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S.A.No.314 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.11.2025
Pronounced on	10.12.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.314 of 2023 and C.M.P. No.9455 of 2023

M/s. Kotak Mahindra Bank Limited
Represented by its authorised Signatory
Mr. G. Ramachandran Srikanth,
Asset Reconstruction Division,
5th Floor, Samson Towers,
No.402-L, Pantheon Road,
Egmore, Chennai 600 008.

...Appellant

Vs.

1. A. Anand Prasad
2. A. Indira Anand
3. A. Manohar Prasad
4. M/s. Ravishankar Industries Pvt. Ltd.
Rep by the Provisional Liquidator
Corporate Bhawan, Second Floor
No.29, Rajaji Salai, Chennai 600 001.



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5. A. Lakshmi Anandhi
6. A. Anjali Krishna Mani
7. A. Chandini Prasad
8. The Recovery Officer,
Debts Recovery Tribunal II, Chennai
Having Office at 6th Floor
Additional Office Building, Shastri Bhavan
Haddows Road, Nungambakkam
Chennai 600 006.

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 14.02.2023 passed in A.S. No.80 of 2022, on the file of the VII Additional Judge, City Civil Court, Chennai, reversing the Judgment and decree dated 06.09.2022 passed in I.A. No.5 of 2022 in O.S.No.7963 of 2021 of 2014, on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Appellant	: Mr. H. Karthik Seshadri
For Respondents	: Mr. V. Raghavachari, Senior Advocate for Ms. V. Srimathi for R1 Ms. Shubharanjani Ananth for R5 and R6 R2 to R4, R7 and R8 – No appearance.

JUDGMENT

Feeling aggrieved and dissatisfied with the impugned order dated



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14.02.2003, passed in A.S.No.80 of 2022 on the file of the learned VII Additional Judge, City Civil Court at Chennai, reversing the judgment and decree in I.A. No.5 of 2022 in O.S. No.7963 of 2021 dated 06.09.2022 on the file of the VI Assistant Judge, City Civil Court, Chennai, the present Second Appeal has been preferred by the appellant Bank.

2. The suit has been filed by the plaintiff for the following reliefs:

(a) for a declaration that the Memorandum of Oral Family Arrangement dated 05.04.2022 is valid and binding;

(b) for a permanent injunction restraining the 7th defendant, their men, agents and subordinates from interfering with the plaintiff's peaceful possession and enjoyment of the suit property except by due process of law and for costs.

3. The facts leading to the present appeal are as under:



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3.1. One L.V.Prasad executed a Will dated 27.09.1990 by which he bequeathed the suit property in favour of his two grandsons, namely, A.Ravishankar Prasad and A. Manohar Prasad to manage the property as kartha of their respective joint families. M/s. Ravishankar Industries, availed a loan of Rs.2,00,00,000/- from M/s. Ind Bank Merchant Banking Services Limited in the year 1994-95 in the nature of lease of imported machinery and Airconditioning equipments with Mr.A. Manohar Prasad and Mr.A.Ravishankar Prasad as guarantors. On account of the default in repayment of the said dues, the said M/s.Ind Bank Merchant Banking Services Limited, filed a suit in C.S. No.225 of 1999 before this Court for recovery of Rs.1,64,27,003.57/- from Ravishankar Industries and his guarantors Mr.A.Ravishankar Prasad and Mr. A. Manohar Prasad. During the pendency of the said civil suit, a compromise was arrived at between the parties therein and accordingly, consent terms were entered into between them on 30.11.2000. A Memo of Compromise along with the consented terms was filed before this Court and a Consent Decree was passed by this Court on 11.12.2000 in the said C.S. No.225/1999. The



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Will executed by Late Mr.L.V.Prasad, was accorded a probate by this Court on 22.11.2001 in TOS No.45 of 1995. As the defendants in C.S. No.225/1999 failed to abide by the terms and conditions of the said Compromise Decree and committed default in paying the dues as per the said Compromise Decree dated 11.12.2000, the said M/s.Ind Bank Merchant Banking Services Limited, filed the Execution Petition in E.P. Nos.45, 46 and 47 of 2005 before this Court. On 11.04.2005, the said Execution Petitions were allowed and M/s.Ind Bank Merchant Banking Services Limited, was permitted to attach and sell the properties of the defendants, more particularly the house property at Adyar and land properties at Manapakkam. Thereafter, assignment was made to M/s.Kotak Mahindra Bank Limited, the appellant herein, by the decree holder. The said Bank, thereafter, filed O.A. No.84/2011 before the DRT II, Chennai, and obtained an order dated 13.12.2011, directing Mr.A.Manohar Prasad and Mr.A.Ravishankar Prasad to pay a sum of Rs.15,14,19,212/- together with interest at 24% per annum from the date of filing of the O.A., till the date of realization, with costs to Kotak Mahindra Bank Limited. On 13.12.2011 an order of attachment was



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passed by the learned Tribunal in I.A. No.216/2011, as per Section 19(13), 13(B) of Recovery of Debts due to Banks and Financial Institutions Act, 1993. On 19.11.2012, the learned Tribunal ordered for issuance of a recovery certificate in O.A. No.84/2011, for realization of the said dues. Accordingly, a Recovery Certificate was issued on 11.01.2013 in DRC No.5/2013. The order dated 19.11.2012 passed in O.A. No.84/2011 was challenged by the respondents therein by way of an appeal bearing AIR No.9/2013 and the same was dismissed on 07.07.2015 by the learned Debt Recovery Appellate Tribunal, on account of non payment of the pre deposit amount. Thereafter, the children of Mr.A.Manohar Prasad, namely, Anand Prasad and Chanthini, filed an application bearing M.A. No.157/2016 in I.A. No.216/2011 in O.A. No.84/2011 seeking release of the property situate at Manapakkam to the extent of 3 acres.

