IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3069 of 2022
and C.M.P.No.16512 of 2022

K.Amudha .. Petitioner

Vs.

C.Vijay Anand .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to allow this Civil Revision Petition and set aside the order dated 18.07.2022 passed in I.A.No.8 of 2022 in O.S.No.331 of 2019 on the file of the Hon'ble I Additional District Court at Thiruvallur, Thiruvallur District.

For Petitioner : M/s.S.Anil Sandeep
For Respondent : No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the petition to reject the plaint filed in I.A.No.8 of 2022 in O.S.No.331 of 2019.

2. The respondent herein filed a suit of recovery of money in O.S.No.331 of 2019 against petitioner herein. The respondent in his plaint had stated that the petitioner herein executed an unregistered mortgage deed on 07.08.2016, after receiving a sum of Rs.63,50,000/- from the plaintiff. The suit was laid for recovery of said money and the respondent has not sought for enforcement of any right under mortgage deed. He simply filed a suit for recovery of money. The revision petitioner filed a petition to reject the plaint mainly on the ground that unregistered mortgage deed is not admissible evidence and therefore the suit for recovery of money based on unregistered mortgage deed is not maintainable.

3. It is a settled law that unregistered mortgage deed can be admitted in evidence to prove the loan transaction. Therefore, in a simple suit for recovery of money, unregistered mortgage deed can be relied on to prove the money transaction. Of-course, it cannot be looked into for the purpose of mortgage. It would be pertinent to extract the relevant observation of this Court in ***MANU/TN/7662/2006, Murugan versus Sumathradevi and Ors.***

"9. (i) In AIR 1931 Madras 124 cited supra, the Division Bench of this court held as follows:-

"The learned Judge however considered that it was open to him to give a decree upon the promissory note and against this decree the defendant has appealed. The decree was preceded by an order allowing amendment of the plaint, so as to comprise a prayer for a personal decree upon the promissory note. This order has been attacked before us, principally on the ground that when it was made, the claim under the promissory note was time barred. But I do not think we need consider whether or not the amendment should have been allowed because on the plaint as it originally stood it seems clear that a decree of this character could be granted.

Apart from a general prayer:

"for such further and other reliefs as to this Honorable Court may seem meet or the nature of the case may require."

Para 14 of the plaint asks that the defendant be directed to pay to the plaintiffs the sum named and goes on in the ordinary terms of a mortgage suit, to ask for the sale of the properties and if the proceeds are not sufficient, for a personal decree. It was I think clearly within the competence of the Court, upon failure of the mortgage, to give such a decree on a plaint so framed. It has been held by a Full Bench of this court in P.V.M.Kunhu Moidu v. T.Madhavan menon (5) that a personal covenant to pay may be proved by a mortgage invalid for defect of attestation, and I think it is incontestable that a trial court on finding a mortgage to be invalid for this or any other reason, may give a decree on the personal covenant which it contains, provided of course that it be *not barred. The only case to the contrary cited before us is Gajadhar Mahton v. Ambika Prasad Tiwari(6), where their Lordships of the Privy Council decided, clearly in the special circumstances of that case, that they should not themselves give a decree of this nature. Nor do I think that where, as here, the debt is embodied in a promissory note which forms the basis of the invalid mortgage the court is any more disqualified from giving a decree upon that note. In the result I would dismiss both these appeals with costs."*

(ii) In AIR 1934 MADRAS 178 cited supra, the Division Bench of this court held as follows:-

"The observations of their Lordships are to the effect, that the mortgage debt as such can be dissociated from the security for the repayment of the debt; and if there is no bar to the admissibility of a document for the purpose of showing the transfer of the debt itself, apart from the security, the appropriate relief, which ought to be given to the plaintiff, should not be denied to him. At p.594 it is observed thus:

"The debts may be secured either on immovable property or on merchandise; they may be wholly secured or partly secured the security may have been given when the debt was created or later; but in any case, the debts exist as movable property and do not, if secured, become identified with the security or transformed into the land in the one case or merchandise in the other. The separation between debt and security is well established the

creditor is entitled to take a judgment for the debt without having recourse to his security."

Applying this principle to the present case, the plaintiff can very well take a judgment for the debt in question, even though no relief can be given to him with respect to the security as he wants."

(iii) In 1939 MLJ 664 cited supra, the Division Bench of this court held as follows:-

"We are therefore reluctantly forced to come to the conclusion that the mortgage deed has not been duly proved to be executed by the first defendant and a decree on the mortgage cannot be sustained and must be set aside. But Mr.Ramachandra Rao contends that there is a personal covenant in the document and on the strength of that personal covenant it is open to us to pass a money decree in favour of the plaintiff for the amount claimed. This can be done. (Vide Kunhu Moidin v. Madhava Menon) Therefore, while we set aside the mortgage decree as passed by the lower court, we pass a decree against the defendants for the amount claimed in the plaint with interest at the contract rate up to date of plaint and at 6 per cent from date of the plaint."

(iv) In 2001-1-L.W.613 cited supra, a learned Judge of this court held as follows:-

" 4. Though notice was served on the respondent and his name printed in the cause list, no attempt was made by him to contest the case. On going through the order passed by the lower court and after hearing counsel for petitioner and perusing the records,

I find that the order of the lower court requires interference. Since the mortgage deed is unregistered, at the most it could be said that plaintiff cannot enforce, as if it is a mortgage. But it could be taken as an agreement of loan, and the loan could be proved on the basis of admission in the document itself. As there is no change of cause of action nor in the nature of the suit, the finding of the lower court that the plaintiff is not entitled to amend the plaint is not correct. Hence the order of lower court is set aside and this Revision is allowed."

10. From the above decisions, it is very clear that an unregistered mortgage deed could be taken as an agreement of loan and the loan could be proved on the basis of the admission in the document itself. Therefore, the trial court is erred in law in rejecting the case of the petitioner/plaintiff and the trial court is directed to permit the revision petitioner/ plaintiff to mark the said document namely the unregistered mortgage bond dated 3.7.1997 as exhibit on the side of the revision petitioner/plaintiff for the limited purpose of proving the loan amount."

4. The reading of the impugned order would suggest that the Court below rightly dismissed the petition to reject the plaint on the ground that in a suit for recovery of money, the unregistered mortgage deed can be looked into only for limited purpose of proving money transaction. Therefore, I do not find any illegality and irregularity in the order passed by the Court below.

5. Further, it is open to the revision petitioner to raise all other points at the time of final disposal. Hence, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

28.09.2022

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

To

1. The I Additional District Court,
   Thiruvallur, Thiruvallur District.

S.SOUNTHAR, J.

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