In the Court of the Principal District and Sessions Judge,
Virudhunagar District at Srivilliputtur

Present:- Thiru.K.Jeyakumar, B.L.,L.L.M.,
Principal District and Sessions Judge,

Tuesday, this the 03rd day of March 2026

I.A.No.03/2026
in
O.S.No.131/2022

B.Kanagaraj … Petitioner/5th Defendant

/**Vs**./

1.R.Chelladurai … 1st Respondent/Plaintiff
2. Rosappu
3. Ganesan
4. Vallimayil
5.Murugeswari … 2nd to 5th Respondents/
1st to 4th Defendants

This petition came before me for final hearing on 17.02.2026 in the presence of Tr.S.Sankaranarayanan, Advocate for the Petitioner, Tr.K.Kalidoss, Advocate for the 1st Respondent/Plaintiff, Tr.P.Balamurugan, Advocate for the 2nd & 4th Respondents, 3rd & 5th Respondents set exparte in Main suit, and upon hearing argument of both side and perusing the records and having stood over for consideration till this day, this Court delivered the following,

ORDER

The petitioner has filed this petition under Order 16 Rule 1 of CPC prays to issue summons to the Income Tax Department, Virudhunagar, to produce before this Court the documents uploaded and filed by the respondent (PAN No:

ARSPC1289Q) in the Income Tax Department portal for the Assessment Years 2018–2019, 2019–2020, 2020–2021 and 2021–2022, and also to direct the competent Income Tax Officer to appear before this Court and depose with regard to the said records.

2) <u>Petition averments in brief:-</u>

(I) The petitioner in this petition is the 5th defendant in the main suit. The respondent has filed the present suit stating that the petitioner's father, Balasubramanian, received a sum of Rs.10,00,000/- in cash on 15.05.2019 and executed a registered mortgage deed in his favour. Further, alleging that the petitioner had borrowed a sum of Rs.9,00,000/- in cash on 15.08.2019 and executed a promissory note, the respondent has filed a suit against the petitioner in O.S.No.52 of 2022 before this Court, which is presently pending for trial before the Additional District Court.

(ii) In this case, as per the orders passed by this Court in I.A.No.1 of 2024, filed by the petitioner seeking a direction to produce the Income Tax Returns and Bank Account details of the respondent/plaintiff, the respondent has produced certain Income Tax documents and bank records before this Court. Among them, the Income Tax Return has been marked as Ex.B3 in this case. The said Ex.B3 Income Tax Return is a false and fabricated document created for the purpose of this case. Further, even according to the particulars mentioned in Ex.B3, it is evident that the respondent did not possess the financial capacity to lend a sum of Rs.10,00,000/- towards the alleged mortgage loan and Rs.9,00,000/- towards the alleged promissory note loan.

(iii) Therefore, in order to prove that the amount mentioned in the suit mortgage deed for Rs.10,00,000/- was mentioned only nominally, and also to verify and examine the Income Tax Returns filed by the respondent before the Income Tax Department up to 31.03.2022, and further to explain the particulars from 01.04.2018 onwards, and to verify the correctness of the particulars mentioned in Ex.B3, the production of the relevant records from the Income Tax Department has become absolutely necessary. Further, in order to establish the legal position that the respondent is required to maintain Day Book / Books of Accounts as per the provisions of the Income Tax Act, and to bring out the true facts before this Court, it is just and necessary that the documents mentioned in this petition be called for from the Income Tax Department, and that a competent Income Tax Officer be directed to appear before this Hon'ble Court and give evidence. Hence, this petition.

3) **<u>The Gist of the Counter filed by the 1st Respondent is as follows:-</u>**

(I) The 1st respondent in this petition is the plaintiff in the main suit. Except the facts which are specifically admitted herein, all the other averments and allegations made in the petition are false, incorrect and contrary to the facts, and the same are hereby denied. The petitioner is put to strict proof of each and every allegation made in the petition. The suit pending before the this Court has been filed by the plaintiff for recovery of the mortgage debt based on the registered mortgage deed executed by the petitioner's father, Balasubramanian, on 15.05.2019, by which he borrowed a sum of Rs.10,00,000/- from him. A legal notice was issued demanding repayment of the said loan amount. However, the petitioner did not send any reply to the said notice. Hence, he was constrained to file the present suit before the Court for recovery of the said debt.

(ii) In the Written statement filed by this petitioner, the petitioner has alleged that Balasubramanian borrowed only Rs.5,00,000/-, but executed the mortgage deed for Rs.10,00,000/-, and that a sum of Rs.7,00,000/- has already been repaid, and further that Rs.1,00,000/- was paid towards the mortgage loan. The petitioner is bound to prove the above allegations through proper oral and documentary evidence. It is a settled principle of law that facts not pleaded in the pleadings cannot be proved through evidence. Therefore, the petition filed by the petitioner is not maintainable in law.

