



A.No.2249 of 2024
in
C.S.No.707 of 2019
and
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P.VELMURUGAN, J

The applicant is the plaintiff, who filed the suit for recovery of a sum of Rs.1,51,25,000/- with interest based on the Mortgage deed dated 11.09.2017.

2. The plaintiff has filed the present application seeking leave of this Court to permit him to mark the Xerox copy of Annexure 2, which is filed along with this application as a document to the plaint.

3. Brief facts leading to filing of the application is as follows:

3.1 The case of the applicant/plaintiff is that the First Simple Mortgage dated 11.09.2017 was prepared with two Annexures. Annexure No.1 contains letter from the plaintiff to one Gunasekaran, who



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is the husband of the first respondent/first defendant and father of respondents 2 and 3/defendants 2 and 3 and Annexure No.2 contains the list of 46 persons (including the plaintiff), who advanced mortgage amount to the said Gunasekaran and the defendants/respondents herein. At the time of registering the mortgage deed, the Registrar had objected the addition of Annexure – 2, the mortgagor Gunasekaran had deleted the recital about the Annexure portion, removed Annexure – 2, had got the mortgage deed registered and handed over the mortgage deed to the plaintiff herein. Further, the said Gunasekaran handed over Annexure-2 duly signed by him to the plaintiff, with an assurance that plaintiff need not worry just because Annexure-2 is not added as a document, and he is fully aware of the amount of Rs.1,50,00,000/- advanced in respect of the mortgage deed from the plaintiff and others. Pending the same, the said Gunasekaran made part payments and thereafter, he passed away and his legal heirs, who are the other defendants in the suit, had made payments as detailed in the plaint. Thereafter, they did not make any payment, and hence, the applicant/plaintiff has issued notice to the defendants in the



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suit, claiming the sum due to the plaintiff. Thereafter, the applicant/plaintiff herein has filed the above suit along with an application in A.No.6286 of 2019 seeking leave to sue against the defendants herein. Though the copy of the plaint filed along with leave to sue, contain averments with regard to Annexure-2, by mistake Annexure -2 was not incorporated in the list of documents. It is further stated that this Court, vide order dated 28.08.2019, allowed the said application and permitted the plaintiff to add Annexure-2 as document to the plaint. Thereafter, the plaintiff's erstwhile counsel Mr.T.Skandhakumaar handed over the papers to his clerk Gopal for further process.

3.2. It is further stated that the applicant's erstwhile counsel had added all the documents including Annexure-2 as suit documents. The defendants have also filed written statement and affidavit of documents was also filed. The plaintiff's counsel also served all the documents including copy of Annexure-2 to the learned counsel for the defendants,



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upon which, the admission and denial of documents was filed by the defendants denying Annexure-2, which is signed by the Late Mr.Gunasekaran. Subsequently, the Case Management Schedule was prepared for trial. At the time of trial, it was noticed by the plaintiff and his counsel that original Annexure -2 is not on file and the plaint only contains one Xerox set of Mortgage deed, which is filed as Document No.1 along with the plaint and Original Mortgage Deed.

3.3. It is further stated that at the time of trial, it came to the knowledge of the plaintiff that his erstwhile counsel Mr.T.Skandhakumaar and his clerk Gopal, who handled the matter, both passed away. Neither the plaintiff, nor the counsel on record for the plaintiff, are aware as to what had happened to Annexure-2. Therefore, the copy of Annexure-2 was served upon the counsel for the defendants as Document No.60. Further, the letters supporting details of payments made by the persons detailed in Annexure-2, are on record as Document Nos.14 to 57 along with the plaint. Therefore, the plaintiff may be



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permitted to mark the copy of Annexure-2 as a document in the plaint.

4. Learned counsel for the applicant/plaintiff submitted that the applicant/plaintiff has handed over Annexure-2 to his erstwhile counsel Mr.T.Skandhakumaar, and in the presence of the plaintiff, the said T.Skandhakumaar handed over the papers to his clerk Gopal. Now the applicant came to know about the missing of Annexure-2 only during the trial of the suit. Originally, Annexure-2 is not on file, and therefore, the present application has been filed to permit the plaintiff to mark the copy of Annexure-2, which was filed along with this application as a document. If the said document is not allowed to be marked, the applicant/plaintiff would be put to irreparable loss and hardship.

5. Despite giving due opportunity, the respondents/defendants have not filed counter affidavit.

6. On a perusal of the records, it is seen that the present application



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is filed after commencement of trial. The applicant/plaintiff himself admitted that he has not filed Annexure-2 to the mortgage deed along with the plaint and he has also admitted that Annexure 2 was not attached with the mortgage deed, as the Registrar had refused to mark it. Therefore, Annexure-2 is not forming part of the mortgage deed.

