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C.R.P. (PD) .Nos.4786 & 4789 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).Nos.4786 & 4789 of 2024
and C.M.P.Nos.26780 & 26783 of 2024

C.R.P.(PD).No.4786 of 2024:

Suneetha

.. Petitioner

Vs.

K.Pramod

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.06.2024 passed by the learned VI Assistant City Civil Court, Chennai, in I.A.No.4 of 2023 in O.S.No.4357 of 2022.

C.R.P.(PD).No.4789 of 2024:

Suneetha

.. Petitioner

Vs.

Kantilal (Deceased)

1.Raju

2.Pramod



3.Nita

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.06.2024 passed by the learned VI Assistant City Civil Court, Chennai, in I.A.No.6 of 2023 in O.S.No.4358 of 2022.

(In both cases):

For Petitioner : Mr.S.Sathish Kumar

COMMON ORDER

These civil revision petitions are arising against the order passed by the VI Assistant City Civil Judge, Chennai, in I.A.No.4 of 2023 in O.S.No.4357 of 2022 & in I.A.No.6 of 2023 in O.S.No.4358 of 2022.

2.For the sake of convenience, O.S.No.4357 of 2022 will be treated as a lead case.

3.O.S.No.4357 of 2022 is a suit filed for recovery of money of a sum of Rs.5,00,000/-. According to the plaintiff, the defendant / civil revision petitioner is the daughter of one Sathrasala Sugunakar, who is a Trustee of



'M/s.Sathrasala Venkatachalam Chetty Charities'. The plaintiff is a tenant under the said trust. He pleaded the civil revision petitioner wanted some amounts for the purpose of purchasing a property. On the recommendation of Mr.Sugunakar, the plaintiff advanced the amount to the defendant. The payment was made through RTGS. As the amounts were not returned as promised by the defendant, he filed a suit for recovery of money. In the plaint, it was pleaded as follows:

“5.In respect of the said promissory note, the defendants failed to pay any money either towards principal or towards interest.”

4.Being an Under Chapter suit, the defendant filed an application seeking leave to defend in I.A.No.3 of 2022. In this application, it was pointed out that there was no promissory note, on the basis of which the suit has been presented. The defendant specifically pleaded that the plaintiff has alleged that the amount of Rs.5,00,000/- is a suit based on a promissory note. However, the said promissory note has not been filed at the time of presentation of the plaint.



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5.The plaintiff taking note of this lacuna, filed an application to amend the plaint in I.A.No.4 of 2023. In the said affidavit, he has stated that instead of typing it as a suit loan, by typographical error, it was typed as promissory note. This application was resisted by the defendant stating that they had already filed an application seeking leave to defend and the said application was reserved for orders. The defendant stated that it is their specific case in the leave to defend application that there is no promissory note. Therefore, to substitute the words “promissory note” with “suit loan”, will change the character of the suit. Hence, they pleaded for dismissal of the petition.

6.The learned Trial Judge held as it is a typographical error and being a pre-trial amendment, the same deserves to be allowed. Hence, this revision.

7.I heard Mr.S.Sathish Kumar for the civil revision petitioner.

8.Mr.S.Sathish Kumar pleads that on account of the amendment, a crucial defense is lost to the civil revision petitioner. He states that the suit was numbered as an Under Chapter suit, only on account of the fact that the



plaintiff has pleaded it is a suit on a foot of a promissory note. If the amendment is granted, the suit is no more a suit on a foot of a promissory note, but it is converted as ordinary suit for recovery of money. He further states that on account of the amendment, he loses a vital defense questioning the very numbering of the plaint as an Under Chapter Suit. Therefore, he pleads that the order of the learned Trial Judge deserves to be set aside.

9.I have carefully considered the submissions of Mr.S.Sathish Kumar.

10.Both the suits are suits for recovery of money. By virtue of the amendment, deleting the word 'promissory note' and including the word 'suit loan', the suit is not converted into a suit of any other form. It continues to be a suit for recovery of money. Mr.S.Sathish Kumar is right that in case a suit does not comply with the requirements of Order XXXVII Rule 1 (a) & (b) of the Code of Civil Procedure, then it cannot be received as an Under Chapter suit. That is a consideration which has to be gone into, by the Court, at the time of dealing with the application for leave to defend. It is certainly not a consideration at the time of granting the amendment.



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11.At the time of granting amendment, I have to see whether the amendment changes the cause of action or changes the very frame of the suit.

The cause of action in the present case continues to be the alleged default in the repayment of money that had been advanced by the plaintiff to the defendant.

12.The suit continues to be a suit for recovery of money. As there is no change in cause of action or the frame of the suit, I am not inclined to entertain these revisions. It is open to Mr.S.Sathish Kumar's client to plea that the suit ought not to have been numbered as an Under Chapter suit.

13.In the result, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

26.11.2024

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Index : Yes / No
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To

The VI Assistant Judge,
City Civil Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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