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C.R.P.(PD).No.2130 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2130 of 2021

and

C.M.P.No.16160 of 2021

Shanthi

... Petitioner

VS

Siva Kumar

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition by setting aside the Fair and Decreetal Order of the learned II Additional District Judge, Tirupur dated 12.12.2021 in I.A.No.1435 of 2018 in O.S.No.288 of 2015.

For Petitioner : Mr.T.M.Hariharan

For Respondent : Unclaimed



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioner/1st defendant seeking to dismiss the suit as 1st respondent/plaintiff failed to produce Succession Certificate as per the requirement under Section 214 of Succession Act.

2. The respondent herein filed a suit for recovery of money against the petitioner. It is the case of the respondent that the petitioner borrowed a sum of Rs.20,00,000/- on 04.12.2012 from one Soundararajan and the respondent herein and executed promissory note. It was also averred by the respondent that as a security for loan borrowed by the petitioner on 05.12.2012 the petitioner deposited her title deeds relating to the suit properties with the respondent with intention to create equitable mortgage. Therefore, the present suit has been laid seeking a preliminary mortgage decree for a sum of Rs.27,18,000/- together with interest at the rate of 12% per annum as petitioner failed to repay the amount borrowed by her.



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3. It is also stated that co-creditor Soundararajan died leaving behind his mother-Saraswathi as his legal representative. Since Saraswathi did not co-operate for filing a suit for recovery of money, she was arrayed as 2nd defendant in the suit along the revision petitioner. It was the specific case of the respondent that he and Soundararajan paid a sum of Rs.10,00,000/- each to the petitioner.

4. The petitioner herein filed the instant application seeking to dismiss the suit on the ground that suit filed by the respondent against the petitioner and Saraswathi without producing Succession Certificate is not maintainable.

5. The learned counsel for the petitioner by relying Section 214 of Indian Succession Act, submitted that no decree shall be passed against the debtor of a deceased person for payment of debt amount to a person claiming himself as a successor of the deceased without production of Succession Certificate.



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6. Section 214 of Indian Succession Act will be applicable only if the suit is filed by person claiming himself as a successor of the deceased.

7. In the case on hand, the respondent is a co-creditor along with deceased, it is his specific case he paid half of the debt amount to the petitioner. Therefore, the suit has been filed by him in his individual capacity not as successor of the deceased. Therefore, the suit filed by respondent cannot be dismissed on the ground that he failed to produce succession certificate as mandated under Section 214 of Indian Succession Act.

8. While dismissing the present application, the Court below said whether the suit filed by the respondent is maintainable and whether he is entitled to initiate proceedings for recovery of money when 2nd defendant refused to co-operate with him etc., are all the matters to be decided at the time of final disposal of the suit. Hence, the right of the petitioner to make submission under Section 214 of the Indian Succession Act is reserved. Therefore, subject to the said right, the present petition filed by the petitioner has been dismissed. When the petition filed by petitioner is dismissed subject



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to his right to raise the very same point in the final disposal of suit, the petitioner is not at all aggrieved by order impugned. Hence, I do not find any illegality or irregularity in the order passed by the Court below.

9. Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

31.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The II Additional District Judge,
Tirupur.



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S.SOUNTHAR, J.

dm

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