



AS No.597 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-03-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.597 of 2017

P. Nirmala
Proprietor
Sanjay Finance
Wife of Prakash Chand Lalwani
Office at No.13, Kalathi Pillai Street
Sowcarpet, Chennai – 600 079

.. Appellant

Versus

P. Poonkodhai

.. Respondent

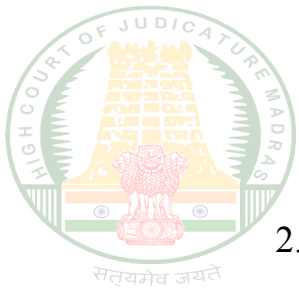
Appeal Suit filed under Section 96 of Code of Civil Procedure r/w. Order XLI, Rule 1 of Code of Civil Procedure, to set aside the Decree and Judgment dated 28.10.2015 made in O.S. No. 2477 of 2011 on the file of the learned XVI Additional Judge, City Civil Court, Chennai.

For Appellant : Mrs. A.L. Ganthimathi, Senior Counsel
for Mr.L.Palanimuthu

For Respondent : Mr. R. Ramesh

JUDGMENT

This Appeal Suit has been filed to set aside the Judgment and Decree passed by the learned XVI Additional Judge, City Civil Court, Chennai in O.S.No.2477 of 2011, dated 28.10.2015.



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2. The Appellant is the Plaintiff, who had instituted the suit in O.S. No. 2477 of 2011 for recovery of a sum of Rs.12,30,000/- from the Defendant along with interest at the rate of 2½% per month on Rs.4,00,000/- from the date of the borrowal till the date of payment by passing a preliminary decree against the Defendant.

3. The averments in the plaint filed by the Plaintiff are as follows:-

3.1. The Plaintiff is carrying on business as financier and during the course of her business, the Defendant approached the Plaintiff for a loan of Rs.4,00,000/-. The Defendant required the said loan for meeting her family needs. The Defendant also offered her property by mortgage to secure the loan. Accordingly, on 25.9.1995, the Plaintiff lent an amount of Rs.4 lakhs and the Defendant executed a registered mortgage deed registered as Doc. No. 4863/1995, at Sub Registrar Office, Adyar. As per the terms of the said mortgage deed, the Defendant agreed to pay interest on the sum of Rs.4 lakhs at the rate of 2½ % per month. As security for due repayment of the loan, the Defendant also mortgaged her property situate at No.112, (Old No.142), Palavakkam Village, Muttukadu Road, (East Coast Road), Door No.4/110, Survey No.16/3B, Saidapet Taluk, morefully described in the Schedule to the Plaint. According to the terms of the mortgage deed, if the Defendant failed to



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repay the loan amount on demand or on failure to pay interest consecutively for a period of three months, the property mortgaged can be brought to sale by the Plaintiff. The Defendant was defaulted in payment of interest right from the date of borrowal and despite repeated reminders and demands, the Defendant has failed and neglected to pay the loan amount and interest due. Therefore, the Plaintiff issued a notice on 9.4.2001 to the Defendant demanding repayment of the entire principal and interest due. The Defendant acknowledged receipt of the notice but did not send any reply. Hence, the Plaintiff is forced to file the present suit for recovery of a sum of Rs.12,30,000/- payable by the Defendant, failing which direct sale of the property.

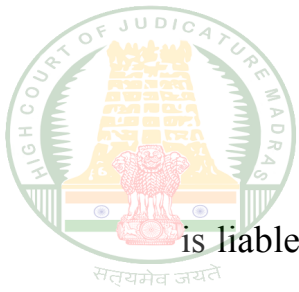
4. The averments in the Written statement filed by the Defendant are as follows:-

4.1. The Plaintiff has no right to file this case in this Court because the mortgaged property is under the jurisdiction of Chengalpattu. So this plaint itself is liable to be contested at Chengalpattu District Court. Hence, the Plaintiff has no cause of action to file this suit itself and the same is liable to be dismissed *in limine*. There is no *prima facie* to file this suit by the Plaintiff against this Defendant and the Defendant borrowed the loan amount of Rs.4