3.2. On 04.02.2017, the Recovery Officer of DRT II, Chennai, passed an order of attachment of the Adyar property on 04.02.2017 on the basis of the Recovery Certificate issued in DRC No.5/2013. The



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Recovery Officer on 20.12.2017, passed an order in DRC No.5/2013, directing to take physical possession of the property in dispute as per Section 25 (aa) of RDB Act, 1993, and appointed Advocate Commissioner for taking possession of the said property. While so, the mother of Mr.A.Manohar Prasad, namely Mrs. Indira Anand, who is also the grandmother of Anand Prasad / the plaintiff in the present suit, filed an application in M.A. No.20/2018 in DRC No..5/2013 before the Recovery Officer seeking to recall the order dated 20.12.2017 passed in DRC No.5/2013. The said application was dismissed on 31.01.2018 by the Recovery Officer. Thereafter, the said Anand Prasad filed applications in M.A. Nos.44 and 45 of 2018 before the Recovery Officer, seeking stay of the operation of the order dated 31.01.2018 passed in M.A. No.20/2018.

3.3. On 12.02.2018, the Recovery Officer issued a direction to break open the disputed premises based on the report of the Advocate Commissioner. Aggrieved by this, the said Anand Prasad filed a Writ Petition bearing W.P. No.3590 of 2018 and obtained an *ex parte* order



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dated 16.02.2018 restraining the 'Appellant Bank' from taking physical possession of the property. The Bank filed a detailed counter affidavit stating that the alleged family arrangement is an unregistered settlement deed which is forged and fabricated. Thereafter, the Writ Petition was withdrawn. On 23.02.2018, the applications in M.A. Nos.44 and 45 of 2018 were dismissed by the Recovery Officer. The said Indira Anand filed another application in M.A. No.62/2018 before the Recovery Officer for lifting of attachment and the same was dismissed on 09.03.2018. Again, the daughter of A.Manohar Prasad, Chandini filed applications bearing M.A. Nos.58-61 of 2018 for lifting of attachment on the basis of the alleged family arrangement and the same was also dismissed on 13.03.2018. Similar applications filed by another family member Anjali Krishna Mani was dismissed as withdrawn. The said Anand Prasad challenged the order dated 23.02.2018 passed in M.A. Nos. 44 and 45 of 2018 by way of an appeal bearing Appeal No.7 of 2018 under Section 30 of the Debt Recovery Act. The said Appeal was allowed on 29.05.2018 on the ground that the Debt Recovery Tribunal had no jurisdiction to decide the validity of family arrangement and that

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the petitioner ought to first exhaust its remedy against the mortgaged property.

3.4. The appeal filed by Indira Anand in M.A.20/2018 was dismissed by the Recovery Officer by order dated 09.03.2018 and the appeal preferred against the said Order in A.R. No.127 of 2018 was also dismissed by the appellate tribunal on 07.09.2018. Thereafter, the appellant bank filed an appeal in M.A. No.11/2019 against the order dated 29.05.2018 passed in A.P. No.7/2018 in M.A. Nos.44 and 45 of 2018 in DRC No.5/2013 before DRAT and the same was partly allowed on 24.10.2019 holding that the Bank has a right of recovery of balance due amount from Adyar property and the order of attachment passed by the Recovery Officer was also confirmed. The appellant Bank filed a Writ Petition bearing W.P. No.33319 of 2019 before this Court challenging the order dated 24.10.2019 passed by the DRAT in M.A. No.11/2019. The 1st respondent also filed a Civil Revision Petition bearing CRP No.73/2021 seeking to set aside the order dated 24.10.2019 passed by the DRAT in M.A. No.11/2019. Since there was no police



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assistance to recover the Adyar property, the appellant Bank was constrained to file a Writ Petition bearing W.P. No.1409/2021 before this Court seeking necessary police assistance for executing the warrant by the Advocate Commissioner for taking possession of Adyar property. This Court, by interim order dated 22.01.2021 directed the police authorities to give necessary assistance to the Advocate Commissioner. While so, Mrs. Indira Anand and her daughter filed an intervention application bearing WMP No.2237/2021 in W.P. No.1409 of 2021 seeking to recall the order passed by this Court on 22.01.2021. On 14.07.2021, this Court passed orders in W.P. No.33319/2019 and CRP No.73/2021 and set aside the order passed by the learned Tribunal on 29.05.2018 and gave liberty to the appellant Bank to proceed freely against all the properties of the debtors, be they borrowers or guarantors in accordance with law. This order was challenged by the 1st respondent by way of Special Leave Petition bearing SLP(C)No.13613 and 13614 of 2021 which was dismissed by the Hon'ble Supreme Court on 08.10.2021. Thereafter, the said Anand Prasad, the 1st respondent herein filed the above suit in O.S. No.7963/2021 before the City Civil Court Chennai,

