IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5163 of 2024
and C.M.P.No.28927 of 2024

Veerappan ..... Petitioner

Vs

1.Venu
2.Dhanusu
3.Chandrasekaran
4.Vachala
5.Ezhilarasi
6.Kappaldurai
7.Durai
8.Sub Registrar
Sub Registrar Office
Vanur. ..... Respondents

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 25.07.2024 in I.A.No.3 of 2023 in O.S.No.27 of 2021 on the file of the II Additional District Judge, Tindivanam.

For Petitioner : Mr.M.Velan
for Mr.T.Sai Krishnan

For Respondents : Mr.Rooban Chakravarthy - for R1

Mr.N.Muthuvel, Govt.Advocate – for R8
RR 2 to 7 – Served, No appearance

ORDER

This Civil Revision Petition challenges the order passed by the learned II Additional District Judge in I.A.No.3 of 2023 in O.S.No.27 of 2021 dated 25.07.2024.

2. The Civil Revision Petitioner is the plaintiff in the suit. He presented O.S.No.27 of 2021 to enforce an alleged mortgage said to have been executed on 19.11.2023. The defendant filed a written statement denying the mortgage. For the purpose of disposal of this revision, I need not delve deep into the facts.

3. After the parties commenced trial in the suit, the mortgage deed was tendered in evidence as Ex.A1. Thereafter, the contesting defendant viz., the first defendant filed an application invoking Section 151 of the Code of Civil Procedure read with Section 33 of the Indian Stamp Act and Section 17 of the Indian Registration Act pleading that Ex.A1 has to be eschewed. His pleading was that it was a forged and untrue document. He added since it is not stamped as required by law, and as it

is an unregistered document, it comes within the teeth of Section 35 of the Indian Stamp Act and Section 17 of the Indian Registration Act, therefore, requires to be eschewed.

4. This was objected by the plaintiff pleading that Exs.A1 to A4 were tendered in evidence and no objection had been raised by the learned counsel for the first defendant regarding their presentation at the time of exhibiting and marking of the documents. He pointed out that the case had been adjourned for cross examination on 16.07.2023, 02.08.2023 and 21.08.2023 and it was thereafter the application came to be filed.

5. The learned Judge concluded that Ex.A.1 being titled as "ஈடு அடமான கடன் பத்திரம்" , it refers only to a mortgage and as a mortgage requires compulsory registration in terms of Section 17 of the Indian Registration Act, the document is totally inadmissible in evidence, as it is hit by Section 49. Consequently, he eschewed Ex.A1. Aggrieved by the same, the present civil revision petition.

5. I heard Mr.Velan for the petitioner and Mr.Rooban Chakravarthy for the respondents.

6. Mr.Velan relied upon the judgment of this Court in **Parisutha Nadar -vs- Pichakkara Pillai and another (S.A.No.284 of 2010 dated 27.11.2020)**. He pleaded that though the suit has been presented as one on mortgage, he is confining the relief as money suit.

7. Mr.Rooban Chakravarthy, inviting my attention to the plaint, points out that the suit had been presented only on mortgage and therefore it is not open to the plaintiff to restrict his plaint to have a money suit without an amendment application. He also relies upon the very same judgment in **Parisutha Nadar -vs- Pichakkara Pillai and another** to point out if mortgage deed is unstamped and unregistered, it would have to be thrown out as inadmissible as found by the learned Judge in that case. Hence, he pleads that the order of the learned Trial Judge is perfectly valid and does not require interference at all.

8. I have gone through the materials available on record. The point I have to answer in this revision is whether Ex.A1 has to be thrown out as it has been done by the learned Trial Judge.

9. The plaintiff pleads that Ex.A1 is mortgage deed titled "சு

அடமான கடன் பத்திரம்" - mortgage deed. There are two aspects to a document, one- the payment of money, which is acknowledged under the document and second, the presentation of a property as a security for the consideration paid or to be paid. It is the latter portion which operates as a transfer of interest in an immovable property. Hence, as rightly contended by Mr.Rooban Chakravarthy, it would attract the provisions of Section 17 of the Registration Act. If it attracts Section 17 of the Registration Act, then it has to be registered. If it is not so registered, then automatically Section 49 will apply. The purpose of tendering Ex.A1 is to prove a mortgage in the suit. Therefore, it is not collateral purpose in order to attract proviso to Section 49.

10. Facing this difficulty, Mr.Velan submitted that though he has sought for the relief of a preliminary decree for a mortgage, the plaintiff is willing to confine his relief for that of a recovery of money. If the suit is converted as a suit for recovery of money as sought for by the learned counsel for the plaintiff, then the document under Ex.A1 can only be treated as an acknowledgment of the amounts paid under the said document. If it is an acknowledgment of payment, then there is no necessity for it to be registered. All that the Court would have to see in such circumstances is, whether the stamp on the basis of which the

document has been engrossed is sufficient for the purpose of receiving the document.

11. Ex.A.1 which has been produced before this Court and it shows that it has been engrossed on two non-judicial stamp papers of the value of Rs.50/- each. The overall being Rs.100/-. In my view, it is prima facie sufficient for the purpose of treating the document as evidencing the payment of loan. The order rejecting the document under Ex.A1 need not stand in the way of the plaintiff.

12. In the light of the above discussion, I pass the following order:

(a) The plaintiff shall file a memo before the Trial Court stating that though he has sought for the relief of foreclosure of a mortgage, he is confining the suit as a simple suit for money.

(b) The learned Trial Judge, on receipt of the memo, shall permit the plaintiff to delete the portion relating to mortgage and confine it only as one for recovery of money.

(c) After this exercise is carried out, the amended plaint saying that it is a suit for recovery of money shall be presented.

(d) If the clauses from (a) to (c) is carried out, marking of Ex.A.1 shall stand restored on to the file of the Court.

(e) In case the plaintiff does not adhere to Clause (a), then the order passed by the learned Trial Judge rejecting Ex.A.1 would have to be given effect to.

(f) It is open to the defendant file appropriate application under Order VIII Rule 9 of CPC. In the event of filing of such application, the Court shall consider the application on its own merits.

13. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2025

Index: Yes/No
Neutral Citation : Yes/No
KST

To

The II Additional District Judge,

Tindivanam.

V.LAKSHMINARAYANAN, J.

KST

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