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lakhs for the business development by mortgaging her property. Accordingly, on 25.09.1995, the documents were registered before the Sub Registrar Office, Adyar. But after few days, the Defendant had paid a sum of Rs.1 lakh to the Sanjay Finance on 25.9.1995. But they had not given receipt, that amount was received by the Manager A.E. Raj. But the Plaintiff does not disclose the said amount in her plaint. The Defendant further stated that on 3.6.2000 the Defendant paid partial amount of Rs.1,25,000/- to the Sanjay Finance P.Nirmala. But she did not give any receipt. Finally on 11.9.2012 the Defendant paid Rs.75,000/- to the Sanjay Finance, totally the Defendant had paid Rs.3 lakhs. But only balance amount Rs.1 lakh is pending. The Defendant had approached several time to settle the amount and release the mortgage. But the Plaintiff had demanded Rs.5 lakhs. The Plaintiff had not disclosed the above amount paid by the Defendant in her plaint and the Plaintiff had tried to cheat and sell the Defendant's properties. The Defendant has given true information that Rs.1 lakh only is pending. In these circumstances, the Defendant was willing to settle the amount before this Court or any other forum. It is admitted that the Defendant borrowed a sum of Rs.4 lakhs as loan from the Plaintiff on 25.9.1995 and the Defendant had repaid a sum of Rs.3 lakhs on various dates to the Plaintiff and Manager (Sanjay Finance). But both are promised to give the receipt. But they are not given, as such the Defendant



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is liable to repay the amount only Rs.lakhs. Hence the suit as framed and filed

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is not maintainable both in law and on facts. Hence, this suit is liable to be dismissed.

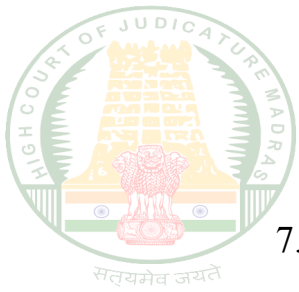
5. The learned XVI Additional Judge, City Civil Court, Chennai, had framed the following issues:-

1. It is correct that this court has no territorial jurisdiction, since the mortgaged property is at Chengalpet?

2. Whether the Plaintiff is entitled for Preliminary Decree as Prayed?

3. To what relief the Plaintiff is entitled?

6. In support of the claim of the Plaintiff, five documents were marked as Ex.A-1 to Ex.A-5. Ex.A-1 is the registered mortgage deed dated 25.09.1995. Ex.A-2 is the copy of the legal notice sent by the Plaintiff to the Defendant dated 09.04.2001. Ex.A-3 is the acknowledgement card for receipt of the legal notice by the Defendant. Ex.A-4 is the Nil Certificate of encumbrance on the suit property dated 16.09.2002. Ex.A-5 is the certificate of encumbrance on the suit property dated 27.03.2003.

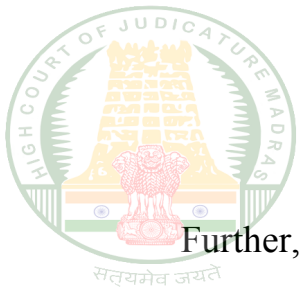


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7. The Plaintiff evidence was closed with P.W-1. The Defendant Poonkodhai examined herself as D.W-1. No document was filed on the side of the Defendant in support of the claim of the Defendant regarding repayment of loan amount.

8. After hearing the arguments of both parties on appreciation of evidence, the learned XVI Additional Judge, City Civil Court, by judgement dated 28.10.2015 in O.S.No.2477 of 2011 dismissed the suit as not maintainable before the City Civil Court. Aggrieved by the dismissal of the suit, the Plaintiff had filed this Appeal Suit.

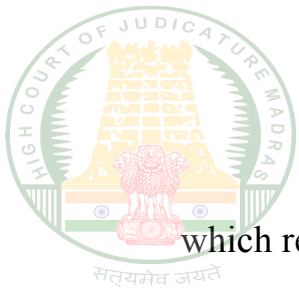
9. The learned Senior Counsel for the Appellant submitted that the Suit in O.S. No. 2477 of 2011 was originally filed on the file of the Original Side of this Court and numbered as C.S. No.221 of 2004. After amendment of Civil Procedure Code, the jurisdiction of the District Court was raised on the pecuniary side, and therefore the Suit in C.S. No. 221 of 2004 was transferred to the file of the City Civil Court. Before filing the Suit on the Original Side of this Court, the Plaintiff had filed an Application seeking permission of the Court to sue the Defendant on the ground that the Plaintiff and the Defendant are residing within the territorial jurisdiction of the Original Side of this Court.



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Further, the mortgage deed was registered with Sub Registrar, Adyar. In the application seeking leave to sue, notice was ordered to the Respondent-Defendant and thereafter the application was allowed and leave was granted. During the pendency of the Suit, subsequently, on raising of pecuniary jurisdiction, the Suit was transferred to the file of the City Civil Court and the Suit was re-numbered as O.S. No. 2477 of 2011.

