
(2006) 09 MAD CK 0263

In the Madras High Court

Case No : Application No. 3667 of 2006 in Civil Suit No. 381 of 1999

Octanorm (India) Ltd. and Another

APPELLANT

Vs

Upasana Finance Limited

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

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

Citation : (2007) 2 BC 488

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : V. Sambasivam, for the Appellant; B.T. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—This application has been filed under Order 14, Rule 8 of O.S. Rules read with Order 7, Rule 11, C.P.C. praying to reject the plaint under Clause 12 of Letters Patent read with Order 7 Rule 11 of C.P.C.

2. Heard both sides. This application has been filed by the applicants to reject the plaint on the ground that the suit properly is not within the territorial jurisdiction of the original side of this Court.

3. The suit is one for recovery of money which is said to have been borrowed by the defendants by giving the suit property which is located outside the jurisdiction of the original side of this Court as a security for repayment and not for declaration of title to the property.

4. Mr. V. Sambasivam, learned Counsel appearing for the applicants fairly submitted that though the application to reject the plaint was filed, it is not maintainable in view of the decision of a Division Bench of this Court reported in Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works and Others, wherein in Para No. 6, it was held thus:

6. As we could see from the views of the learned Judges of the Federal Court, the

relevant tests to be remembered and applied to find out as to whether the suit is one for land are : (1) whether the suit involves determination of right, title or interest in land; or (2) whether the suit involves recovery of possession or control of land. In a suit to recovery of money due under a mortgage, when we apply the above tests, it is not possible to say that the suit will come within the mischief of any of the above tests. There may not be a determination of title to the land as such. Equally so, there may not be straightaway a decree for recovery of possession of land. Primarily the decree will be one for recovery of money. Only when there is a default, a final decree may ensue permitting recourse to the land in satisfaction of the money claim. Even then, there is no determination of title to the land and there is no decree for recovery of possession. It is only at the time of execution, a need to advert to these questions may arise, on contingencies therefore presenting themselves. Shanmukham, J. in State Industries Promotion Corporation of Tamil Nadu Ltd., Sipcot Vs. Arvind Distillery and Chemicals Ltd., Madras and Others, adverted to the pronouncements of the Full Bench of this Court in Velliappa Chettiar and Ors. v. Saha Govinda Doss and Ors. AIR 1972 Mad. 721 and the pronouncements of the Federal Court in Mooji Jaitha and Co. v. K.S. and W. Mills Co. AIR (31) 1950 FC 83 and held that the suit for recovery of amount due on mortgage in respect of properties situated outside the jurisdiction of the original side of this Court cannot be classified as a suit for land....

5. Hence, following the Order passed by the Division Bench referred to above and the fact that the suit is one for recourse to land in satisfaction of money claim and not for determination of title or interest of the land or for recovery of possession this application is dismissed as devoid of merits. No costs.