



A.No.3839 of 2022

SENTHILKUMAR RAMAMOORTHY,J

The proposed plaintiff has presented this application seeking leave to institute the suit against the defendant before this Court.

2. A simple mortgage was executed by the defendant in favour of the plaintiff. The suit is for enforcement of the personal covenant to pay amounts secured by the mortgage and, in default thereof, for sale of the mortgaged asset. Learned counsel for the applicant asserts that this is not a suit for land. On the basis that the title deeds were deposited with the plaintiff at Chennai and part payments were made at Chennai, this application is filed.

3. Learned counsel for the applicant submits, on instructions, that possession of the property would not be claimed in this suit by seeking amendment of the plaint. This statement is recorded.



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4. Learned counsel for the proposed defendant opposes this application on the ground that the defendant resides at Villupuram and that the mortgaged property is at Villupuram. He further submits that the simple mortgage deed was executed and registered at Villupuram. He contends that no part of the cause of action arose within the jurisdiction of this Court.

5. Upon examining the draft plaint, it is clear that it is a suit to enforce the personal covenant in a simple mortgage and for sale of the mortgaged asset for purposes of recovery of the amount secured thereunder. Therefore, it is not a suit for land.

6. As regards the cause of action, the plaintiff has stated in the draft plaint that title deeds relating to the property were deposited with the plaintiff at Chennai and that part payments were made at Chennai. These assertions are denied by the defendant. Since these are disputed questions of fact, a decision thereon should await trial. However, on the basis of these averments and taking into account the fact that this is not a



suit for land, leave to sue is granted to the applicant to sue the defendant before this Court. This order will not preclude the defendant from raising the issue of jurisdiction and making a request for an issue to be framed on this question when the suit is taken up for hearing. . As a corollary, the Registry is directed to number the suit, if otherwise in order.

22.12.2022

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