



C.R.P.No.911 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.08.2022

Delivered On : 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.911 of 2020

and

C.M.P.No.4837 of 2020

S.Sagayamary

... Petitioner/Defendant/Petitioner

-VS-

P.Kathiresan

... Respondent/Plaintiff/Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal order dated 27.08.2019 made in I.A.No.13096 of 2018 in O.S.No.6035 of 2016 on the file of VII Assistant City Civil Court, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr.T.S.Saravanakumar

For Respondent : Mr.C.R.Malarvannan

ORDER



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This Civil Revision Petition had been filed seeking to set aside the Fair and Decretal order dated 27.08.2019 made in I.A.No.13096 of 2018 in O.S.No.6035 of 2016 on the file of learned VII Assistant Judge, City Civil Court, Chennai and allow the Civil Revision Petition.

2.The Learned Counsel for the Petitioner submitted that this Civil Revision Petition had been filed by the Defendant in the suit in O.S.No.6035 of 2016 challenging the order passed in I.A.No.13096 of 2018 in O.S.No.6035 of 2016 on the file of the Learned Judge, City Civil Court on the ground that the learned Judge has no territorial jurisdiction to try the suit and the suit ought to have returned for filing before appropriate Court having territorial jurisdiction. Learned counsel for the Petitioner invited the attention of this Court to the copy of the Promissory Note which is available in the typed set filed along with this Petition. Learned Counsel for the Petitioner also invited the attention of this Court to the affidavit filed by the Petitioner herein as Petitioner in I.A.No.13096 of 2018, copy of which is also filed along



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with the typed set. He also invited the attention of this Court to the contents of the counter in I.A.No.13096 of 2018, copy of which is also filed along with this petition. Learned Counsel also invited the attention of this Court to the order passed by the learned VII Assistant Judge, City Civil Court, Chennai, in I.A.No.13096 of 2018 in O.S.No.6035 of 2016 dated 27.08.2019. It is the submission of the Learned Counsel for the Petitioner that the points raised by the Petitioner as Petitioner in Interlocutory Application was not answered by the Learned Judge. Instead, the Learned Judge went by the writings in the Promissory Note in the concluding para (“மேலும் நான் தங்களுடைய சென்னை முகவரியில் வைத்து கீழ்க்கண்ட சாட்சிகள் முன்னிலையில் மேற்கூறிய தொகையை பெற்றுக்கொண்டு இப்பிராம்சேரி நோட்டீஸ் கையெழுத்து இடுகின்றேன்.”),

3. Based on the said sentence, the Learned Judge dismissed the petition filed by the Petitioner herein as Petitioner in I.A.No.13096 of 2018 seeking return of the plaint for proper presentation before the Court having territorial jurisdiction. Further, the Learned Counsel for



the Petitioner, invited the attention of this Court to the reported judgment *MANU/TN/9165/2011*, in the case of ***K.Rajendran and Ors. Vs. M.Packirisamy***, dated 14.12.2012. The relevant paragraphs of the judgment is extracted hereunder:

“....

11. *It is the submission of the learned counsel for the appellants / defendants that, the alleged transaction had happened between the plaintiff and the respondents at Kuranguputhur Village, Tranquebar Taluk in Nagai District and hence, the Court at Pondicherry, is not having any jurisdiction to try the present suit filed by the respondent / plaintiff. It is the further submission that, the defendants are residing at Kuranguputhur and accordingly, under Section 20 of the Civil Procedure Code, the suit is maintainable only before the Court situated at Tamil Nadu.*

12. *On the other hand, it is the submission of the learned counsel for the respondent / plaintiff that the defendants had borrowed the loan amount and executed a promissory note at Thiruvettakudy, Karaikal and therefore, the Court at Karaikal, is having jurisdiction.*

.....

18. *In this occasion, it would see Rule 3 of the Pondicherry Stamp Rules, reads as follows:*

“ Rule~3 Description of Stamps:~ (1) Except as otherwise provided by the Act or by these rules,~
(i)~~~~~ (ii)~~~~~ (iii) stamps



purchased in the Union territory of Pondicherry shall alone be used for instruments chargeable with Duty Act as in force in that territory. From the above rules, it is clear that in Pondicherry region, the Pondicherry Revenue stamp only to be affixed in the Promissory note.”

.....