10. It is the contention of the learned Senior Counsel for the Appellant that in the Petition seeking leave to sue, it was specifically mentioned that both the Plaintiff and Defendant are residing within the territorial jurisdiction of the original side of this Court and the deed of mortgage was registered with the Sub Registrar, Adyar, even though the property is situated outside the territorial jurisdiction of this Court. Under those circumstances, after the application seeking leave was granted, the suit was entertained. Later, when the Suit was transferred to the file of the City Civil Court and numbered the Suit as O.S. No. 2477 of 2011 the Defendant filed written statement in which she disputed the jurisdiction of the City Civil Court to entertain the suit and also contended that out of Rs.4 lakhs borrowed, she has paid Rs.3 lakhs on various dates. The learned Senior Counsel for the Appellant invited the attention of this Court to Paragraph No.4 of the Plaint



which reads as follows:

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“The cause of action for this Suit arose at Madras within the jurisdiction of this Court where the Plaintiff and Defendant reside, where the 1st Defendant on 25.09.1995 borrowed a sum of Rs.4,00,000/- from the Plaintiff and executed registered mortgage deed her favour, where on 09.04.2001, the Plaintiff issued notice through her counsel demanding repayment of the amounts due and the Defendant acknowledged the same, and subsequently.”

11. Further, the learned Senior Counsel for the Appellant invited the attention of this Court to the contents of the written statement filed by the Defendant. The Defendant admits the execution of mortgage and repayment. Also, the Defendant claims that the Plaintiff did not issue receipt for the payment of Rs.3,00,000/- made and what remains to be paid is only Rs.1,00,000/-. Since it is a registered mortgage, the claim of the Defendant that the repayment was made and receipt was not issued is not acceptable. However, only on the point of the territorial jurisdiction, the learned XIV Additional Judge, City Civil Court dismissed the Suit without dealing with the merits of the case.

12. It is the submission of the learned Senior Counsel for the Appellant that if the learned Judge had arrived at such conclusion that the suit has been filed before a Court which lacks jurisdiction, the learned Judge ought



not to have dismissed the Suit instead sent the record to the Court which has territorial jurisdiction, but that was not done in this case. The learned Senior Counsel for the Appellant also invited the Attention of this Court to the discussion of evidence by the learned Judge in Paragraph Nos.6 to 11 which reads as follows:-

“Issue No.1:-

6. The Suit was originally filed before the Hon'ble High Court in the year 2004. Therefore, on pecuniary jurisdiction it was transferred to this Court and renumbered. The written statement was filed only on 04.09.2015. Before that the Suit was pending for ex-parte evidence therefore the Petition was filed for set aside the ex-parte order along with the written statement and thereafter trial commenced.

7. The main contention of Defendant is that the Suit property is situate outside the Court's jurisdiction. Further, it is contended that the claim of the Plaintiff is erroneous as the Defendant is allegedly borrowed a sum of Rs.4,00,000/- out of which a sum of Rs.3,00,000/- was already paid on various dated and a sum of Rs.1,00,000/- is the balance. First of all, it is to be decided whether this Court has territorial jurisdiction. It is true that the Defendant borrowed money by mortgaging the Suit property. The mortgage deed is marked as Ex.A-1, it is clear that the property situated Palavakkam Village which comes under Chengalpet District. It is not disputed the Suit property lies in Chengalpet District. The property does not lie within territorial jurisdiction of this Court. It is true that this Court lack territorial jurisdiction.

8. The Complaint which was originally presented before the Hon'ble High Court on 10.10.2002. But it was numbered in the year 2004. The Suit was pending quite a long time before the Hon'ble High Court and then it was transferred before this Court in 2011. The Plaintiff ought to have taken steps to transfer the case to the Court which is having territorial jurisdiction. During trial also the Plaintiff failed to take steps. Since as discussed above, this Court lacks territorial jurisdiction to entertain the Suit, this issue decided against the Plaintiff.

Issue No.2:-



9. The Plaintiff has claimed that the Defendant has borrowed a sum of Rs.4,00,000/- by mortgaging the Suit property. The loan amount of Rs.4,00,000/- is provided under Ex.A-1 in the mortgaged deed. Though the Defendant has claimed that he has discharged a sum of Rs.3,00,000/- on various dates there is no documentary proof for the same. When the Defendant has claimed that he has discharged the loan amount it is for the Defendant to prove the same. On behalf of the Plaintiff the husband of the Plaintiff was examined. Though P.W-1 was cross examined by the Defendant Counsel the claim of the Defendant that he was already discharged Rs.3,00,000/- out of Rs.4,00,000/- is denied. The Defendant is not able to get favourable evidence from P.W-1 with respect to this defence.

10. The claim in the cross-examination of P.W-1 that the Suit property was made subject to the mortgage for the previous loan of Rs.3,00,000/- was not pleaded in the written statement.

