

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 13-11-2025**

**PRONOUNCED ON: 24 .03.2026**

**CORAM**

**THE HON'BLE DR.JUSTICE A.D.MARIA CLETE**

**AS Nos. 266 & 267 of 2021**

**A.S.No.266 OF 2021**

K. Shivakumar  
S/o.Late K.Swamy,  
No.P-6, (OLD No.P-11),  
19<sup>th</sup> Street, Anna Nagar,  
Chennai – 600 040.

..Appellant/1st  
respondent/Plaintiff

Vs

1. Punjab National Bank  
Rep By Its Chief Manager,  
Asset Recovery Management Branch,  
Khivraj Building , 1st Floor,  
No.624, Anna Salai,  
Chennai -600 006.
2. Recovery Officer  
DRT-I, Chennai.
3. H.Asiya Bhanu  
W/o. V.M.S. Hajee Mohammed,  
No.W-27, Block-W,  
Anna Nagar, Chennai - 600 040.
4. K.Dhanapal  
S/o. R.Krishna Nadar,  
No.W-27, Block W,  
Anna Nagar, Chennai - 600 040.

..1st respondent/1st defendant/Petitioner/1  
and Respondents 2 to 4/  
Respondents 2 to 4 /  
Defendants 2 to 4



**PRAYER IN A.S.No.266 of 2021:** The appeal suit filed under Section 96 of CPC to allow the appeal by dismissing the Fair and decreetal order dated 06/01/2021 passed in IA.No.1/2019 in OS No.3969/2019 on the file of VI Additional City Civil Court, Chennai

**A.S.NO.267 OF 2021**

Mr.K.Shivakumar,  
S/o.Late K.Swamy,  
No.P-6, (Old No.P-11),  
19<sup>th</sup> Street, Anna Nagar,  
Chennai – 600 040.

...

Appellant/1st  
Respondent/Plaintiff

Vs.

1.Mr.K.Dhanapal  
S/o.R.Krishna Nadar,  
No.W-27, Block W,  
Anna Nagar, Chennai – 600 040.

2.Punjab National Bank,  
Represented by its Chief Manager,  
Asset Recovery Management Branch,  
Khivraj Building, 1<sup>st</sup> Floor,  
No.624, Anna Salai, Chennai – 600 006.

3.Recovery Officer,  
DRT – I, Chennai.

4.Mrs.H.Asiya Bhanu,  
W/o.V.M.S.Hajee Mohammed,  
No.W-27, Block – W,  
Anna Nagar, Chennai – 600 040.

... 1<sup>st</sup> respondent/petitioner/4th  
defendant/Respondents 2 to  
4/ Respondents 2 to 4/  
Defendants 1 to 3.



**PRAYER IN A.S.No.267 of 2021:** The appeal suit filed under Section 96 of CPC to allow the appeal by dismissing the Fair and decretal order dated 06/01/2021 passed in IA.No.2/2019 in OS No.3969/2019 on the file of VI Additional City Civil Court, Chennai.

For Appellant(s):  
in both cases

Mr.T.Sai Krishnan

For Respondent(s):

Mr.M.L.Ganesh  
for R1 in A.S.No.266 of 2021/  
R2 in A.S.No.,267 of 2021

Ms.R.Meenalochini  
for R4 in A.S.No.266 of 2021/  
R1 in A.S.No.267 of 2021

R2 – DRT in A.S.No.266 of 2021  
R3 – DRT in A.S.No.267 of 2021  
R3 – No appearance in A.S.No.266 of 2021  
R4 – No appearance in A.S.No.267 of 2021

### **COMMON JUDGMENT**

These two appeals arise from the fair and decretal orders dated 06.01.2021 made in I.A. Nos.1 and 2 of 2019 in O.S. No.3969 of 2019, by which the learned VI Additional City Civil Judge, Chennai, allowed the applications filed under Order VII Rule 11(a) and (d) CPC and consequently rejected the plaint.

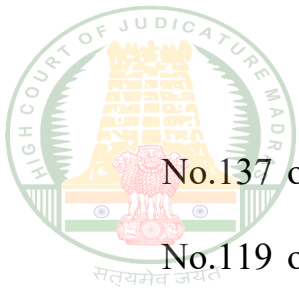


2. Since both applications arose from the same suit and the impugned orders rest on substantially similar reasoning, these appeals are taken up together and are being disposed of by this common judgment.

