

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**

PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Tuesday, the 19th Day of March 2024

I.A. No.1/2023

-in-

O.S. No.234/2021

B.Karthi ... Petitioner/Plaintiff

-Vs-

Ramathilagam ... Respondent /Plaintiff

This petition came on 2.3.2024 before this Court for hearing in the presence of Thiru.M. Manivannan, Advocate for the petitioner, and Tvl.A.B.Prabhakar, S.Vadivelu and M.Barathiraja, Advocates for the Respondent, and after having heard the argument of both sides and on perusal of case records, this Court delivers the following :

Order

1. Petition filed by th petitioner under Order 6 Rule 17 and Sec.151 of CPC.
2. **The petitioner contention in brief :**

The petitioner states that he has filed the suit for recovery of amount due under two mortgage deeds dated 25.6.2015 and 2.11.2017. At the time of

filing the suit, the petitioner had given instructions to his previous counsel that he has paid Rs.5,00,000/- on 5.6.2016 to the defendant through Karur Vysya Bank. The defendant had promised to execute the mortgage deed for the above said amount of Rs.5,00,000/- on 25.6.2015 and agreed to repay the same with interest at the rate of 12% p.a. within a year. When the suit was posted for trial, the present counsel on perusal of the plaint noticed that the payment of Rs.5,00,000/- made by the petitioner through the Bank account was omitted to be mentioned in the plaint. He has stated that such omission is neither willful nor wanton. But taking advantage of the said mistake, the defendant has filed written statement with false and frivolous allegations. Hence, the plaint has to be suitably amended. So, he prays to amend the plaint as detailed in the petition.

3. The contention of the respondents in brief:

The respondent states that the petition is not maintainable and the original suit was filed only based on the mortgage. The allegations in the affidavit are contrary to the plaint averments and this petition is filed only to fill up the lacuna after filing the written statement and framing of issues. The reasons stated by the petitioner in the petition are not true and they are

invented for filing this petition. This defendant has filed a detailed written statement denying all the averments and specifically denying the execution, place, date and passing of consideration etc., This petition is filed only to fill up the lacuna and to unnecessarily harass the respondent. If the amendment is allowed, it will change the nature of the suit and also the cause of action and would destroy the defence taken up by the defendant. If the petition is allowed, the respondent would be put to irreparable loss and hardship. Hence, he prays to dismiss the petition.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. **Answer to Point :**

Admittedly, the suit is filed on the basis of mortgage deeds executed by the defendant. The averments in the plaint reveals that the defendant has borrowed a sum of Rs.5,00,000/- by executing the mortgage deed before the Sub Registrar, Batlagundu and the defendant borrowed another sum of Rs.10,00,000/- on 2.11.2017 and executed another mortgage deed. The fact that the 1st loan of Rs.5,00,000/- was paid by the plaintiff to the defendant through bank transactions is not mentioned in the plaint. It is also true that the defendant has filed the written statement denying execution of mortgage deeds. He has also denied the borrowal of the entire amount. Now the case

is posted for trial after framing of necessary issues. At this stage, the petition to amend the plaint incorporating the details about the payment of Rs.5,00,000/-on 5.6.2015 through Karur Vysya Bank earlier to the execution of the mortgage deed is sought to be included.

6. It is true that amendment after commencing of trial should not be allowed unless there is compelling necessity and proper reasons for not seeking such amendment at the earliest state. It is equally true that the amendment shall not be allowed if it changes the nature of suit or introduces a new cause of action. This petition seeking amendment is only regarding the mentioning of the transfer of Rs.5,00,000/- through Bank earlier to the execution of mortgage deeds. This amendment does not change the nature of the suit but it only supplements the case of the plaintiff. Since the defendant has totally denied borrowal of any amount, the amendment about the mode of payment of the amount would not change the case of the defendant. Further, it is the duty of the plaintiff to prove the existing loan and passing of consideration. This amendment if not allowed, would cause serious prejudice to the plaintiff and the suit being one on mortgage deed, the mortgage can be executed for past or present consideration. Hence, the cause of action is also not newly introduced and the nature of suit is not altered by way of this

amendment. The objections raised by the respondent except that it would cause hardships to the defendant are not sustainable. The hardships caused to the respondent shall be compensated by way of cost. The mistake of the earlier counsel shall not affect the party. According, it is held that the petition will be allowed on payment of cost of Rs.2,000/- to the respondent on or before 28.03.2024. This point is decided accordingly.

In the result, this petition will be allowed on payment of cost of Rs.2,000/- to the respondent on or before 28.3.2024. call on 1/4/2024.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 19th day of March 2024.

Additional District Judge,
Dindigul.