division Benches of this Court and cited the following decision in the case of Southern Petro Chemicals Industrial Corporation Limited Vs. Durga Iron Works, reported in 1995 (2) CTC 602 and followed by the subsequent decision of the Division Bench of this Court in the case of Central Bank of India Vs. Mr. Joseph and 20 others reported in 1997 (2) CTC 1 as the suit on

mortgage was a suit for land. However, unfortunately, the learned Judge rejected the petitioner's contention and allowed the respondent's application filed under Section 47 of C.P.C.,. For better appreciation, Section 47 of C.P.C. is extracted hereunder:

47. Questions to be determined by the Court executing decree-(1) *All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge of satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*

(Explanation I.- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be



*deemed to be a party to the suit in which the decree is passed;
and*

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section).

9. The only issue arises in this Civil Revision Petition is whether a suit for mortgage is a suit for land and whether this Court has got jurisdiction under Clause 12 of the Letters Patent and in this regard, a Division Bench of this Court has held that a suit for mortgage is not a suit for land in *Vikram Singh Raja Bonsle Vs. Jeganathan & others* reported in 2012 (2) TLNJ 268 which clearly held that:

“Civil Procedure Code 1905 as amended, Section 16 – Suit to enforce mortgage for recovery of money filed in Original Jurisdiction of Madras High Court – Mortgaged Property situated outside the original jurisdiction of Madras High Court – objected by defendant on the jurisdiction aspect – trial Judge felt that suit is not one for land title dispute and for recovery of money and therefore held as maintainable – on appeal to the intra court bench, confirmed the view of the Single Judge and held that suit for recovery of amount on mortgage in respect of property situated outside jurisdiction of original side of High Court, cannot be classified as suit for land – (para 13) suit on mortgage of property outside



jurisdiction is held as maintainable”.

Following the Division Bench of this Court in Southern Petro Chemicals Ltd., Vs. Durga Iron Works as reported in 1995 II CTC 602 in holding that the suit for recovery of money by enforcement of equitable mortgage properties situated outside jurisdiction of original side of High Court as the suit for recovery of money enforcement of mortgage does not involve determination of title to land or decree for possession of land.

10. The above Civil Revision Petition is absolutely covered with the above Division Bench decision in the case of R.Vikram Singh Rajah Bonsle Vs. V.S.jagannathan and another in the case of 2012 (2) TLNJ 268 as this Court in the Original Side jurisdiction has got every power to try this suit on mortgage pertaining to the properties situated outside the jurisdiction of this Court and the other issue decided by the Subordinate Court as the execution Court has got every power to deal with the decree as a void one.

11. The learned Sub Judge is of the view that the execution Court has got every right to decide that the decree was passed without jurisdiction does not at all arise and however, a recent decision of the Hon'ble Apex Court has held in 2019 Supreme Appeal Reported (Civil) 246:



A. Civil Procedure Code, 1908-Secs. 21, 47 and Suits Valuation Act, 1887, Sec.11-Scope, ambit and sweep of – A Court executing a decree cannot go behind the decree between the parties or their representatives – it must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts – Until it is set

aside by an appropriate proceeding in appeal or revision – A decree even if it be erroneous is binding between the parties – If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act – Objection to the jurisdiction of the Court to make the decree may be raised where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit – Objection cannot be raised in the execution proceedings.”

12. Heard the learned counsel appearing for the petitioner and perused the material documents available on record. There was no representation for the respondent.

13. On a careful perusal of the materials available on record, it is crystal clear and evident that the C.S.No.102 of 1992 was filed before this Court after obtaining appropriate leave under Clause 12 of the Letters Patent for recovery of money pending to the mortgage property. If, no leave was



obtained, the suit would not have been numbered by the Registry and in this case, the property was situated outside the jurisdiction of this Court. Hence, obtaining leave under Clause 12 of the Letters Patent is mandatory. Further, the suit has to be filed along with the application for obtaining leave under Clause 12 of the Letters Patent.