3. For the sake of convenience, the parties are hereinafter referred to in the same rank in the suit .

**4. The plaintiff's case, in brief, is as follows:** According to the plaintiff, the third respondent, Mrs. H. Asiya Bhanu, executed a simple mortgage deed dated 28.03.2008 in respect of the suit schedule property to secure a loan of Rs.1,00,00,000/-, agreeing to repay the principal together with interest at 24% per annum within a period of three months. The said mortgage deed was registered on the file of the Sub-Registrar, Anna Nagar, as Document No.1217 of 2008. Since the third defendant failed to repay the amount, the plaintiff instituted C.S. No.560 of 2008 on 09.06.2008 on the file of this Court for recovery of the mortgage amount.

5. The plaintiff further states that he subsequently came to know that certain criminal cases had been registered against the third defendant by the Central Bureau of Investigation in relation to bank fraud. According to the plaintiff, he also came to know, through an advertisement issued by the first defendant Bank, that the first defendant had treated the very same property as collateral security for the credit facilities availed by the third defendant and had initiated recovery proceedings before the Debt Recovery Tribunal in O.A.



No.137 of 2003, culminating in the issuance of Recovery Certificate in DRC No.119 of 2008. Though the advertisement stated that the original title deeds relating to the properties were in the custody of the CBI, the plaintiff asserts that the original sale deed pertaining to the suit property, standing in the name of the third defendant, is in his possession. On that basis, the plaintiff alleges that the first defendant Bank and the third defendant had colluded with each other and that the loan amount had been disbursed in a fraudulent manner; the bank's claim is fraudulent since the original deeds were with the plaintiff. It is further alleged that the officials of the first defendant Bank, in collusion with the third defendant, instituted O.A. No.137 of 2003 before the Debt Recovery Tribunal and obtained orders fraudulently, and that, consequently, the Recovery Certificate issued therein is a nullity.

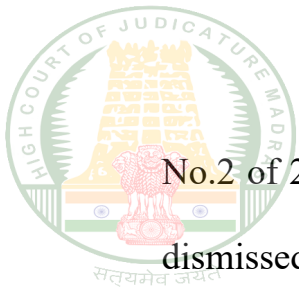
6.The plaintiff thereafter filed I.A. No.2 of 2009 in DRC.No.119/2009 in O.A. No.137 of 2003 before the Recovery Officer seeking a declaration that the equitable mortgage and the Recovery Certificate were null and void, and also filed an application to reopen O.A. No.137 of 2003. Both applications came to be dismissed on 28.07.2009. Aggrieved thereby, the plaintiff preferred Appeal No.11 of 2009 before the Debt Recovery Tribunal. During the pendency of the said appeal, an auction was conducted on 27.10.2009, in which the fourth defendant emerged as the successful bidder, and the sale was subsequently confirmed on 03.03.2010. Thereafter, Appeal No.11 of 2009 was dismissed on



09.12.2015. The plaintiff states that he then preferred an appeal before the Debt Recovery Appellate Tribunal, but the same could not be processed for want of a Presiding Officer. In the meanwhile, the fourth defendant took possession of the suit property, effected mutation in the revenue records, and demolished the building standing thereon. It is further stated that the third defendant had also challenged the auction proceedings and carried the matter up to the Supreme Court of India, but without success. According to the plaintiff, a fresh cause of action thereafter arose, and on that basis he instituted the present suit on 20.07.2016 seeking a declaration that the entire proceedings initiated on the strength of the alleged mortgage said to have been executed by the third defendant in favour of the first defendant in O.A. No.137 of 2003 on the file of the Debt Recovery Tribunal, the Recovery Certificate issued pursuant thereto, the auction conducted in respect of the suit property, and the demolition of the building are all null and void and non est in law.

**7. Brief contents of the affidavit filed in support of I.A. No.1 of 2019:**

This application has been filed by the first defendant, Punjab National Bank, seeking rejection of the plaint under Order VII Rule 11 CPC. According to the first defendant, the suit is not maintainable, since the jurisdiction of the civil Court is expressly barred under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It is further contended that the suit is also liable to be rejected as barred by limitation. The plaintiff had filed I.A.

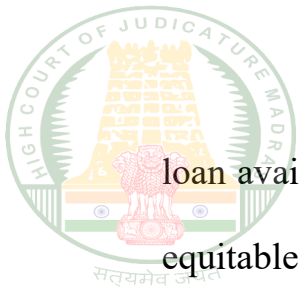


No.2 of 2009 in DRC.No.119/2009 in O.A. No.137 of 2003, which came to be dismissed on 28.07.2009; O.A. No.137 of 2003 had already been allowed on 04.04.2008; the Recovery Certificate was thereafter issued; auction was conducted on 27.10.2009; and the sale was confirmed and sale certificate issued on 03.03.2010. In such circumstances, the present suit, having been filed only on 20.07.2016, is stated to be clearly barred by limitation.

