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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.(PD)No.2097 of 2022

1.Jayakumar
2.Udhayakumar
3.Thirumani
4.Suresh
5.Maithili

...Petitioners/Defendants/Revision Petitioners

-Vs-

K.Aswinikumar ... Respondent/Plaintiff/Respondent

Prayer:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, as against the Fair and Decreetal order dated 06.04.2022 in I.A.No.1 of 2020 in O.S.No.161 of 2018 on the file of the Additional District and Sessions Judge (Fast Track Court), Kancheepuram.

For Petitioners : Mr.A.M.Ilango

For Respondent : Mr.D.Murthy

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ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 06.04.2022 in I.A.No.1 of 2020 in O.S.No.161 of 2018 on the file of the Additional District and Sessions Judge (Fast Track Court), Kancheepuram, wherein the petitioner herein has filed a petition before the trial Court under Order 13 Rule 3 and under Section 151 of CPC to reject the document marked as Ex.A1 the unregistered mortgage deed dated 18.06.2014. The trial Court dismissed the petition. As against the said order, the present Civil Revision Petition has been filed.

2. According to the petitioners, they are defendants in the said suit, the respondent herein being the plaintiff has filed a suit for recovery of money based on unregistered mortgage deed dated 18.06.2014. When the said document was produced before the trial Court, the petitioners have raised objection to mark the said unregistered document stating that the said document is unregistered mortgage deed and thereby it cannot be marked. But the trial Court marked the document by stating that mere marking of documents will not amount to prove and it can be relied upon as collateral purpose. The above said order as observed by the trial Court is not correct. Hence, this petition has been filed.

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3. According to the respondent, he filed a suit for recovery of money and the mother of the petitioner had executed unregistered mortgage deed and the said mortgage deed is unregistered mortgage deed. Though it is unregistered under proviso of Section 49 of the Indian Stamps Act, it can be received as collateral purpose to prove the receipt of money. The plaintiff has not filed a suit for recovery of money based on the mortgage deed and the said mortgage deed is only to prove the receipt of money. Therefore, it can be received as document for collateral purpose. The trial Court and also received the documents for collateral purpose.

4. The learned counsel appearing for the petitioners would contend that the petitioners filed a petition before the trial Court to reject the document marked as Ex.A1, since it is an unregistered mortgage deed. The respondent/plaintiff filed the petition for recovery of money based on the unregistered mortgage deed. Therefore, the said unregistered mortgage deed cannot be marked as document. The petitioner filed a petitioner to reject the said document Ex.A1, but the trial Court has not considered the same and dismissed the petition.

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5. The learned counsel appearing for the petitioner also relied upon judgment of the Division Bench of this Court in *Dr.Rathinasamy Vs. Selvakumarasamy and one another in A.S.No.35 of 2017 and Kesavamattam Koda Nayakamma Vs. Edara Venkayya @ another reported in CDJ 1939 MHC 212.* Further, the learned counsel appearing for the petitioner has also brought to the knowledge of this Court that even for simple money suit, the suit is barred by limitation. Therefore, the suit itself is not maintainable. The plaintiff has filed a suit only based on the mortgage deed, not for simple money suit and also they mentioned the description of the properties in the plaint and also paid Court fee under Section 33 of the Tamil Nadu Court Fees and Suit Valuation Act. The trial Court failed to consider the same and marked the documents as Ex.A1. Therefore, the order passed by the trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would content that the suit has not been filed based on the mortgage deed and the suit is only for simple money suit. Therefore, the unregistered documents can be received as collateral purpose to prove the case of receipt of money. Initially the suit was filed as mortgage suit and thereafter before its presentation it was altered as simple money suit. The plaint was filed under Order VII Rule 1 of C.P.C. and

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not presented under Order XXXIV of C.P.C. and prayer also not sought for passing of preliminary decree and the same is for only ordinary money suit. Therefore, merely mentioning the property in the plaint and wrongly mentioning of Court fee provision, it cannot be construed as mortgage suit. Further the learned counsel assured that they are not going to rely the unregistered document for mortgage purpose and there are different procedures to be adopted for mortgage suit but since the suit is simple money suit, they claimed only regular money suit prayer. Therefore, the document can be received for collateral purpose.