11. The Defendant was examined as D.W-1. In the proof affidavit, it is contended that there was a loan of Rs.1,00,000/- obtained in the year 1984 and an exorbitant interest was arrived at Rs.3,00,000/- and rounded at Rs.4,00,000/- and claimed mortgaged was obtained. Further, it is contended that the Plaintiff has instigated the Suit property with assurance of parting a cheque of Rs.4,00,000/-. The above contention is not available in the written statement. The Defendant was examined as D.W-1 and admitted the mortgage deed. Further, it is stated that he has repaid two or three times. The D.W-1 has admitted in the cross-examination that she is not aware of the contends in the proof affidavit. The alleged repayment on various occasions pleaded in the written statement is not proved by the Defendant. However, this issue needs not be decided for the reason the 1st issue is decided against the Plaintiff. This Court has concluded that this Court has no territorial jurisdiction to entertain the Suit where the Suit property is situated outside the jurisdiction of this Court. Therefore, this issue is also decided against the Plaintiff.”

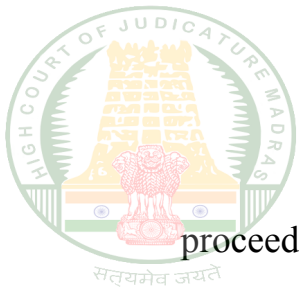
13. The learned Senior Counsel submits that the conclusion arrived at by the learned XVI Judge to dismiss the Suit is perverse. When the suit was filed after obtaining leave to sue the Defendant, by specifically pointing out that though the property situate outside the jurisdiction of this Honourable



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Court, the parties to the suit are residing within the jurisdiction of this Court and the mortgage was registered before the Sub-Registrar, Adyar. The learned Trial Judge, without taking note of the above facts, erroneously dismissed the suit and therefore, the learned Senior Counsel for the Appellant seeks to set aside the Judgment of dismissal passed by the trial Court and to allow the Appeal.

14. Per contra, the learned Counsel for the Defendant vehemently objected to the line of argument made by the learned Senior Counsel for the Appellant and stated that the Suit is for recovery of money based on mortgage. The property covered in the mortgage lies outside the jurisdiction of the trial Court. The learned Counsel for the Defendant/Respondent invited the attention of this Court to Section 16 (c) of CPC, subject to the pecuniary or other limitations prescribed by any law, suits relating to foreclosure, sale or redemption in the case of a mortgage of a charge upon immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. Further, in this case, the relief sought in the Plaint is also to fix a time frame for payment of the decree amount and in default, within the time allowed, a final decree for sale may be passed and the Plaintiff's decree debt is satisfied by the sale of the schedule mentioned property. In case the



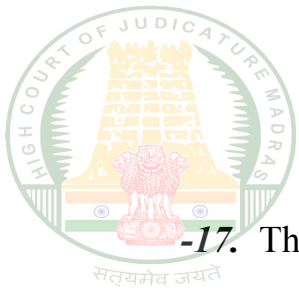
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proceeds of the sale are found to be not sufficient to satisfy the amount due, the balance may be recovered personally from the Defendant. As per the prayer (c) sought for in the plaint to bring the property for auction sale, it can be resorted only by the Court having territorial jurisdiction and not the trial Court. Under those circumstances, since the property covered in the mortgage deed is situated outside the jurisdiction of the City Civil Court, the Judgment of the learned XVI Additional Judge is proper and well-reasoned Judgment which does not warrant any interference by this Court.

15. By way of reply, the learned Senior Counsel for the Appellant submitted that even though the property covered in the mortgage is situated outside the territorial jurisdiction, the parties are residing within the territorial jurisdiction of the Original Side of the Court and leave was granted. Therefore, the trial Court is having jurisdiction to entertain the suit. In support of his submission, the learned Senior Counsel for the Appellant relied on the following reported rulings:

(i) **2003 (4) CTC 218** in the case of ***A.S.Baskaran, Proprietor of Sri Amman Leathers, No.5, Moutha Ibrahim Road, Chrompet, Chennai-600044 Vs. Indian Finance and Factors Limited, represented by its Managing Director, R.Ramachandran, No.47, South Boag Road, T.Nagar, Chennai***



-17. The relevant portion is extracted hereunder:-

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“Letters Patent Act, Clause 12 – Suit for land – Suit filed for recovery of money against borrower – Plaintiff sought permission to have recourse against land mortgaged to Plaintiff in event of default by Defendant in paying decretal amount within time stipulated in decree – Such suit does not involve adjudication of title to land or immovable property and it does not involve delivery of possession of land or immovable property – Plaintiff claim does not amount to suit for land – Plaintiff could file Suit under original jurisdiction before High Court eventhough mortgaged land is situate outside Jurisdiction of High Court as Plaintiffs and Defendants are residing within Jurisdiction of High Court – Application filed by Defendants to revoke leave already granted to Plaintiffs to file Suit dismissed”

(ii) **1995 (II) CTC 602** in the case of ***Southern Petrochemical***

Industries Corporation Ltd., Vs. Durga Iron Works and 3 others. The

relevant portion is extracted hereunder:

