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C.R.P.No.3454 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3454 of 2022
and C.M.P.No.18412 of 2022

K.Muthuthandavan

...Petitioner

Versus

K.Dhanalakshmi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the judgment and decree dated 06.01.2018, partial dismissing of the suit, in regard to the claim in respect of the two suit promissory notes dated 07.03.2013 and 08.03.2013, which was passed in the O.S.No.322 of 2016 on the file of II Additional Subordinate Judge, Villupuram.

For Petitioner :Mr.V.P.Chamuraj

O R D E R

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the suit in respect of the claim concerning suit promissory notes dated 07.03.2013 and 08.03.2013.



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2. The petitioner herein filed a suit for recovery of money based on mortgage deed dated 06.03.2013 and two promissory notes dated 07.03.2013 and 08.03.2013. According to the petitioner/plaintiff, the respondent borrowed a sum of Rs.1,00,000/- on 06.03.2013 and executed a mortgage deed in favour of the petitioner by creating a charge over the immovable property. Thereafter he borrowed another sum of Rs.1,00,000/- on 07.03.2013 and executed the suit promissory note No.1 agreeing to treat it as an attachment to the mortgage. It was also averred by the petitioner in his plaint that the respondent borrowed another sum of Rs.1,00,000/- on 08.03.2013 and executed the second suit promissory note agreeing to treat it as an attachment to the mortgage. Therefore, the petitioner filed the suit for recovery of money based on mortgage deed dated 06.03.2013 and two promissory notes dated 07.03.2013 and 08.03.2013.

3. The respondent herein filed a written statement raising specific plea that the execution of mortgage and subsequent promissory notes are separate transactions and the petitioner is not entitled to club all the three transactions together and maintain a single suit. It is also submitted that the suit promissory notes were executed at Puducherry, outside the territorial limits of the Subordinate Court, Villupuram and respondent/defendant is also admittedly



residing at Puducherry. Therefore, the question of territorial jurisdiction was also raised by the respondent. The Court below framed the following preliminary issues and considered the same.

5) Preliminary issued framed as follows.

- 1) *Whether the claim on suit promissory note within the jurisdiction of this Court?*
- 2) *Whether the joinder of cause of action is proper or mis-joinder?*

4. After hearing the parties on the preliminary issues, the Court below came to the conclusion that the claim for money based on mortgage deed dated 06.03.2013 and the subsequent promissory notes dated 07.03.2013 and 08.03.2013 cannot be clubbed together and hence, there is a mis-joinder of cause of action. The Court below also concluded that the suit promissory notes were admittedly executed at Puducherry and the defendant is residing at Puducherry and therefore, the Court has no territorial jurisdiction to entertain the suit for recovery of money based on those pro-notes. On these findings in the preliminary issues, the suit was partly dismissed in respect of the promissory notes dated 07.03.2013 and 08.03.2013. Aggrieved by the said judgment and decree the petitioner/plaintiff had come up by way of this revision.



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5. Heard the learned counsel for the petitioner and perused the typed set of papers.

6. The findings of the Court below with regard to the lack of territorial jurisdiction to entertain the suit concerning the promissory notes and also its finding on mis-joinder of cause of action cannot be faulted. Merely because, the petitioner while executing the promissory notes mentioned, that those promissory notes were executed as an attachment to the mortgage, the subsequent loans received by him on 07.03.2013 and 08.03.2013 will not become part and parcel of the mortgage, in the absence of any registered mortgage deed. Therefore, the execution of promissory notes on 07.03.2013 and 08.03.2013 are separate and independent transaction and it cannot be treated as part and parcel of the mortgage deed. Hence, I agree with the findings rendered by the Court below on the preliminary issues framed by it. The suit promissory notes were executed on 07.03.2013 and 08.03.2013.

7. The present suit appears to have been filed on 06.01.2016 of course before the forum which has no territorial jurisdiction to entertain the suit concerning the promissory notes.



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8. The revision petitioner is entitled to the benefit of extension of time under Section 14 of the Limitation Act in respect of the period from 06.01.2013 to till the date of disposal of this revision and he is at liberty to file a separate suit based on the promissory notes dated 07.03.2013 and 08.03.2013 by filing a formal application for exclusion of time under Section 14 of the Limitation Act.

9. The Court below is directed to return the promissory notes dated 07.03.2013 and 08.03.2013 to the petitioner to enable him to institute a separate suit based on the promissory notes before the forum having territorial jurisdiction.

10. With these observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order / Non-Speaking Order

Note: Issue order copy on 09.11.2022



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S.SOUNTHAR, J.

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To

The II Additional Subordinate Court,
Villupuram.

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