

(2007) 03 MAD CK 0325

In the Madras High Court

Case No : Application No. 2791 of 2006 in C.S. No. 771 of 1996

Mrs. Jayanthi Selvarajan and Mr. P. Selvarajan

APPELLANT

Vs

Shiva Texyarn Limited (formerly known as Annamalai Finance Ltd.)

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2007) 03 MAD CK 0325

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : C. Rajan, for the Appellant; K. Harishankar, for T.K. Bhaskar, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—This application has been filed by the defendants to reject the plaint in the above suit C.S. No. 771/1996 on the file of this Court.

2. The defendants in the suit have filed the above application under Order 7 Rule 11, CPC to reject the plaint.

3. For the sake of convenience, the parties are referred as per their ranking in the suit.

4. The plaintiff-company filed the suit in the year 1996 for the following relief:

directing the defendants to pay a sum of Rs. 10,16,640/- jointly and severally with further interest thereon at 30% per annum from this date till date of realization.

5. The plaintiff filed an application in Application No. 4826/2000 to amend the plaint and by order dated 2.3.2001, the application was allowed by this Court and thereafter the plaintiff added the following reliefs to the original relief already prayed by them:

aa) directing the defendants to pay the aforesaid amount together with further interest from the date of filing of the plaint to the date of payment and also costs of the suit on the date to be named by this Honourable Court and in default, the property mentioned in the schedule to be sold and the proceeds (after defraying the expenses of the sale) applied in and towards the payment of the amount of the said principle and interest and costs;

ab) That, if such proceeds shall not be sufficient for the parents in full and such amount the defendants may be ordered to be paid to the plaintiff the amount of the plaintiff, the amount of deficiency with interest thereon at the rate of 30% per annum until realisation.

6. After the amendments were carried out, the defendants filed the above application to reject the plaint by contending that new prayers are for sale of immovable property in Attur, Salem District which is outside the jurisdiction of this Court.

7. The plaintiff filed a counter affidavit wherein it is stated that they have obtained leave to sue in application No. 1332/1996 from this Court on 2.4.1996 and the suit is very much maintainable before this Court.

8. Heard the learned Counsel for the plaintiff and the learned Counsel for the defendants. I have also gone through the documents filed and the judgments referred to by them in support of their submissions.

9. The learned Counsel for the defendants submitted that as per the new prayers added after allowing the amendment application, a relief of selling the suit schedule property situated at Attur, Salem District has been sought for and thus the suit has become a suit for land and in such circumstances, as per Clause 12 of the Letters patent, a suit for land can be filed only in a court in whose jurisdiction the property is situated. He relied on the following decisions in support of his submissions:

- 1) AIR 1935 Nag 258 G.T. Firm v. D.J. Co. Bombay (FB)
- 2) AIR 1939 Bombay 345 Motilal v. Shankarlal
- 3) Sugandha Mohan Bhattacharjee Vs. N.M. Mukherjee and Others,
- 4) 2001(4) CTC 39 Adcon Electronics Pvt. Ltd. v. Daluate(SC)
- 5) 2002 1 CTC 134 Parameswari Veluchamy v. T.R. Jayaraman
- 6) 2002 4 CTC 653 Dhanasekar, S.K.J. v. S.V.S. Jawaharlal (DB)
- 7) 2005 5 CTC 483 Thamiraparani Investments Pvt. Ltd. v. Meta Films Pvt. Ltd.
- 8) 2006 1 CTC 270 Thamiraparani Investments Pvt. Ltd. v. Meta Films Pvt. Ltd. (DB).

10. Per contra, the learned Counsel for the plaintiff submitted that even after

adding the new prayers, the suit is still a suit for recovery of money and a suit for recovery of money by enforcement of mortgage does not involve determination of title to land or decree for possession of land and therefore it is not a suit for land. He relied on the following decisions in support of his contentions:

- 1) State Industries Promotion Corporation of Tamil Nadu Ltd., Sipcot Vs. Arvind Distillery and Chemicals Ltd., Madras and Others, .
- 2) Bank of Madurai Ltd. Vs. Balaramadass and Brothers and Others, .
- 3) Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works and Others, .
- 4) Central Bank of India Vs. Joseph and Others,
- 5) A.S. Baskaran, Proprietor of Sri Amman Leathers Vs. Indian Finance and Factors Limited, .

11. I have considered the rival submissions carefully with regard to facts and citations.

12. The plaintiff filed the suit for recovery of money on the basis of the Hire Purchase Agreement entered into between the parties on 11.8.1993 and also on the basis of the promissory note executed by the defendants on 16.6.1993. Initially the suit was filed for recovering a sum of Rs. 10,16,640/- with interest. By way of amendment, the additional prayer of selling the suit schedule property situated at Attur, Salem District has been asked for in case the defendants failed to pay the amount of Rs. 10,16,640/-with interest.