“Letters Patent, 1865, Clause 12 – Suit for land or for other immovable properties – Suit for recovery of money by enforcement of equitable mortgaged of immovable properties situated outside jurisdiction of original side of High Court – Suit for recovery of money by enforcement of mortgage does not involve determination of title to land or decree for possession of land – Decree in such Suit is only for recovery of money and recourse to land in satisfaction of money claim may arise when default is committed in payment of money – Such suit is not – Suit for land – Leave granted to institute suit on Original side of High Court for recovery of money by enforcement of equitable mortgage of immovable properties situated outside jurisdiction of Original side of Madras High Court – Suit involving determination of title and interest of land and for recovery of possession and control of land would be “suits for lands” or “other immovable properties”.

Points for determination:



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(i) Whether the trial Court has no territorial jurisdiction to entertain the suit, since the property covered in the mortgage is situated at Chengalpet, outside the jurisdiction of the trial Court?

(ii) Whether the Plaintiff is entitled for a Preliminary Decree as prayed?

(iii) To what other relief the Plaintiff is entitled?

16. Heard the learned Senior Counsel for the Appellant and the learned Counsel for the Respondent and perused the materials placed on record.

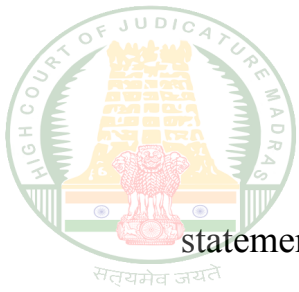
17. The Plaintiff had filed the Suit before the Original Side of this Court in the year 2004 and it was numbered as C.S. No. 221 of 2004. Before entertaining the Plaint, the Registry of this Court on the Original Side had returned the Plaint with queries. The learned Counsel for the Plaintiff had answered the queries raised by the Registry and accordingly, the Suit was numbered, after filing of Application in A.No. 2431 of 2004 to condone delay in re-presentation in C.S.SR on the file of the Original Side of this Court. Subsequently, an Application was moved by the Plaintiff as per the Original Side Rules seeking leave of the Court to institute the Suit on the Original Side of this Court.



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WEB COPY18. The Suit was filed for recovery of money based on a mortgage deed. The petition seeking leave of the Court was filed as the property covered in the mortgage is situated outside the territorial jurisdiction of the Original Side of this Court. In the year 2004, as per Application in C.S. No. 221 of 2004 the Plaintiff had specifically mentioned that both the Plaintiff and the Defendant are residing within the territorial jurisdiction of the Original Side of this Court, within the City limit of Chennai and the mortgage was registered with the Sub Registrar, Adyar. However, the property is situated outside the territorial jurisdiction of the Original Side of this Court in the year 2004. Therefore, the learned Judge had ordered notice to the Respondent. After service of notice, the Respondent had not raised any objections for entertaining the suit before the Original Side of this Court. Therefore, leave was granted by this Court and the Registry was directed to number the suit, if it is otherwise in order. Accordingly, the Suit was numbered by the Registry of this Court on the Original Side as C.S. No. 221 of 2004. Therefore, the question of lack of jurisdiction does not arise for consideration in this case.

19. After the suit was re-numbered, summons were sent to the Defendant. The Defendant engaged a Counsel but did not file the written



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statement in time. Therefore, the Defendant was called absent and set ex-parte. Subsequently, the Suit was posted for recording of ex-parte evidence before the Original Side of this Court. At that time, the pecuniary jurisdiction of the District Courts throughout the State was raised. In view of the enhancement of the pecuniary jurisdiction of the District Courts, the instant suit was transferred to the file of the City Civil Court, Chennai. On such transfer, the suit was re-numbered as O.S. No. 2477 of 2011 on the file of the City Civil Court, Chennai.

20. After transfer, once again, summons were ordered to the Defendant. The Defendant also entered appearance and filed an Application to set aside the *ex parte* decree. She has also filed her written statement. In the written statement filed by the Defendant, the Defendant admitted the execution of mortgage but alleged that some payments made were not given credit by the Plaintiff. In other words, the Defendant claimed that she repaid upto Rs.3,00,000/- out of Rs.4,00,000/- and what is required to be paid is only Rs.1,00,000/-. In the same written statement, the Defendant raised objections regarding maintainability of the Suit as the property was situated outside the territorial jurisdiction of the City Civil Court, Chennai. Based on the pleadings, issues were framed by the learned Judge. One of the issues was



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maintainability of the Suit before the City Civil Court on the point of territorial jurisdiction. Trial proceeded. Both sides had let in evidence. Therefore, the learned Judge on appreciation of evidence reached a conclusion that since the property, for which mortgage was executed, is lying outside the territorial jurisdiction of the City Civil Court, Chennai, the Suit filed by the Plaintiff before the City Civil Court is not maintainable.