26. Now, following the above said principle, to the case on hand, here, it is a case, because of the reason that the word “Pondicherry” is not printed in the stamp, which was affixed in the suit pronote, the same is in view of Rule 3 of the Pondicherry Stamp Rules, inadmissible in evidence.

27. As rightly pointed out by the learned counsel for the appellants that, merely because of the reason that the document has been exhibited, it cannot be said that, the same is having the evidentiary value.

28. As already stated, the stamp affixed in the suit pronote, cannot be used in the territory of Pondicherry Union. Therefore, Ex.A.1 pronote is not an admissible document before the trial Court. The trial Court only after concluding above, dismissed the suit. On the other hand, the First Appellate Court by following Section 36 of Indian Stamp Act, precluded the objection raised by the defendants. The view taken by the First Appellate Court, is erroneous one and therefore, I am of the considered view that, the suit filed by the plaintiff, is based upon Ex.A.1, is not maintainable before the learned Principal District Munsif, Karaikal.

29. In fine, the Second Appeal is allowed and the judgment and decree dated 05.09.2008 passed in A.S.No.17 of 2007 on the file of the learned Additional District Judge, Puducherry at Karaikal, is hereby set aside. Consequently, connected Miscellaneous Petition is closed. However, there is



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no order as to costs.”

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4. It is the submission of the Learned Counsel for the Petitioner that as per the Judgment in S.A.No.1112 of 2010 and on the instrument is from Pondicherry , the Jurisdiction of the Court ought to have been at Pondicherry. Instead the Respondent as Plaintiff had filed the Suit before the City Civil Court, Chennai. Therefore, this Civil Revision Petition has to be allowed and the order passed by the VII Assistant Judge, City Civil Court, Chennai in dismissing the I.A.No.13096 of 2018 in O.S.No.6035 of 2016 dated 27.08.2019, is to be set aside.

5.The learned Counsel for the Respondent submitted that the order passed by the learned VII Assistant Judge rejecting the Petition filed under Order 7, Rule 10 of C.P.C. in I.A.No.13096 of 2018 is well reasoned order and is to be upheld and this Petition seeking to set aside the order has no merits. The learned Judge had given a finding that the defence of the Defendant who is the Petitioner in I.A.No.13096 of 2018 can be considered at the time of trial and therefore, rejected it. It is to be noted that the suit was filed as under Chapter suit under Order 37 of C.P.C. Therefore, the



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Petitioner herein had filed a Petition seeking permission to defend the suit.

Only to protract the Proceedings, the Petitioner had filed the Petition under Order 7, Rule 10 of C.P.C. Therefore, the learned VII Assistant Judge, City Civil Court, Chennai, had dismissed the Petition as the contentions of the Petitioner can be considered only during trial by appreciation of evidence and not at the stage of enquiry based on averments in the Petition. Therefore, he seeks to dismiss this Civil Revision Petition.

6. On consideration of the rival submission and on perusal of the order made in I.A.No.13096 of 2018 in O.S.No.6035 of 2016 and also the rulings relied on by the Petitioner/Defendant reported in *MANU/TN/9165/2021* [*K.Rajendran and others -vs- M.Packirisamy*], it is found that the valuable defence is that the Revenue Stamp on the Promissory Note had been affixed is from Pondicherry, the Defendant who is the resident of Karaikal in Pondicherry. When the Revenue Stamp is from Pondicherry territory, the Court at Chennai has no territorial jurisdiction as per the provision of Stamp Act. Therefore, it gives a presumption that the Promissory Note was executed at Karaikal. In the light of the above discussion, this Petition is to



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be allowed.

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In the result, **this Civil Revision Petition is allowed.**

The order passed by the learned VII Assistant Judge, City Civil Court, Chennai dismissing the Petition in I.A.No.13096 of 2018 in O.S.No.6035 of 2016 is set aside. The learned VII Assistant Judge, City Civil Court, Chennai, is directed to return the plaint in O.S.No.6035 of 2016 to the Plaintiff forthwith and the Plaintiff/Respondent is also directed to re-present the plaint before the Court having jurisdiction at Karaikal in Pondicherry, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

14.10.2022

SRM

Index : Yes / No

Internet : Yes / No

Note: A copy of this order shall be communicated to the learned Chief Judge, Pondicherry and District Judge, Pondicherry at Karaikal for appropriate follow up.



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The VII Assistant Judge,
City Civil Court,
Chennai.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
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14.10.2022