13. Whether this additional prayer has altered the suit from a suit for recovery of money to a suit for land is the only question that arises for consideration in this application.

14. Before dealing with this question, let me consider the decisions relied on by both the counsel.

15. In AIR 1935 Nag 250 (cited supra), a Full Bench of the High court held that a suit for sale on a mortgage cannot be regarded as a suit in personam to recover a debt because the decree which is passed in such a suit directly affects the title to and disposition of the land mortgaged and hence a suit on a mortgage is one for land and is therefore excluded from the cognizance of the Bombay High Court unless the mortgage property is situate within the jurisdiction of the court.

16. In Motilal Tribhovandas Choksey Vs. Shankarlal Chhaganlal, , the Bombay High Court held that the obtaining of leave under Clause 12 of the Letters patent is the foundation of jurisdiction and such leave must be obtained before the institution of the suit and if an amendment, which would alter the cause of action, is made, it necessarily follows that fresh leave should be obtained in respect of the altered cause of action.

17. In *Sugandha Mohan Bhattacharjee Vs. N.M. Mukherjee and Others*, , the Calcutta High court held that in a suit which is filed with leave under Clause 12 of Letters patent, only formal amendment can be allowed, provided the amendment sought, does not affect the jurisdiction assumed by court originally.

18. In 2001 4 CTC 39 (SC) (cited supra), the Hon"ble Supreme Court held that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property.

19. In 2002 1 CTC 134 (cited supra), a Division Bench of this Court held that when the suit is primarily a suit for a share in the properties which are situated outside the jurisdiction of this Court and all the defendants are residing outside the jurisdiction of this Court, it is a suit for land.

20. In 2002(4) CTC 653 (cited supra), a Division bench of this Court held that a suit filed for specific performance of an agreement for the conveyance of land situated outside the jurisdiction of this Court as also the possession of one of the items of the lands, the suit is clearly one for land and the lands not being situated within the jurisdiction of this Court, the suit was not maintainable in this Court.

21. In 2005 5 CTC 483 (cited supra), this Court held that a suit for injunction restricting the defendant from entering into schedule mentioned property and disturbing possession of the plaintiff, is a suit for land and as the property situated outside the jurisdiction of this Court, this Court cannot entertain the suit.

22. In 2006 1 CTC 270 (cited supra), the above said decision of the learned Single Judge reported in 2005(5) 483 was confirmed by the Division Bench of this Court.

23. In *State Industries Promotion Corporation of Tamil Nadu Ltd., Sipcot Vs. Arvind Distillery and Chemicals Ltd., Madras and Others*, , this Court held that suit for recovery of amount due on mortgage property situated outside the territorial jurisdiction of this Court, is not a suit for land and the leave is to be granted to the plaintiff.

24. In *Bank of Madurai Ltd. Vs. Balaramadass and Brothers and Others*, , a Division Bench of this Court held that when all the defendants are residing within the territorial jurisdiction of this Court, the question whether a suit on mortgage for sale of the mortgaged property is a suit for land or not may not arise at all.

25. In *Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works and Others*, , a Division Bench of this Court held that suit for recovery of money by enforcement of equitable mortgage of immovable properties situated outside the jurisdiction of this Court, is not suit for land and the suit can be filed before this Court. The decision of the learned Single Judge reported in *State Industries Promotion Corporation of Tamil Nadu Ltd., Sipcot Vs. Arvind Distillery and Chemicals Ltd., Madras and Others*, was approved by the Division Bench in the above said decision.

26. Central Bank of India Vs. Joseph and Others, , another Division Bench of this Court referred to the decision of this Court reported in Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works and Others, .

27. In A.S. Baskaran, Proprietor of Sri Amman Leathers Vs. Indian Finance and Factors Limited, , this Court has once again reiterated the law in this regard by holding that a suit for recovery of money and in default to sell the properties mortgaged is not a suit for land.

28. In the case on hand also, the suit is only for recovery of money and in default for selling the mortgaged property situated in Attur, Salem District and in such circumstances, following the decisions reported in State Industries Promotion Corporation of Tamil Nadu Ltd., Sipcot Vs. Arvind Distillery and Chemicals Ltd., Madras and Others, , Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works and Others, and A.S. Baskaran, Proprietor of Sri Amman Leathers Vs. Indian Finance and Factors Limited, , it is to be held that the suit is not for land and as there is a definite cause of action within the jurisdiction of this Court and as prior leave has been already obtained, the suit is very much maintainable in this Court. In view of the clear-cut decisions of this Court, I have not followed the decision in AIR 1935 Nag 250 (cited supra) which was very much relied on by the learned Counsel for the defendants.

29. In the result, there is no merit in the above application and the same is dismissed. No costs.