14. The suit was very much contested by the respondent/J.D. and the same was decreed on 11.02.1999 by this Court and no appeal was filed by the respondent/J.D. and the decree dated 11.02.1999 passed in C.S.No.102 of 1992 has become final. Subsequently, the Execution Petition No.104 of 2008 was filed by the decree holder for execution of the decree dated 11.02.1999 passed in C.S.No.102 of 1992 against Manonmani Palaniswami, the respondent/J.D. herein by selling the mortgage property under Order XXI Rule 54 of the Civil Procedure Code.

15. Then, the application in E.A.No.172 of 2010 was filed under Section 47 of the Civil Procedure Code by the respondent/J.D., raising objections and the nullity of the decree dated 11.02.1999 passed by this Court in the above mentioned C.S.No.102 of 1992 is only to protract the



proceedings. In this case, the decree was passed as early as on 11.02.1999 and the respondent/J.D has not preferred any appeal and further did not appear in the transferred E.P. Proceedings before this Court. Hence, the intention of the petitioner herein is only to drag on the proceedings. Moreover, it is a contested decree and admittedly, the respondent/J.D. has not filed any appeal and the decree has become final.

16. At this juncture, the respondent/J.D cannot file the application under Section 47 of the Civil Procedure Code, raising objections and the nullity of the decree dated 11.02.1999 passed in C.S.No.102 of 1992. Moreover, the learned Subordinate Judge has no power to nullify the decree passed by this Court under Section 47 of the Civil Procedure Code, when, the suit was filed after obtaining leave under Clause 12 of the Letters Patent.

17. It is pertinent to note that this Court has entertained the above suit in C.S.No.102 of 1992, only after granting leave to sue under the provision of Clause 12 of the Letters Patent. The learned Single Judge has erred in holding that this Court has no jurisdiction in entertaining the very suit as the suit in question was a suit for land. Further holding that the decree granted



by this Court was a nullity and consequently, it cannot be executed is untenable and unsustainable in law.

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18. It is also equally important to mention that the respondent/J.D. had not taken any plea of jurisdiction or any steps to revoke the leave granted by this Court under Clause 12 of the Letters Patent. Moreover, it is a well settled law that the execution Court cannot go beyond the decree and it does not have power or jurisdiction to question the decree passed by this Court. The learned Subordinate Judge is not an Appellate Authority to question the decree passed by this Court, which is Superior and the Highest Court of appeal in the state and no doubt, it is a arbitrary exercise of power by the learned Subordinate Judge, who is Subordinate to this Court cannot be appreciated.

19. The Division Bench of this Court in the case of Central Bank of India Vs. Mr. Joseph and 20 others, reported in 1997 II CTC (1) where it has specifically held that once leave was granted by this Court under Clause 12 of the Letters Patent, the suit cannot be re-transferred to the Civil Court even though the mortgage properties were situated in the outside jurisdiction of



this Court and the decree granted by this Court was not a suit for land and it is a suit on mortgage.

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20. The learned Judge was under the impression that no leave was obtained under Clause 12 of the Letters Patent to file the suit in C.S.No.102 of 1992 before this Court but it was clearly and categorically stated in the counter affidavit filed by the petitioner/decreed holder in paragraph 7 that the suit in C.S.No.102 of 1992 was filed before this Court only after obtaining leave under Clause 12 of the Letters Patent from this Court.

21. Considering the facts and circumstances of the case and for the foregoing reasons, the fair and decreetal order dated 01.04.2011 passed in E.A.No.172 of 2010 in E.P.No.104 of 2008 in C.S.No.102 of 1992 is liable to be set aside. Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

11.04.2022

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

After the pronouncement of the order, the learned counsel for the



petitioner prayed this Court to issue direction to the Execution Court to dispose of E.P.No.104 of 2008 which is pending on its file since 2008, at the earliest.

Considering the request made by the learned counsel for the petitioner, the Execution Court is directed to dispose of E.P.No.104 of 2008, as expeditiously as possible, preferably, within a period of ten months from the date of receipt of a copy of this order.

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C.R.P(NPD)No.2738 of 2011



J.SATHYA NARAYANA PRASAD,J.

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To:
The Subordinate Court,
Poonamallee.

Pre Delivery Order in
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