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seeking, inter alia, a declaration that the Memorandum of Oral Family Arrangement dated 05.04.2002 is valid and binding and to injunct the Recovery Officer from interfering with his possession. He had also filed an application I.A. No.3/2021 in O.S. No.7963 of 2021 seeking an ad interim injunction against the Recovery Officer from interfering in the peaceful possession and enjoyment by the plaintiff over the suit property till the disposal of the suit. Since the appellant Bank was unable to take possession of the property, filed a Writ Petition bearing W.P. No.405/2022 for appropriate relief. In pursuant to the order passed on 12.01.2022 by this Court in the above Writ Petition, the Advocate Commissioner was able to take possession of the first floor of the attached property on 12.04.2022 and granted 10 days time to vacate the entire premises based on written undertaking by the occupants. In the meanwhile, the 1st respondent filed a Civil Revision Petition in CRP No.1456/2022 before this Court, challenging the order dated 01.11.2021 passed in I.A. No.3/2021 refusing to grant interim injunction in which a status quo order was passed by this Court 22.04.2022 directing the Recovery Officer not to take delivery of the ground floor of the property



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in question till 27.04.2022, i.e., until the trial court disposes I.A.

No.3/2021. In the above Revision Petition and in the suit, the 1st respondent had only made the Recovery Officer a party. The appellant Bank filed an application in C.M.P. No.7949 and 7945 of 2022 seeking impleadment in CRP No.1456 of 2022 and in O.S. No.7963/2021 along with applications to recall the order dated 22.04.2022 passed in CRP No.1456/2022 and sought dismissal of the plaint in O.S.No.7963/2021. This Court, by order dated 27.05.2022, allowed the implead petitions and directed the appellant Bank to raise all contentions regarding maintainability of the suit in O.S. No.7963/2021 before the trial court. This Court also directed the trial court to take up I.A. No.3/2021 within a period of 15 days and granted an order of status quo till then. The SLP filed by the appellant against the order dated 27.05.2022 was dismissed with a direction to the trial court to decide the reject plaint application and injunction application within a period of 8 weeks. On 06.09.2022, the VI Assistant City civil Court rejected the suit in O.S. No.7963/2021 as being an abuse of process and relitigation. All the family members of the 1st respondent remained ex parte in the suit. The 1st respondent filed



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appeal against the judgment of the VI Assistant Judge, City Civil Court in A.S. No.80/2022. The first appellate court allowed the appeal suit setting aside the order passed by the VI Assistant Judge, City Civil Court and the suit in O.S. No.7963/2021 was ordered to be restored to file.

3.5. Thus, the appellant Bank has preferred this Second Appeal.

4. The Second Appeal has been admitted on the following substantial questions of law.

"i) Whether the Appellate Court was justified in restoring the plaint in O.S.No.7963 of 2022 reversing the order of the trial Court in rejecting the plaint by holding that the suit was liable to be rejected on principles of res judicata and relitigation?

ii) Whether the Appellate Court ought to have noticed that the so-called MoFA was a collusive document brought into existence between Respondent Nos.2, 3 and father of Respondent Nos.5 and 6 and even if it is held to be a genuine document, would not bind any third party creditors



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iii) Whether the Appellate Court failed to see that there were no triable issues in the suit in as much as there were no prayers that are sought against the Appellant / 8th Respondent?

iv) Whether the Appellate Court failed to see that no suit would lie against the 8th Respondent herein as it is barred by Section 33 of the RDB Act?"

5. Mr. H. Karthik Seshadri, the learned counsel for the appellant / Bank submits that, the grandsons of Mr. L.V. Prasad, namely, Manohar Prasad and Ravishankar Prasad, along with their mother Mrs.A.Indirani Anand are alleged to have entered into a family arrangement which is an unregistered deed fabricated to delay the recovery proceedings. Even in the applications filed by the plaintiff in M.A. No.157/2011 before the Debt Recovery Tribunal, Chennai-2, there is no whisper of the alleged family arrangement. The present suit is nothing but re-litigation and the

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rights of the plaintiff and the defendants 1 to 6 in respect of the suit property is already determined finally. The Bank's right to proceed against the same in accordance with the Recovery of Debts and Bankruptcy Act, 1993, stands concluded in favour of the Bank. Even if the relief prayed by the plaintiff is granted, it will not have any binding effect on the Bank. The injunction prayer sought by the plaintiff cannot be granted in view of the express bar under the statute, i.e., RDB Act. No injunction can be granted against the Recovery Officer in discharge of his duties and function under Section 33 of RDB Act, 1993. It is submitted that RDB Act is a comprehensive enactment made with the object of early and speedy recovery of dues to banks and financial institutions. The plaintiff had already exhausted his remedies under the RDB Act and cannot re agitate the same before the Civil Court when there is an express bar under the said Act. The plaintiff and the defendants 1 to 6 are adopting illegal tactics to deny the bank of its ability to execute the recovery certificate as against the suit property. Hence, the appellant Bank filed an application in I.A. No.5/2022 in O.S. No.7963/2021 which was erroneously rejected by the first appellate