(iii) In the present petition, the petitioner has prayed that an Income Tax Officer should be summoned and examined. The petitioner has no right to seek such an examination. The plaintiff has already produced the necessary Income Tax documents and accounts before this Court. Merely because the mortgage transaction was not reflected in the Income Tax returns, it cannot be presumed that the suit has been filed on the basis of false documents. It is a settled position of law, as held in several judgments of the Hon'ble Madras High Court and other Courts, that failure to disclose a transaction in the Income Tax return cannot by itself invalidate the transaction. The petitioner has filed the present petition only with an intention to delay the trial of the suit and to waste the valuable time of this Court. The petition is filed with a mala fide intention to harass the plaintiff and cause unnecessary inconvenience and expenses. If the petition is allowed, the 1st respondent will suffer irreparable hardship, loss and prejudice. Therefore, it is prayed that this Court may be pleased to dismiss the petition filed by the petitioner with costs.

4) The 2nd to 5th Respondents counter not filed.

5) No oral and documentary evidences let in on either side.

6) Now, the point for consideration is that whether the petition deserves to be allowed or not?

Answer to the Point:-

7) The petitioner has filed this petition under Order 16 Rule 1 of CPC prays to issue summons to the Income Tax Department, Virudhunagar, to produce before this Court the documents uploaded and filed by the respondent (PAN No: ARSPC1289Q) in the Income Tax Department portal for the Assessment Years 2018–2019, 2019–2020, 2020–2021 and 2021–2022, and also to direct the competent Income Tax Officer to appear before this Court and depose with regard to the said records.

8) The contention of the petitioner/5th defendant is that the 1st

respondent/plaintiff has filed the present suit stating that the petitioner's father Balasubramanian borrowed Rs.10,00,000/- on 15.05.2019 and executed a registered mortgage deed, and further alleging that the petitioner borrowed Rs.9,00,000/- on 15.08.2019 and executed a promissory note. The said suit in O.S.No.52 of 2022 is pending before the Additional District Court. As per the orders of this Court in I.A.No.1 of 2024, the respondent has produced certain Income Tax documents, among which the Income Tax Return has been marked as Ex.B3. The said Ex.B3 is a false and fabricated document. Even according to its contents, the respondent did not have the financial capacity to lend Rs.10,00,000/- and Rs.9,00,000/-. Therefore, to verify the correctness of Ex.B3 and the respondent's Income Tax records up to 31.03.2022, it is necessary to call for the records from the Income Tax Department and direct the Income Tax Officer to appear and give evidence. Hence, this petition.

9) On the other hand, the learned counsel for the 1st respondent opposed the petition contending that the suit pending before this Court has been filed by the plaintiff for recovery of mortgage debt based on the registered mortgage deed executed by the petitioner's father, Balasubramanian, on 15.05.2019 for Rs.10,00,000/-. The allegations in the Written Statement that only Rs.5,00,000/- was borrowed and that Rs.7,00,000/- and Rs.1,00,000/- were repaid are matters to be proved by the petitioner through proper evidence. Facts not pleaded cannot be proved by evidence and hence the petition is not maintainable in law. The

request to summon an Income Tax Officer is unnecessary. The plaintiff has already produced the required Income Tax records before this Court. Non-reflection of the transaction in Income Tax returns does not invalidate the transaction, as held in several judgments. The petition has been filed only to delay the trial and harass the plaintiff. Hence, he prayed to dismiss the petition with costs.

10) Both side arguments heard. Record perused. This Court has considered the rival submissions made on both sides. On a careful consideration of the pleadings and records, it is seen that the petitioner seeks to summon the Income Tax Officer and call for the Income Tax records to verify Ex.B3 and the financial capacity of the respondent to lend the alleged loan amount. It is further seen that in the Written Statement the petitioner has stated that Balasubramanian had actually borrowed only a sum of Rs.5,00,000/- from the plaintiff and that the plaintiff had obtained signatures not only in the mortgage deed dated 15.05.2019 but also in three promissory notes. Further, the respondent has already produced the necessary Income Tax documents before this Court. It is also admitted by the 1st respondent/plaintiff in the counter that the mortgage transaction was not reflected in the Income Tax returns. In view of the fact that the mortgage transaction has not been reflected in the Income Tax returns, it is not necessary at this stage to call for the records from the Income Tax Department or to summon the Income Tax Officer. In view of the above circumstances, this Court

is of the opinion that summoning the Income Tax Officer is unnecessary for deciding the present case. Therefore, the petition filed by the petitioner is not maintainable and the same is liable to be dismissed.

11) In the result, this petition is dismissed. No cots.

Directly dictated to the Stenographer, typed by her in Computer, then corrected and pronounced by me in the open Court, on this the 03rd day of March 2026.

K JEYAKUMAR

Digitally signed by K JEYAKUMAR

Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.

<u>No witnesses and exhibits on both side- Nil</u>

K JEYAKUMAR

Digitally signed by K JEYAKUMAR

Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.

Principal District and Sessions Court,
Virudhunagar District at
Srivilliputtur
I.A.No.3/2026 in O.S.No.131/2022
Draft/Fair Order
Dated: 03.03.2026