21. Before arriving at such conclusion, the learned Judge ought to have verified the Plaint. If the learned Judge had verified the Plaint, she would have come across the fact that the Suit was originally instituted before the Original Side of this Court, Registry of the Original Side of this Court had returned the Plaint raising many queries and ultimately, the learned Counsel for the Plaintiff before the Original Side of this Court answered the queries and represented the Plaint. After many returns and compliance of returns, the Suit C.S.No.221 of 2004 was numbered in the year 2004. In the Application seeking leave to institute the Suit filed by the Plaintiff, after issuing notice, the application was allowed. The learned Trial Judge did not verify the records before passing the judgment of dismissal of the suit on the ground that the Court lacks jurisdiction. Had the learned XVI Additional Judge perused the records before passing the Judgment, these facts would have emerged and the



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trial Court would not have dismissed the suit on the ground of lack of territorial jurisdiction. Therefore, the question of territorial jurisdiction of City Civil Court as raised by the Defendant in the written statement cannot be accepted in the light of the order passed by this Court granting leave to sue.

22. Even if the learned XVI Additional Judge did not peruse the original records, on the basis of evidence recorded before it, it is clear that both the Plaintiff and Defendant are residing within the territorial jurisdiction of Original Side of this Court or the City Civil Court under whose territorial jurisdiction the Sub Registrar, Adyar functions. Therefore, the learned Judge should have disposed the case on merits but ought not to have dismissed the suit on the ground of lack of territorial jurisdiction

23. In the present case, trial was conducted in which the Plaintiff and the Defendant adduced evidence. Therefore, after completion of evidence, the learned Trial Judge is not justified in dismissing the suit on the ground of lack of jurisdiction. The fact remains that this Court had granted leave to sue and therefore, the Trial Court ought not to have dismissed the suit on the ground of lack of jurisdiction. Under those circumstances, the Judgment of the learned XVI Judge, City Civil Court in O.S. No. 2477 of 2011 dated 28.10.2015 is

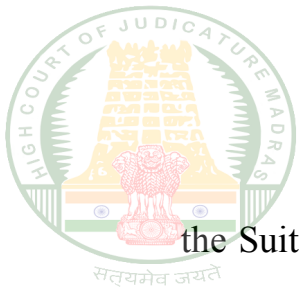


found perverse.

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24. Now in the Appeal, the said defects in the Judgment can be set right by this Court as Appellate Court which can exercise all the discretion vested in the trial Court. The Appeal is an extension of trial proceedings. Therefore, instead of sending back the matter to the trial Court, this Court as an Appellate Court is entitled to pass a preliminary decree, by setting aside the Judgment of dismissal passed by the trial Court.

25. On perusal of the entire materials available, it is found that the Defendant had not proved that she had repaid Rs.3,00,000/- as claimed in the written statement. This was also pointed out by the trial Court in issue No.2. However, the suit was dismissed for want of territorial jurisdiction to entertain the suit. Considering the fact that the mortgage was registered with the Sub Registrar, Adyar, the claim made by the Defendant in the written statement that she paid Rs.3,00,000/- and what remains to be paid is Rs.1,00,000/- cannot be accepted. If that be the case, it is the duty of the Defendant to prove the receipts. When the mortgage is registered with Sub Registrar, Adyar there cannot be repayment without receipts. The claim of the Defendant is found inadmissible due to the fact that the mortgage was registered mortgage. When



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the Suit was pending before the the learned XVI Judge, City Civil Court, the Defendant had not admitted to settling the dues. Therefore, the claim made by the Defendant in the written statement is found without any legal basis and it cannot be accepted. Therefore, in the light of Ex.A-1 to Ex.A- 5, evidence of Plaintiff as P.W-1, the Suit had to be decreed.

26. The husband of the Plaintiff as P.W-1 had in his examination-in-chief, which was filed as affidavit has stated the facts stated in the plaint. In support of his contention, documents were marked as Ex.A-1 to Ex.A-5. Ex.A-1 is the registered mortgage deed dated 25.09.1995. Ex.A-2 is the copy of the legal notice sent by the Plaintiff to the Defendant dated 09.04.2001. Ex.A-3 is the acknowledgement card for receipt of the legal notice by the Defendant. Ex.A-4 is the Nil Certificate of encumbrance on the suit property dated 16.09.2002. Ex.A-5 is the certificate of encumbrance on the suit property dated 27.03.2003.