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court, which warrants interference by this Court. In support of his contention, he has relied on the following judgments:

- 1. Vadlamannati Venkatanarayana Rao vs. Gottumukkula Venkata Somaraju reported in ILR 1937 Mad 880***
- 2. S.M. Jakati & Another vs. S.M. Borkar & Ors reported in AIR 1959 SC 282.***
- 3. T. Arivanandam vs. T.V. Satyapal & another reported in (1977) 4 SCC 476.***
- 4. Shipping Corporation of India Ltd., vs. Machado Brothers & others reported in (2004) 11 SCC 168.***
- 5. Punjab National Bank vs. J. Samsath Beevi & others reported in (2010) 3 CTC 310.***
- 6. Venkataraja & others vs. Vidyane Doureradjperumal and others reported in (2014) 14 SCC 502.***

6. On the other hand, Mr. V. Raghavachari, learned Senior Advocate appearing for Ms. V. Srimathi, learned counsel on record for the 1st respondent and Ms. Shubaranjani Anath for the respondents 5 and



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6 submits that, the above suit was filed by the 1st respondent / plaintiff for declaring the Memorandum of Family Arrangement dated 05.04.2002 valid and binding and for permanent injunction against the Recovery Officer, namely the 7th defendant from proceeding with the suit property except by due process of law. The learned Senior counsel would contend that, the appellant Bank had already filed an application to reject the plaint under Article 227 of the Constitution in C.M.P. No.7939/2022 before this Court and the same was dismissed directing the appellant Bank to get itself impleaded in the present suit and place its contentions. Hence, the present petition to reject the plaint filed under Order 7 Rule 11 of the Code is devoid of merits. He would submit that, this Court by its order dated 27.05.2022 in CRP(PD) No.1456/2022 has categorically held that the question of whether the property would be ancestral in the hands of the 2nd defendant Manohar Prasad and his brother Late Ravishankar Prasad has not been decided in any forum. The Hon'ble Supreme Court declined to interfere with the said order passed by the learned Single Judge. He would further contend that the principles of Res Judicata would apply only when there is a previous suit between the



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same parties in an issue directly and substantially an issue as in the present suit between the same parties under whom they or any of them to be litigating under the same title in a competent Court to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard by such court. Even in the application filed by the appellant Bank to reject the plaint, nothing is disclosed about any previous suit on the same issue as to the validity on the Memorandum of Family Arrangement dated 05.04.2002 , decided between the plaintiff and the defendants. Therefore, the plaint cannot be rejected on the principles of *Res Judicata*. The plaintiff derives his right in respect of the suit property from and under the Will of his Late great grandfather and the same has been probated. Therefore, as long as the plaintiff has the right, he has the remedy in accordance with law. Such remedy is found under Section 29 of the RDB Act, 1993, read with Rule 11 (6) of the Second Schedule to the Income Tax Act, 1963. The purpose of making the Second Schedule of Income Tax Act applicable to Recovery Proceedings under DRT Act, mutatis mutandis is only because recovery is done pursuant to certificate of debt. The questions of title and

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determination of the character of the property can be decided only by a competent Civil Court and not by the Recovery Officer of the DRT. A distinct right is conferred on a party having objections to the actions taken by the Recovery Officer to challenge the steps of such Recovery Officer. Only after an elaborate enquiry in trial before a Civil Court, the rights of the parties can be determined. It is settled law that the plaint is to be tested under Order 7 Rule 11 of the Code only on a meaningful reading of the bare allegations in the plaint. The law laid down by the Hon'ble Supreme Court in the case of *Nahar Industrial Enterprises Ltd vs Hongkong & Shanghai Banking Corp* reported in **(2009) 8 SCC 646**, it has been held that a DRT constituted under the RDB Act is not a Civil Court, but only a court of civil jurisdiction. Hence, the jurisdiction of the Civil Court is not altogether barred or ousted. The right of the plaintiff emanates on the Will executed by Mr. L.V. Prasad. The said right cannot be defeated by a third party.

6.1. The further contention of the learned Senior Counsel



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appearing for the 1st respondent / plaintiff is that, the suit property is not included in the schedule of properties in the assignment. In Appeal No.7/2018, it was held that only the Civil Court can decide on the validity of MoFA and not the Tribunal. The order of the Tribunal was set aside by directing the Bank to proceed only against the property of borrower / guarantor and it was recorded that the 1st respondent / plaintiff is neither the borrower nor the guarantor. The said order was challenged by the appellant Bank in CRP(PD) No.1795/2018 and the same was dismissed holding that the Bank did not avail the alternative remedy. On 28.01.2019, the 2nd defendant executed a settlement deed in favour of the 1st defendant, settling 50% of his undivided share and for the remaining 50% of the share, the 1st defendant on the same day executed another settlement deed in favour of the plaintiff and his daughter, namely the 6th defendant. On 24.10.2019, the Debt Recovery Appellate Tribunal, partly allowed the appeal filed in M.A.11/2019 preferred against Appeal No.7/2018 dated 29.05.2018 holding that the Recovery Officer can proceed with the Adyar property only if the money recovered from Andhra property and Mumbai property is insufficient. In the interregnum,



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this Court in I.P.5/2013 declared that the Civil Court Decree based on which appellant Bank claims its right were declared as a nullity, against which appeal is pending.