8.It is further stated in the affidavit that the third defendant and her family members had filed M.A. No.471 of 2010 before the Debt Recovery Tribunal to set aside the ex parte order passed in O.A. No.137 of 2003, and the said application was dismissed on 31.05.2011. Challenging the same, the third defendant filed W.P. No.13710 of 2011 before this Court, which also came to be dismissed on 03.08.2011. Against the said order, SLP Nos.24063 and 24064 of 2011 were preferred before the Hon'ble Supreme Court of India, and the same were dismissed on 12.09.2011. On the above grounds, rejection of the plaint is sought.

**9.Brief contents of the affidavit filed in support of I.A. No.2 of 2019:**

This application has been filed by the fourth defendant in the suit, the auction purchaser of the suit property, seeking rejection of the plaint under Order VII Rule 11 CPC. According to the fourth defendant, the suit is not maintainable in view of Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It is stated that the third defendant, as guarantor for the



loan availed by V.M.S. Jaffarulla from the first defendant Bank, had created an equitable mortgage over the suit property and executed letters of personal liability in favour of the Bank on 23.04.1998. It is further stated that the Bank filed O.A. No.137 of 2003 and obtained an ex parte order on 04.04.2008. In the execution proceedings in DRC No.119 of 2009, the Recovery Officer conducted auction sale on 27.10.2009, in which the petitioner emerged as the successful bidder and purchased the suit property for a sale consideration of Rs.2,02,50,000/-. The sale was confirmed on 03.03.2010, and the sale certificate was issued and registered on the same day. On that basis, it is contended that the fourth defendant's purchase has become lawful and final.

10.The third defendant instituted C.S. No.796 of 2009 on 27.08.2009, raising substantially the same challenge as in the present suit, namely, that no valid mortgage had been created in favour of the first defendant, Punjab National Bank, and also assailing the order passed by the Debt Recovery Tribunal in O.A. No.137 of 2008, the Recovery Certificate in D.R.C. No.119 of 2008, and the consequential auction sale proceedings. In the said suit, the first defendant, Punjab National Bank, filed Application No.5583 of 2009 under Order VII Rule 11 CPC seeking rejection of the plaint, and the same was allowed on 02.03.2010. The appeals preferred by the third defendant in O.S.A. Nos.64 and 65 of 2010 were dismissed by a Division Bench on 30.03.2010. The Special Leave Petition filed against the said judgment of the Division Bench in



SLP No.13608-13609 of 2010 was also dismissed by the Supreme Court of India on 08.07.2010.

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11. Likewise, the third defendant and the other guarantor had filed an application before the Debt Recovery Tribunal to condone the delay in filing a petition to set aside the ex parte order; the said application was dismissed, and the matter was carried up to the Supreme Court of India, but without success. Inasmuch as the reliefs sought in the present suit and in C.S. No.796 of 2009 are substantially the same, it is contended that the present suit is hit by estoppel and barred by res judicata. It is further stated that the plaintiff had admitted knowledge of the proceedings before the Debt Recovery Tribunal, yet chose to institute the present suit only after a lapse of about eight years, and therefore, according to the fourth defendant, the suit is barred by limitation.

**12. The brief contents of the counter affidavits filed by the first respondent/plaintiff in I.A. Nos.1 and 2 of 2019 are as follows:** With regard to the plea of ouster of civil Court jurisdiction under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, it is contended that the bar of jurisdiction applies only to matters falling within Section 17, namely, applications filed by Banks and Financial Institutions, and that, therefore, the civil Court's jurisdiction is excluded only in respect of such proceedings. According to the plaintiff, the present suit having been instituted by an individual, the civil Court has jurisdiction to entertain the same. It is further



stated that the plaintiff was not a party to O.A. No.137 of 2003, in which only the third defendant had been arrayed as the fourth respondent, and that, having advanced a substantial sum to the third defendant, the plaintiff is entitled to approach the civil Court. It is also contended that the plaint discloses triable issues, including the bona fides of the transaction, the custody of the original title deeds, and the genuineness of the title deeds, and therefore rejection of the plaint under Order VII Rule 11(a) and (d) CPC is unwarranted. The plaintiff further asserts that he was not a party to C.S. No.796 of 2009 and, therefore, the principles of estoppel and res judicata have no application to the present suit.