27. He was cross-examined on behalf of the Defendant. In the cross-examination, the claim of the Defendant in the written statement was suggested that the Defendant had repaid the amount in instalments, totally the Defendant had paid Rs.3,00,000/- but the Plaintiff had not issued receipts



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acknowledging part payment of the loan. This suggestion of the learned Counsel for the Defendant was denied by the husband of the Plaintiff as P.W-1 in his cross-examination. In the cross-examination, it is suggested that only Rs.1,00,000/- was borrowed by the husband of the Defendant, the Plaintiff insisted the Defendant to part with the mortgage deed. On such insistence only, the Defendant had executed mortgage deed under Ex.A-1 and as per the mortgage deed Rs.4,00,000/- was not paid on the date of mortgage. The said suggestion was denied by P.W-1. Also, it is suggested that the mortgage deed was executed in the house of the Plaintiff by the Manager of the Plaintiff and without lending any amount, the mortgage was registered with the Sub Registrar without the presence of the Defendant.

28. The said suggestions are found unacceptable considering the fact that the Defendant had in the written statement clearly admitted the execution of the mortgage deed. Further, it is found that the mortgage deed was registered before the Sub Registrar, Adyar. As per Section 114 of the Indian Evidence Act all the acts done by the Government officials are presumed to have been carried out as per law. The suggestion put fourth by the learned Counsel for the Defendant is contradictory to this presumption. If that had been true, what prevented the Defendant from issuing a legal notice warning



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the Plaintiff about the legal consequences of not lending Rs.4,00,000/- and executing a mortgage deed. The Defendant had not done so till the filing of the suits. The plaint was presented before the original side of the High Court in 2002. Till the institution of the suit or even after receipt of the summons by the Defendant, Defendant had not disputed the mortgage or the receipt of the loan amount. Ex.A-2 is the Lawyer's notice issued on behalf of the Plaintiff which was received by the Defendant under Ex,A-3 and no reply was sent by the Defendant disputing the claim. In the written statement, the only claim made by the Defendant is that they had repaid the amount through Manager A.E.Raj but they had not issued any receipt. If that had been so, what prevented the Defendant from issuing lawyer's notice to the Plaintiff before ever the Plaintiff had issued notice. Even after issuance of the notice by the Plaintiff to the Defendant under Ex.A-2 the Defendant had not replied to the lawyer notice on behalf of the Plaintiff. Therefore, the claim of the Defendant or the suggestions put to P.W-1 by the learned Counsel for the Defendant is found unacceptable.

29. When the Defendant claims that she had repaid the loan amount, the said fact has to be proved by the Defendant as per Section 102 of the Indian Evidence Act. To prove the discharge, it is for the Defendant to prove



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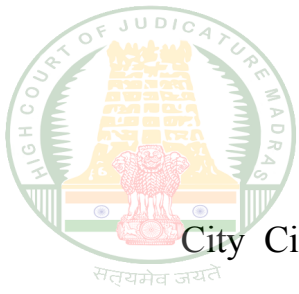
it. The Defendant had not marked any document regarding repayment as claimed by the Defendant in the written statement. The Defendant herself in the affidavit admitted execution of the mortgage deed. The claim of the Defendant in the affidavit that mortgage was executed without the knowledge of the Defendant in connivance with the Sub Registrar, Adyar is found unacceptable in the light of the Section 114 of the Indian Evidence Act the presumption regarding all the acts done by the Government officials with regard to respective official duties. It is the contention of the Defendant in the cross-examination of the husband of the Plaintiff as P.W1- that for the mortgage executed in the year 1995 wherein in the recitals he has stated that for default of payment continuously for three months, the property will be brought for sale by public auction. But the Plaintiff had not brought the property for sale by public auction because the Defendant had paid almost Rs.3,00,000/- by instalments. The same will be proved either by summoning the Manager of the Plaintiff A.E.Raja or by production of the registers maintained by the Plaintiff. Since the Plaintiff had not examined the Manager and not produced the registers, the claim of the Plaintiff that the Defendant had not paid any amount and seeking payment for Rs.4,00,000/- along with interest is not maintainable. The said suggestions were denied by P.W-1 in the cross-examination.



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WEB COPY30. The claim of the Defendant as D.W-1 that the Manager of the Plaintiff came to the residence of the Defendant and obtained signature based on which Ex.A-1 was created by the Plaintiff cannot be accepted by any Court of law. She claims that she does not know the content of the lawyer's notice under Ex.A-2. She also claims that she does not know the signature in Ex.A-3 acknowledgement card. She had denied the suggestion that the Defendant had not paid any single amount till the date of filing of the suit inspite of repeated request directly by the Plaintiff. From Ex.A-3 it is found that on behalf of the Defendant some other had received the notice.