6.2. The further contention of the learned senior counsel is that the appellant Bank preferred a Writ Petition on 14.07.2021 in W.P. 33319/2019 against the DRAT order dated 24.10.2019 and the same was disposed of with a modification that the appellant Bank could proceed with all properties in accordance with law, against which SLP (C) Nos.13613-13614 of 2021 were filed and the same were dismissed on 08.10.2021; that in terms of Rule 11(6) of the Second Schedule to Income Tax Act and in terms of Section 29 of the RDDBFI Act, a Civil Suit is maintainable to establish the right / claim of an objector. Hence, the 1st respondent/plaintiff filed the present suit for declaring the MoFA dated 05.04.2002 as valid and binding; that the certificate holder / creditor was aware that the remaining properties were available with the Bank, free from encumbrance and they ought to have been proceeded first and that the attachment proceedings under the Recovery Officer



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cannot extinguish or override the pre existing right of the plaintiff in the joint family property. He would further submit that it is settled law that the jurisdiction of the Civil Court is not ousted in respect of declaration of civil rights in immovable properties unless expressly barred as held in (2025) 4 SCC 38 (Central Bank case) and (2003) 6 SCC 220.

6.3. His further submission is that plaint cannot be rejected on the ground of *res judicata* and that the allegation that the MoFA is collusive or fraudulent cannot constitute a ground for rejection of the plaint under Order 7 Rule 11 CPC. The question of collusion is a disputed question of fact which requires elaborate evidence and can only be determined at the stage of trial. Hence, the plea of collusion cannot be a ground to non suit the plaintiff at the threshold. The plaintiff asserts his pre existing right in the ancestral property which is independent of any claim or liability of his father. The attachment order obtained by the creditor cannot operate beyond the right title and interest of the debtor himself and cannot encroach upon the share of the plaintiff. Hence, the plaint cannot be rejected on the ground of re litigation and collusion. Moreover, the

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Tribunal has no jurisdiction to decide the validity of MoFA and that, only the Civil Court is competent to adjudicate such issues of title and family arrangement. Any attachment or charge claimed by a creditor would extend only to the debtor's individual share and cannot override or diminish the lawful rights of the plaintiff. The plaint discloses substantial issues requiring trial. The plaintiff being the son of the 2nd defendant holds 25% undivided share in the joint family property. His right is a pre existing coparcenary interest independent of his father's liabilities. The reliefs sought in the suit can be determined only on evidence. His further contention is that Section 33 of RDB Act, 1993, does not oust the jurisdiction of Civil Courts nor bar the filing of the civil suit. Where an officer purports to act beyond jurisdiction or interferes with property not belonging to the judgment debtor, the bar under Section 33 cannot be invoked, since such action cannot be said to be in good faith or in pursuance of the Act and that the present suit is maintainable in view of the express statutory right conferred under Rule 11(6) of the Second Schedule to the Income Tax Act, 1961, which applies mutatis mutandis to recovery proceedings under the Recovery of Debts and Bankruptcy Act,



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1993 by virtue of Section 29 thereof. The first appellate court considering the above facts and legal aspects rightly rejected the petition filed by the appellant Bank under Order 7 Rule 11 CPC which warrants any interference by this Court and prays for dismissal of the Second Appeal. To support his contentions, the learned counsel has relied upon the following judgments.

1. Jageshwari Devi vs. Shatrughan Ram

reported in (2007) 15 SCC 52.

2. Sajjan Singh vs. Jasvir Kaur

reported in 2023 Livelaw (SC) 517.

3. Gurdev Singh vs. Harvinder Singh

reported in (2022) Live Law (SC) 963.

4. Madhav Prasad Aggarwal vs. Axis Bank Ltd.,

reported in (2019) 7 SCC 158.

5. Popat and Kotecha Property vs. State Bank of India Staff

Association reported in (2005) 7 SCC 510

6. H.S. Deekshit & Another vs. Metropoli Overseas Limited &

others reported in 2022 SCC Online SC 2024.



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7. *Eldeco Housing & Industries Limited vs. Ashok Vidyathi &*

Others reported in 2023 Livelaw (SC) 1033.

8. *Srihari Hanumandas Totala vs. Hemant Vithal Kamat*

reported in (2021) 9 SCC 99.

9. *Keshav Sood vs. Kirti Pradeep*

reported in 2023 Livelaw (SC) 799.

