THE HIGH COURT OF JUDICATURE AT MADRAS

Date :27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

A.S.No.68 of 2025 & CMP.No.1137 of 2025

A.Thirumalai @ Thirumalai Selvam ... Appellant

Versus

P.M.Anbarangam ... Respondent

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to allow the above Appeal Suit by setting aside the judgment and decree dated 05.09.2023 in O.S.No.390 of 2018 on the file of the I Additional District and Sessions Court, Tiruvallur.

For Appellant : Mr.G.Ilangovan

For Respondent : Mr.A.E.Ravichandran

JUDGMENT

Challenging the decree and judgment of the trial Court decreeing the suit for a sum of R.12,30,000/- with interest at the rate of 12% per annum on the principal sum of Rs.5,00,000/- from the date of plaint payable within two months from the date of decree and on failure, the plaintiff may proceed against the suit schedule property, the present appeal has been filed by the unsuccessful defendant.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The case of the plaintiff is that the defendant has borrowed a sum of Rs.15,00,000/- agreeing to pay the said amount along with 24% interest while executing mortgage deed by mortgaging his property for a sum of Rs.5,00,000/-. Therefore, at the request of the plaintiff, for the remaining sum of Rs.10 lakhs four promissory notes each for a sum of Rs.2,50,000/- was given on the same day. As the amount has not been paid, the plaintiff issued a

legal notice to the defendant on 05.04.2014, which was replied by the defendant with false allegations. Again the plaintiff had issued second notice on 16.06.2015. As the mortgage amount has not been paid, the suit has been laid.

4. It is the contention of the defendant in the written statement that the plaintiff's father gave a loan to the defendant for which the defendant executed a mortgage deed in respect of the suit property in favour of the plaintiff agreeing to repay a sum of Rs.5 lakhs together with interest. At the time of execution of the mortgage deed, the rate of interest was mentioned as 2% p.a. rather than 1% per month. However, the plaintiff's father assured that the rate of interest shall be 1% per month. After the demise of plaintiff's father, when the defendant asked to give back four blank cheques and promissory notes, the same has not been returned. Promissory notes have been given for Rs.10 lakhs. The plaintiff sent a legal notice with false allegations which has been replied by the defendant on 30.06.2014. Hence, prayed for dismissal of the suit.

5. In the additional written statement filed by the defendant. It is

submitted that as the defendant has executed mortgage deed for Rs.5,00,000/- and executed four promissory for a total sum of Rs.10,00,000/- in respect of same transaction, the plaintiff cannot split the single loan transaction into two or multiple suits against the defendant, which is against the principles of double jeopardy. Hence, submitted that the suit is barred by Order II Rule 2 of Code of Civil Procedure.

6. In the reply statement, it is submitted that though mortgage deed and promissory notes have been executed on the same day, transactions are entirely different transactions and it is not a single transaction as alleged by the defendant.

7. On the basis of the above pleadings, the following issues have been framed by the trial Court :

1. Whether the defendant is liable to pay the suit claim amount?

2. Whether the plaintiff is entitled to the reliefs as prayed for?

3. To what other relief?

8. On the side of the plaintiff, plaintiff examined himself as P.W.1 and Ex.A.1 to Ex.A.4 have been marked. On the side of the defendant, the defendant examined himself as D.W.1 and Ex.B.1 to Ex.B.9 have been marked.

9. The trial Court considering entire evidence decreed the suit in favour of the plaintiff. Challenging the same, the present Appeal Suit came to be filed.

10. The main contention of the appellant is that the plaint itself proceeded as if the suit has been filed for recovery of a sum of Rs.5 lakhs, but according to the him, no leave has been obtained for filing a separate suit in respect of promissory notes. Therefore, the present suit is not maintainable in the eye of law. In support of his submissions, he had relied on the judgment of the Supreme Court in **Civil Appeal No.5527 of 2013 [arising out of SLP. [c] No.26157/2012 Coffee Board Vs. M/s.Ramesh Exports Pvt. Ltd.].**

11. Whereas, it is the contention of the learned counsel appearing for the respondent that question of obtaining leave does not arise at all. This is a simple suit for mortgage. The mortgage deed executed for a sum of Rs.5 lakhs which is admitted by the appellant. Merely because some promissory notes have been executed for some other transaction, that will not amount to same cause of action. Hence, prayed for dismissal of the appeal.

12. In the light of the above submissions, the point that arises for consideration is as follows :

Whether the suit is barred for non obtaining leave to file a suit?

13. Point :

On a perusal of entire pleadings, though the plaint proceeded as if a sum of Rs.15 lakhs has been borrowed by the defendant, the mortgage deed has been executed only for Rs.5 lakhs and for remaining Rs.10 lakhs, promissory notes have been executed by the defendant. Those promissory notes are not subject matter of the present suit. The present suit has been filed on the basis of the mortgage deed. Admittedly, the defendant has not disputed the registration of the mortgage deed and receipt of consideration on the said document. The registered mortgage deed has been marked as Ex.A.1. When the defendant has categorically admitted in the written statement the execution of the mortgage deed and receipt of Rs.5 lakhs, merely on the basis of the allegations that some blank cheques have been issued for alleged sum of Rs.10 lakhs, it cannot be said that the present suit for recovery of money on the basis of the mortgage loan is not maintainable without obtaining leave.

14. The judgment relied on by the learned counsel for appellant in **Civil Appeal No.5527 of 2013 [arising out of SLP. [c] No.26157/2012 Coffee Board Vs. M/s.Ramesh Exports Pvt. Ltd.]** is not applicable to the facts of this case. A suit for mortgage is an independent cause of action. In the referred case, merely because some other suits have been filed on the basis of promissory notes which have been executed on the same date, it cannot be said that the present suit is not maintainable, since no leave has been obtained.

Therefore, the contention of the learned counsel has no legs to stand. Hence, I do not find any merits in this appeal. The point is answered accordingly.

15. In the result, this appeal suit is dismissed and the judgment and decree of the trial Court in O.S.No.390 of 2018 dated 05.09.2023 is confirmed. Consequently, connected miscellaneous petition is closed. There shall be no Order as to costs.

27.02.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order
vrc

To,

The I Additional District and Sessions Judge,
Tiruvallur.

N. SATHISH KUMAR, J.

vrc

A.S.No.68 of 2025

27.02.2025