31. As per Order V, Rule 15 of Civil Procedure Code, notice received by any adult member of the family is proper service. Therefore, the claim of the Defendant that she is not aware of the notice cannot be accepted. Earlier when the case was pending before the original side of the High Court as C.S. No. 221 of 2004, the summons were served on the Defendant but the Defendant did not appear. Therefore, the case was posted for evidence after setting the Defendant ex parte. At that stage only on raising of the pecuniary jurisdiction of the District Court, the case was transferred to the file of the City Civil Court and re-numbered as O.S.No.2477 of 2011. Once again from the

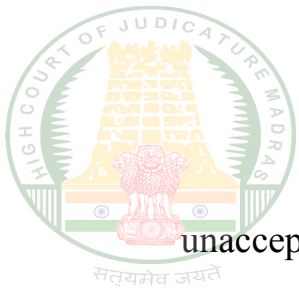


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City Civil Court, summons were issued to the Defendant. This time the Defendant entered appearance and filed written statement in which the execution of the mortgage deed is accepted but the claim made by the Defendant that the Defendant had repaid the amount but no receipts were issued by the Plaintiff cannot be accepted by any Court of law. Therefore, on appreciation of evidence, the evidence of the Plaintiff is found cogent.

32. The learned District Judge, had not answered the issues as the learned Judge found out that the suit is not maintainable as the subject matter of the mortgage deed is outside the territorial jurisdiction of the City Civil Court. Therefore, dismissed the suit.

33. In cases of this nature, if the learned trial Judge arrives at a conclusion that the subject matter of the suit is outside the territorial jurisdiction of the trial Court, in such circumstances, the trial Court is not expected to dismiss the suit. It can answer the issues as the suit is not maintainable before the Court and instead without answering the other issues, they can direct the Plaintiff to present this case to the Court having territorial jurisdiction or they can address the Court concerned and transfer the entire records to the Court having territorial jurisdiction and dismissing the suit is



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unacceptable as per the provisions of law. Here, the learned Judge had dismissed the suit as not maintainable.

34. If the learned Judge had perused the plaint and found out from the original plaint that it had been returned several times raising queries and the queries were complied by the learned Counsel for the Plaintiff before the original side of the High Court and only after leave to sue was obtained by the learned Counsel for the Plaintiff, the suit was entertained on the original side of the High Court. Under those circumstances, when the High Court had transferred the case to the Court of the City Civil Court, the learned Judge ought not to have dismissed the suit. Instead the learned Judge ought to have discussed the evidence and disposed of the case on merits as per law. Instead the learned Judge had dismissed it which is found perverse. Therefore, the judgment of dismissal by the learned XVI Additional Judge, City Civil Court, Chennai, is found unacceptable and hence, the same is set aside. From the merits of the case on perusal of the oral evidence of P.W-1, D.W-1 and the documentary evidence under Ex.A-1 to Ex.A-5, the claim of the Plaintiff is proved. The claim of the Defendant that they had repaid Rs.3,00,000/- is not proved by the Defendant. If the claim of the Defendant had not proved what prevented the Defendant from issuing a lawyer's notice to the Plaintiff calling



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upon the Plaintiff to issue documents regarding repayment and also warn the Plaintiff not to file a suit for recovery of money in the absence of issue of documents for acknowledgement of repayment.

35. Till the Plaintiff had issued notice under Ex.A-2, the Defendant had not caused any notice calling upon the Plaintiff to issue documents for repayment of part of amount. Under those circumstances, even after issuance of notice under Ex.A-2, the Defendant had not replied and considering the fact that on earlier occasion when the case was pending before the original side of the High Court the Defendant had left it as ex parte. The conduct of the Defendant is found that the Defendant accepted the liability. Therefore, the claim made by the Defendant in the written statement was not proved as per Section 102 of the Indian Evidence Act. The Plaintiff had proved the claim as per Section 101 of the Indian Evidence Act. Under those circumstances, the Plaintiff is entitled to preliminary decree for mortgage. The Defendant is granted one year time to repay the amount failing which the Plaintiff is within his discretion to file a petition for final decree against the mortgage.

36. In the light of the above discussion, the Points for determination are answered in favour of the Appellant/Plaintiff and against the



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Respondent/Defendant. The Decree and Judgment dated 28.10.2015 made in O.S. No. 2477 of 2011 on the file of the learned XVI Additional Judge, City Civil Court, Chennai is liable to be set side.

In the result, **this Appeal Suit is allowed with cost throughout.** The Decree and Judgment dated 28.10.2015 made in O.S. No. 2477 of 2011 on the file of the learned XVI Additional Judge, City Civil Court, Chennai is set side. The suit filed by the Appellant-Plaintiff is allowed. There will be a preliminary decree in favour of the Plaintiff as prayed for. The Defendant is however granted one year period for settling the dues. In the event of failure to settle the dues within a period of one year, she has to repay the outstanding dues along with interest at 2 ½ % per month.

03-03-2025

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh/srm



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To
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1. The XVI Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment made in
A.S.No.597 of 2017

03-03-2025