7. Heard the learned counsel appearing on behalf of the respective parties at length.

7.1. As the suit is filed for injunction challenging the decree passed by the Recovery Officer, DRT, the appellant Bank has filed application to reject the plaint in exercise of powers under Order 7 Rule 11 (d) of the Code of Civil Procedure. The application was allowed by the learned trial court, which was reversed by the first appellate court. Therefore, the short question which is posed for consideration of this Court is, whether the suit filed by the plaintiff is liable to be rejected in exercise of powers under Order 7 Rule 11(d) of the Code of Civil



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Procedure or not. Admittedly, a plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provisions are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and merit less, the Court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to read as a whole to find out whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendants are wholly immaterial while considering the prayer of the defendants for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole



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on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the Court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

7.2. While considering the above said issue / question, a few decisions of the Hon'ble Apex Court on exercise of powers under Order 7 Rule 11 (d) of the Code of Civil Procedure are required to be referred to and considered.

7.2.1. In *T. Arivandandam* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] , while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, the Hon'ble Apex Court in para 5 has observed and held as under : (SCC p. 470)



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“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.”

7.2.2. In Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust [Church of Christ Charitable Trust & Educational Charitable



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Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012)

4 SCC (Civ) 612] , the Hon'ble Apex Court in para 13 has observed and held as under : (SCC p. 715)

“13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

7.2.3. In *ABC Laminart (P) Ltd. v. A.P. Agencies [ABC Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163]*, the Hon'ble Apex Court explained the meaning of “cause of action” as follows : (SCC p. 170, para 12)



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“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”



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7.2.4 . In *Sopan Sukhdeo Sable* [*Sopan Sukhdeo Sable v. Charity*

Commr., (2004) 3 SCC 137] in paras 11 and 12, the Hon'ble Apex Court has observed as under : (SCC p. 146)

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 CPC is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 CPC.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 CPC. (see T.



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WEB COPY *Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4*

SCC 467])”

7.3. At the outset, it is required to be noted that there is already an order passed by the DRT against the principal borrower and the guarantor and the Recovery Certificate issued by the Recovery officer by order dated 19.11.2012 passed in O.A. No.84/2011 and in DRC No.5/2013. The alleged MoFA was said to have been executed in the year 2002 and the suit in O.S. No.7963/2021 was filed after a period of 19 years from the date of execution of the said family arrangement and after lapse of 9 years from the date of decree passed by the DRT on 19.11.2012. In the said suit, it is the case on behalf of the plaintiff to declare the MoFA dated 05.04.2002 is valid and binding and to injunct the Recovery Officer from interfering with his possession in the suit property.

7.4. Thus, basically the plaintiff is challenging the decree passed by the DRT. At this stage, it is required to be noted that in fact



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M/s.Ravishankar Industries Private Limited availed a loan of about of Rs.2,00,00,000/- from M/s. Ind Bank Merchant Banking Services Limited in the year 1994-95 in the nature of lease of imported machinery and Air conditioning equipments with Mr.A.Manohar Prasad (R2) and Mr.A.Ravishankar Prasad (Late) as guarantors. Since there was default in repayment of dues, the said Bank filed a suit in C.S. No.225/1999 for recovery of money in which a Compromise Decree was passed on 11.12.2000. As the defendants in the above suit failed to act in accordance to the terms and conditions stipulated in the Compromise Decree, Execution Proceedings were initiated. There was no whisper about the alleged family arrangement in the above proceedings, i.e., till 11.04.2005. Thereafter, assignment was made of all the debts to the appellant Bank by the decree holder. The appellant Bank filed an application in O.A. No.84/2011 before DRT II Chennai, and obtained an order against the respondents for payment of a sum of Rs.15,14,19,212/- together with 24% interest per annum by order dated 13.12.2011 and Recovery Certificate was issued on 11.01.2013 in DRC No.5/2013. Though the plaintiff preferred an application in M.A. No.157/2011



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before DRT, Chennai 2 seeking to release the property situate at Manapakkam, nothing is whispered about the alleged MoFA. No suit was also filed by the plaintiff at that point of time and only in the applications filed by Mrs. Indira Anand and Mrs.Chandini, mother and sister of Manohar Prasad, they have prayed for lifting of attachment on the basis of the alleged family arrangement. Thereafter, the plaintiff, son of Manohar Prasad, filed the present suit. It is true that only a competent Civil Court can decide the validity of family arrangement and about the nature of the property.

7.5. Having considered the pleadings and the averments in the suit, there is no reference to the deed of guarantee created by the guarantors. Even the appellant Bank was not a party to the suit. The appellant Bank on petition impleaded itself in the said suit. Be that as it may, considering the pleadings / averments in the suit, the same is found to be illusory and only with a view to get out of the judgment and decree passed by the DRT. As observed herein above, the plaintiff is claiming to declare the family arrangement dated 05.04.2002 as valid and binding. According to



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the averments in the plaint, the grandsons of Mr.L.V. Prasad, namely Manohar Prasad and Ravishankar Prasad and their mother Mrs. Indirani Anand entered into a family arrangement to effectuate the Will of Late Mr.L.V. Prasad. As per the said family arrangement, Mr. Manohar Prasad and Mr. Ravishankar Prasad relinquished their rights over their properties in favour of their mother Mrs. A. Indirani Anand, to hold the properties in trust for the benefit of minor children of Manohar Prasad and Ravishankar Prasad. It is to be noted that the said family arrangement is an unregistered deed said to have been executed subsequent to passing of the consent decree in C.S. No.225/1999 by this Court on 11.12.2000 in which the said Manohar Prasad and Ravishankar Prasad were parties. As observed herein above, even in the year 2016, when the plaintiff filed an application in M.A. No.157/2016 before the DRT to release the property situate at Manapakkam, there is no whisper of the suit MoFA.

