
(1995) 02 MAD CK 0124
In the Madras High Court
Case No : C.R.P. No. 1736 of 1994

Bank of India

APPELLANT

Vs

Dr. C.S. Sainathan

RESPONDENT

Date of Decision : 03-02-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 17, 34

Citation : (1995) 02 MAD CK 0124

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : L. Jayakumar, for the Appellant; R. Sengottaiyan, for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.—Plaintiff in O.S. No. 190 of 1991, on the file of the Subordinate Judge's Court, Gobichettipalayam, is the revision petitioner. The suit filed by the plaintiff is for recovery of money chargeable on the plaint schedule properties. As it is, the suit is one under Order 34 of the Code of Civil Procedure. In the relief sought for, the plaintiff has only stated that it reserves its right to seek personal relief if the sale proceeds of the mortgaged properties are insufficient. Later, the plaintiff filed I.A. No. 93 of 1993 for amendment seeking a personal relief also. The court below dismissed the same on the ground that if the amendment is allowed, that will take away the right of the defendant on the ground of limitation.

2. The order of the Court below cannot stand. The question of limitation should not have been decided by the court below at present, because, it is a question to be decided on merits. For adjudicating an amendment application, we are governed only by Order 6, Rule 17 of the Code of Civil Procedure.

3. The amendment application should have been allowed since it is not going to change the nature of the suit, not does it affect the right of the defendant. The defendant is entitled to put forward all his contentions, even if the amendment is

allowed. The order of the court below is, therefore, set aside, and the Civil Revision Petition is allowed, with no order as to costs. After the amendment is incorporated, the defendant will be allowed to file an additional written statement in so far as the amendment is concerned.