



CRP.No.1856 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1856 of 2019 and
CMP.No.12263 of 2019

Uma Shankar

... petitioner

Vs.

1.Oriental Bank of Commerce, Main Branch,
Rep. by its Manager-legal having office at
Jaya Enclave, Avinashi Road,
Coimbatore

2.S.Jayakumar

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to
set aside the order and decree dated 08.04.2019 in IA.No.1253 of 2018 in
OS.No.3053 of 2013 on the file of II Additional District Munsif of Coimbatore.

For Petitioner : Mr.R.Raja Rajan

For Respondents

For R1 : Mr.S.K.Srinivasan

For R2 : No appearance



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ORDER

This civil revision petition has been filed to set aside the order and decree dated 08.04.2019 in IA.No.1253 of 2018 in OS.No.3053 of 2013 on the file of II Additional District Munsif of Coimbatore, thereby allowed the petition filed to take the issue of jurisdiction as a preliminary issue.

2. The petitioner is the plaintiff and the first respondent is the second defendant in the suit filed by the petitioner for permanent injunction. The case of the petitioner is that the suit property was leased out in his favour by the second respondent herein for residential purpose by the lease deed dated 03.04.2009 on 'boghyam' for a sum of Rs.10,00,000/-. From the date of the lease deed, the petitioner is in possession and enjoyment of the suit property. While being so, the first respondent herein and their officers came to the suit property on 17.10.2013 and pressurised the petitioner to vacate the suit property. Thereafter the petitioner came to know about the existence of the mortgage between the respondents 1 and 2 herein in respect of the suit property. Further averred that the said mortgage entered between the first and second respondents is only after the petitioner is holding over the possession of the suit property based on the 'boghyam' deed dated 03.04.2009.



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2.1 The first respondent herein resisted the suit by way of filing written statement stating that the trial court has no jurisdiction to entertain the suit since the first respondent has already initiated proceedings under SARFAESI Act as against the second respondent herein and his property including the suit schedule property. Therefore, as per the provision under Section 34 of the said Act, the civil court has no jurisdiction to entertain the suit. In fact, the first respondent issued possession notice under Section 13(2) of the said Act and e-auction for sale of the property was also published in a daily newspaper. Thereafter, public notice was issued on 06.04.2013 cautioning the public not to deal with the said property. Original title deeds were deposited by the second respondent herein with the first respondent on 02.04.2009. However, the very next day, in order to curtail the rights of the first respondent, the petitioner and the second respondent entered into false 'boghyam' deed and filed the present suit. While pending the suit, the first respondent filed petition for rejection of plaint under Order 7 Rule 11 of CPC. However, it was dismissed. Again the first respondent filed petition under Order 14 Rule 2 read with Section 151 of CPC to take up the issue of jurisdiction as preliminary issue before deciding the main issue in the suit, which was allowed. Therefore, the present civil revision petition has been filed.



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3. The learned counsel for the petitioner would submit that the present application is directly hit by the principle of *res judicata* since already the first respondent filed petition for rejection of plaint under Order 7 Rule 11 of CPC on the very same ground. Only on the ground of jurisdiction, application was filed for rejection of plaint. After dismissal of the said application, the first respondent did not choose to file any appeal or revision. Instead of filing appeal or revision, the first respondent had chosen to file application to decide the issue of jurisdiction as preliminary issue in the suit. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Satyadhyan Ghosal and others Vs. SM.Deorajin Debi and another*** reported in ***1960 AIR 941***, in which the Hon'ble Supreme Court of India held that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again.



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4. The Hon'ble Supreme Court of India and this Court repeatedly held that the principles of *res judicata* does not apply to the interlocutory application. In this regard, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Mathura Prasad Bajoo Jaiswal and others Vs. Dossibai N.B.Jeejeebhoy*** reported in ***1971 AIR 2355***, in which the Hon'ble Supreme Court of India held that a question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the court holds that it has no jurisdiction, the decision will not, operate as *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the decision will not operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. Therefore, in the case on hand, the issue of jurisdiction has been questioned by the first respondent herein and the suit has been filed for bare injunction. Therefore, the issue of jurisdiction has to be decided as a preliminary issue and the court below rightly allowed the application. As such, this Court finds no infirmity or illegality in the order passed by the court below.



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5. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

1.The II Additional District Munsif of Coimbatore



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2. Manager,
Oriental Bank of Commerce, Main Branch,
legal having office at
Jaya Enclave, Avinashi Road,
Coimbatore

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