7.6. It is not in dispute that the suit property is not included in the schedule of properties while assignment of all debts to the appellant



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Bank by the decree holder. However, in W.P. No.33319/2019, this Court by its order dated 24.10.2019 permitted the appellant to proceed with all properties in accordance with law. It is also not in dispute that on 12.04.2022, in pursuant to order dated 12.01.2022 in W.P. No.405/2022 1st floor of Adyar property was taken possession by the Advocate Commissioner with the assistance of the police. At that time, undertaking was given by the certificate debtors and the occupant that they will hand over the ground floor on 22.04.2022. Moreover, the Hon'ble Supreme Court in the order dated 03.07.2023 has observed as follows:

"We regret that an elderly lady who is stated to be having parkinson is being used by the respondents to keep occupation of the part of the premises as a result of which our order dated 15.05.2023 has not been implemented to the fullest extent. We have heard learned counsel for parties and at request of the respondents grant them three days time so that the lady is moved from the premises themselves and the Commissioner will complete the process. List on 17.07.2023. Learned counsel for the bank is not averse to the plea if the respondents move the



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Further in the order dated 17.07.2023, the Hon'ble Supreme Court has held as follows:

"The order has been complied with and thus no further directions are necessary. We had already noticed on the last date of hearing that the respondents want to move an application for seeking down payment settlement which is stated to be filed before Debt Recovery Tribunal. In our view, that is a call which Debt Recovery Tribunal has to take. The Special Leave Petition accordingly stands disposed of."

The plaintiff failed to disclose the above material facts and circumstances in the plaint, which he is duty bound to disclose.

7.7. The persons who stood as guarantors have executed the alleged unregistered deed of family arrangement after passing of the consent decree in C.S. No.225/1999, relinquishing their right in the suit property as well as property at Manapakkam. Since they failed to comply the terms of the consent decree, execution proceedings were initiated by



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the decree holder in the year 2005 in E.P. No.47/2005. Even at that point of time, no reference was made to MoFA while contesting the execution proceedings. Thereafter, the decree holder, vide deed of assignment, assigned the decree in C.S. No.225/1999 in favour of the appellant Bank. The appellant Bank on 11.05.2011 filed O.A. No.84/2011 against the judgment debtors in C.S. No.225/1999 for grant of recovery certificate in terms of the Recovery of Debts and Bankruptcy Act, 1993. On 13.12.2011, the Debt Recovery Tribunal, passed order in I.A. 216/2011 in O.S.84/2011 attaching the suit property at Adyar, Manapakkam property and property at T.Nagar and recovery certificate was issued on 19.11.2012 in O.A. No.84/2011. On 09.01.2013, debt recovery certificate was issued in favour of the appellant Bank by DRT in DRC No.5/2013 for an amount of Rs.20,72,92,541.91/- against the defendants D2 to D7, the certificate debtors along with interest at the rate of 24% per annum.

7.8. Thus, considering the over all facts and circumstance of the case, the suit filed by the plaintiff is vexatious, frivolous and nothing but an abuse of process of law and court. Considering the law laid down by

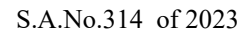


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the Hon'ble Supreme Court in catena of decisions referred above, more particularly in the case of **T.Arivanantham (supra)**, in which it is pointed out that the suit being vexatious and frivolous, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC. In the above referred judgment, it is pointed out that, “the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11 (a) CPC”. As observed herein above, the plaint is vexatious , frivolous, merit less and nothing but an abuse of process of law and Court. Therefore, this is a fit case to exercise the powers under Order 7 Rule 11(d) CPC. The first appellate court had materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11(d) CPC.

8. Coming to the question of Civil jurisdiction, the case of the plaintiff in the above suit, who is the son of A.Manohar Prasad / certificate debtor, is that, since Adyar property belongs to the family, irrespective of A. Manohar Prasad's admission as to being the 50% owner



8.1. No doubt, the issue with regard to exclusion of jurisdiction of court is no more *res integra*. However, to a very limited extent, action of the Civil Court can also be invoked, where for example, action of the secured creditor is alleged to be fraudulent or his claim is so absurd and untenable. In the present case it cannot be said that the action of the appellant Bank is either fraudulent or that its claim is so absurd or untenable which may not require any probe whatsoever. The present plaint appears to be a perfect example of clever drafting with intent to escape a regress of the action taken by the appellant Bank. The suit in O.S. No.7963/2022 was filed after the Hon'ble Supreme Court had dismissed SLP No.13613-14 of 2021 on 08.10.2021. Even in the above proceedings in SLP No.13613-14 of 2021, the plaintiff has raised all the grounds of objection to the appellant Bank taking possession of the