7. The learned counsel for the respondent relied on the judgments of i) *T.Bhaskar Rao Vs. T.Gabriel in C.R.P.No.5953 of 1980 reported in CDJ 1981 APHC 029, ii) P.Joseph Vs. M.T.Santiagu in CRP.No.3700 of 1999 reported in CDJ 2000 MHC 1202, iii) Umde Bhojram Vs. Wadla Gangadhar in CRP.No.5972 of 2022 reported in CDJ 2004 APHC 097, iv)Murugan Vs. Sumathradevi & another in CRP(PD).No.1863 of 2003 reported in CDJ 2007 MHC 228, v) K.Amudha Vs. C.Vijay Anand in CRP.No.3069 of 2022 reported in CDJ 2022 MHC 8117 and vi) Hetram Sahu vs. Ramlal Chouhan & Others reported in CDJ 2024 Ch HC 034.*

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8. This Court heard both sides and perused the materials available on record.

9. According to the petitioners/defendants, the respondent/plaintiff has filed a suit for recovery of money based on the unregistered mortgage deed and thereby Ex.A1 unregistered mortgage deed cannot be for collateral purpose and the main suit is based on mortgage money. Therefore, it cannot be received as documents.

10. According to the respondent/plaintiff, the suit is filed only for recovery of money for personal decree and not based on the mortgage deed. Therefore, the unregistered mortgage deed can be received as collateral purpose.

11. This Court has pursued the plaint filed by the plaintiff and the plaint was presented under Order VII Rule 1 of C.P.C. and the prayer also for simple ordinary money suit and he prayed for personal decree. But at the same time, the Court fees paid under Section 33 of the Tamil Nadu Court Fees and Suit

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Valuation Act and the description of the property also mentioned in the plaint. Therefore, it is the duty of the trial Court to find out whether the plaintiff has filed for mortgage or simple money suit.

12. At this juncture, the learned counsel appearing for the respondent also brought to the knowledge of this Court that the Court fee was paid under Section 33 and they filed a petition for amendment and the same is also pending. Since the plaintiff filed Order 7 Rule 1 of CPC and the prayer also for recovery of money, the suit is not based on the mortgage deed, the same is simple money suit. However, the learned counsel appearing for the respondent before this Court fairly conceded that though the description of the property was mentioned in the suit plaint they only sought for the relief for simple money suit and not relying upon the document for the purpose of mortgage. As admitted by the learned counsel for the respondent, it is only suit for recovery of simple money suit and thereby the documents can be relied upon for the money suit as collateral purpose.

13. It is the admitted fact that before the trial Court, P.W.1 was examined and at this stage the petition has been filed. Since P.W.1 was examined before the trial Court, the trial Court can decide the matter including the point of

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limitation. Since the counsel appearing for the respondent himself submitted that the documents is only as collateral purpose to prove the money transactions between the parties and they have not claimed any right through the mortgage, the said Ex.A1, can be relied for collateral purpose of money suit for personal decree.

14. The trial Court can be relied the document of Ex.A1 only for the purpose of money transactions. As far as the judgments filed by the petitioners are concerned, it is based on the unregistered mortgage deed and the main prayer is also based on the mortgage. In the case on hand, the respondents admitted themselves that they have not sought any relief based on the mortgage deed and also filed a money suit for personal decree. Therefore, the above said case law is not applicable to the present facts of the case.

15. As far as the Judgments relied on by the respondent are concerned, on careful perusal of the judgments, it is clear that though the unregistered mortgage deed was executed by the parties, the said unregistered mortgage deed can be relied as collateral purpose to prove the money transaction for the personal decree.

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16. Therefore, this Court is of the view that EX.A1 which was already marked as documents by the trial Court can be relied upon by the parties for the personal money decree. In this context, as rightly held by the trial Court that the marking of documents itself will not amount to proof of the contracts of documents and the documents can be relied for collateral purpose. Therefore, the order passed by the trial Court is in order.

17. Considering the nature of suit and it is pending from the year 2018, the trial Court is directed to dispose the case within a period of six months from the date of receipt of a copy of this order.

18. With the above said observations, this Civil Revision Petition is disposed of. No costs.

15.04.2024

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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P.DHANABAL, J

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To

The Additional District and Sessions Judge (Fast Track Court),
Kancheepuram.

C.R.P.(PD)No.2097 of 2022

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