7. In the affidavit, the applicant/plaintiff himself admitted that this Court, vide order dated 28.08.2019 allowed the application in A.No.6286 of 2019 seeking leave to sue and permitted the plaintiff to add Annexure-2 as a document to the plaint. Thereafter, the plaintiff's erstwhile counsel one T.Skandhakumaar had handed over the papers to his clerk one Gopal. Thereafter, the plaintiff came to know that his erstwhile counsel and his clerk, both passed away.

8. It is further seen that now the present application has been filed by the Power of Attorney of the plaintiff and he is not having any personal knowledge about the said document. Further, the original



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document is not either annexed to the original plaint, or subsequent to the plaint. The order of this Court in the leave to sue application, is also not produced before this Court. Further, the applicant has filed several applications, one of which is for amendment and also recognising the Power of Attorney and all the applications were allowed.

9. The suit is pending from the year 2019. In the meanwhile, both the plaintiff and the defendants have filed draft Case Management Schedule and based on that, this Court also fixed hearing date for recording evidence, which reads as follows:

Date	<i>Stage</i>
22.01.2024 to 29.01.2024	Chief Examination of the plaintiff's witness No.1 along with filing of the proof affidavit and marking of documents filed by the plaintiff's witness No.1
30.01.2024 to 03.02.2024	Cross Examination of the plaintiff's witness No.1 by the defendants
05.02.2024 to 09.02.2024	Chief Examination of the plaintiff's witness No.2 along with filing of the proof affidavit and marking of documents filed by the plaintiff's witness No.2
12.02.2024 to 16.02.2024	Cross Examination of the plaintiff's witness No.2
26.02.2024 to 01.03.2024	Chief Examination of the defendant's witness No.1 along with filing of the proof affidavit and marking of documents filed by the defendant's witness No.1



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Date	Stage
04.03.2024 to 08.03.2024	Cross examination of the defendant's witness No.1
11.03.2024 to 15.03.2024	Chief Examination of the defendant's witness No.2 along with filing of the proof affidavit and marking of documents filed by the defendant's witness No.2
18.03.2024 to 22.03.2024	Cross examination of the defendant's witness No.2
25.03.2024 to 29.03.2024	Chief Examination of the defendant's witness No.3 along with filing of the proof affidavit and marking of documents filed by the defendant's witness No.3
01.04.2024 to 05.04.2024	Cross examination of the defendant's witness No.3
08.04.2024 to 12.04.2024	Chief examination of the defendant's witness No.4 along with filing of the proof affidavit and marking of documents filed by the defendant's witness No.4
15.04.2024 to 19.04.2024	Cross examination of the defendant's witness No.4
3 weeks after the date of completion of defendants side of evidence	commencement of final Arguments

While so, the applicant/plaintiff has appeared before the learned Master concerned on 22.01.2024. Thereafter, the suit was adjourned to 24.01.2024 for filing Proof Affidavit of P.W.1. On 29.01.2024, the plaintiff has filed the Proof Affidavit and marked the documents as Ex.P1 to Ex.P11. However, the evidence on the plaintiff's side was not completed by marking of documents through P.W.1 quite long time. Therefore, the learned Master concerned closed the evidence and referred



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the case to this Court. Thereafter, the applicant/plaintiff has not taken any steps to re-schedule the Case Management Schedule. Now, the applicant /plaintiff has come forward with the present application after four months i.e., on 17.04.2024 to mark the Xerox copy of the Annexure-2 as a document.

10. It is settled proposition of law that, as per Order XI Rule 1-(1) (a) of the amended Code of Civil Procedure, all the documents have to be filed along with the plaint itself. In case of failure to file those documents, the same shall be filed within 30 days and beyond 30 days, it is not permissible. Though in this case they did not file the original document, this Court permitted the plaintiff to file Annexure-2 as a document and admittedly they have not produced. Though the applicant has stated that his erstwhile counsel handed over the said document to his clerk, but they are no more. However, Annexure-2 is not forming part of the mortgage deed. The said Annexure-2 is not attached with any registered document or public document. Without marking or producing the original document



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for comparison, the Xerox copy of the same cannot be marked as a document.

11. For the foregoing reasons, this Court is not satisfied with the reasons stated in the affidavit filed in support of this application, as the applicant has not met out the provisions of Order XI Rule 1-(1) (c) (ii) of the amended Code of Civil Procedure and Section 65 of the Indian Evidence Act. Therefore, this application is dismissed.

12. List the suit for hearing on 05.08.2024.

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