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Adyar property. Moreover, the orders passed in W.P. No.33319/2019 and CRP No.73/2021 specifically addressed the claims in relation to the Adyar property and has permitted the appellant Bank to proceed with its execution of its recovery certificate. Therefore, the question raised by the plaintiff in CRP No.73/2021 cannot be re-agitated. The order passed by the DRT II on 20.05.2018 rejected the similar contention of the plaintiff against which no appeal was preferred. Thus, the suit preferred by the plaintiff is nothing but clear abuse of process of law. Moreover, the framing of the suit itself will disclose that how it is cleverly drafted. The plaintiff sought a declaratory relief with regard to the alleged MoFA without any consequential relief. The suit is based on an illusory cause of action. The alleged MoFA is an unregistered document brought into existence by plaintiff and the defendants which is also inadmissible in evidence for want of registration. Even assuming that the said document is genuine, such a document will not bind third party creditors in respect of assets dealt with by them either as a karta or otherwise. Admittedly, the father of the plaintiff, his uncle are certificate debtors of the appellant Bank. Upon perusal of the plaint documents, it is seen that



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after the attachment of the properties, the father of the plaintiff executes a registered settlement deed favouring the grandmother of the plaintiff on 28.01.2019 and on the next day the grandmother executes a settlement deed in favour of the plaintiff. The recitals in the above documents would reveal that the Will dated 27.09.1990, executed by Late L.V. Prasad bequeathing his properties in favour of the plaintiff's father A. Manohar Prasad and his uncle Ravishankar Prasad, with absolute rights in equal share. Thus, the parties had clearly understood the purport of the Will executed by Late L.V. Prasad even after the execution of MoFA and the objections raised before DRT. Therefore, the submissions made on the side of the plaintiff that he is having independent right over the suit property is without any basis. The plaintiff has no independent right over the suit property. He is only an alienee from the 2nd defendant, father of the plaintiff, who is a certificate debtor. The appellant Bank identified the suit property as one of the assets, the certificate debtors were owning and possessed of. Therefore, the certificate debtors cannot seek to relinquish their ownership over the property so as to bind the third party creditor who already proceeded against it. It is well settled law that when



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a kartha contracts debts, unless the same is tainted by immorality the other coparceners cannot seek to disclaim the liability from the coparcenary property. Therefore, there is no triable issues in the suit. When none of the defendants have raised any issue concerning the MoFA, there is no cause of action to file a suit to declare the MoFA as valid. The reason for seeking such a declaration was not even explained in the plaint. No relief has been sought against the appellant Bank who is alone is pursuing against the suit property. From the above facts, it is understood that the purpose of the suit is to stop proceedings against the Adyar property by the Recovery Officer. Moreover, the 7th defendant being a statutory authority constituted under the RDB Act, 1993, is empowered to carry out all statutory functions. No injunction can be granted as against such an authority as there is a specific bar under Section 33 of the RDB act which reads as follows:

33. No suit, prosecution or other legal proceeding shall lie against the Central Government or against 1[the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal] or against the Recovery Officer for anything which is in good faith done or intended to be done in



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Therefore, the Recovery Officer is empowered by statute to carry out his duties and functions to execute any Recovery Certificate. No civil court can injunct him from performing his duties as the RDB Act specifically bars such suits. Moreover, the provisions of Rule 11(6) Income Tax Act, that the plaintiff seeks to rely upon has no application. Rule 11(6) IT Act is applicable only to genuine third parties and not to “defaulter or their representatives”.

8.2. This Court in the case of Punjab National Bank vs. J. Samasth Beevi ((2010) 3 CTC 310) has observed as follows:

" A Court is obliged to see if allegations of fraud and collusion made in the plaint are themselves a product of "fraud & collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spate in the number of Civil Cases filed against actions initiated by Bank & Financial Institutions, either under 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4



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- (i) Cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents submitted by borrowers to Banks;*
- (ii) Cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities;*
- (iii) Cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities; and*
- (iv) Cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the mortgage and that they are bona fide purchasers for value without notice of the encumbrance.*

In the present case, there is no whisper of any collusion or fraud between the borrowers and the Bank in the plaint. While so, the plaintiff, who is



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the son of the certificate debtors, seeks to disclaim liability incurred by his father and his uncle who did business jointly with Bank funds and suffered a decree acting as kartha for their respective branches. The plaintiff having exercised all his rights, right upto the Hon'ble Supreme Court of India resisting execution against the suit property and failed, seeks to re-litigate on the same facts. Therefore, the bar under Section 18 of the RDB Act will also apply to the facts of the present suit.

8.3. Applying the law laid down by the Hon'ble Apex Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case on hand and the averments in the plaint, I am of the opinion that the first appellate court has materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC.

9. In view of the above and for the reasons stated above, the Second Appeal succeeds. All the substantial questions of law are answered in favour of the appellant Bank. The impugned judgment and order passed by the first appellate court in A.S. No.80/2022 in dismissing



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the application filed under Order 7 Rule 11 CPC is hereby set aside.

Consequently, the plaint filed by the plaintiff in O.S. No.7963/2021 pending in the Court of VI Assistant City Civil Court, Chennai, is rejected. The instant Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

10.12.2025

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga



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- To
1. The VII Additional Judge, City Civil Court, Chennai.
 2. The VI Assistant Judge, City Civil Court, Chennai.
 3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
S.A.No.314 of 2023 and
C.M.P. No.9455 of 2023

10.12.2025