13. By separate orders, the trial Court held that the plaint did not disclose a cause of action, that the jurisdiction of the civil Court was barred under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and that the suit was also barred by limitation. On those findings, both the applications were allowed and, consequently, the plaint came to be rejected.

14. Aggrieved by the rejection of the plaint, the plaintiff has preferred the present appeals. The appellant contends that the trial Court erred in rejecting the plaint under Order VII Rule 11(a) and (d) CPC, since the plaint, when read as a whole, discloses a cause of action and raises triable issues. Reliance is placed on the settled principle that rejection of a plaint is permissible only where the bar is apparent on the face of the plaint itself. The appellant would further submit that

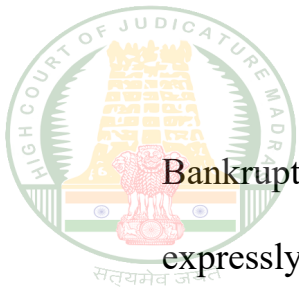


the present suit is independent of the earlier mortgage suit in C.S. No.560 of 2008 and is not hit by Order II Rule 2 CPC, as the cause of action for the declaratory relief is stated to have arisen subsequently. It is also contended that the question whether the proceedings before the Debt Recovery Tribunal and the recovery proceedings are binding on the plaintiff, who claims to be a registered mortgagee, as well as the issues relating to fraud, collusion, genuineness of title deeds, and bona fides, are matters requiring a full-fledged trial and cannot be decided at the threshold. The appellant further disputes the finding regarding the bar of jurisdiction under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, contending that the civil Court is competent to adjudicate such disputes. As regards limitation, it is pleaded that the same is a mixed question of law and fact and that the plaintiff's mortgage right continues until discharge of the mortgage.

15. The points that arise for consideration in these appeals are as follows:

- i. Whether the suit is barred under Sections 18 of the Recovery of debts due to Bank and Financial Institutions Act 1993?
- ii. Whether the suit is ex facie barred by limitation?
- iii. Whether the suit is barred by resjudicata?
- iv. Whether the order and decretal order passed in I.A.No.1 & 2 of 2019 are liable to set aside?

**16.Point No.1:** On the side of the applicants/defendants, it is contended that the suit is barred under Section 18 of the Recovery of Debts and



Bankruptcy Act, 1993, inasmuch as the jurisdiction of the civil Court is expressly excluded.

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17. Per contra, the learned counsel for the plaintiff would submit that Section 18 bars the jurisdiction of the civil Court only in respect of matters falling under Section 17 of the Act, and that the said bar operates only in relation to applications by Banks and Financial Institutions. It is therefore contended that, the plaintiff being an individual, the present suit before the civil Court is maintainable.

18. This Court has carefully considered the rival submissions advanced on either side. The principal question that arises for consideration is whether the present suit is maintainable in the light of the bar contained in Section 18 of the Recovery of Debts and Bankruptcy Act, 1993.

19. It is the contention of the defendants that the suit is barred, since the subject matter relates to recovery proceedings, auction sale, and issuance of the sale certificate, all of which, according to them, fall within the exclusive jurisdiction of the Debts Recovery Tribunal. On the other hand, the plaintiff would contend that the bar under Section 18 applies only in respect of Banks and Financial Institutions and does not extend to an individual litigant such as the plaintiff.



20. This contention of the plaintiff is misconceived and is liable to be rejected. Section 18 of the Act expressly bars the jurisdiction of civil Courts in respect of matters falling within the ambit of Section 17. The language employed in Section 18 is clear and categorical, inasmuch as it provides that “no court or authority” shall exercise jurisdiction in relation to such matters. The statutory bar is, therefore, absolute in its operation and is not confined only to proceedings initiated by Banks or Financial Institutions.

21. The Supreme Court, in **United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110**, has categorically held that where a special statute provides a complete mechanism for redressal of grievances, the jurisdiction of the civil Court stands excluded and the parties must work out their remedies in the manner provided under the statute. Likewise, in **Jagdish Singh v. Heeralal, (2014) 1 SCC 479**, the Apex Court held that any challenge to the measures taken in respect of secured assets, including auction sale, falls exclusively within the jurisdiction of the Tribunal, and that the jurisdiction of the civil Court is barred.

22. On the side of the appellant/plaintiff, reliance is placed on the judgment of the Madras High Court in **Deenadayalan v. N. Sathish Kumar (represented by Power Agent N. Ashok), 2021 SCC OnLine Mad 16531**. It is contended that, since the plaintiff is neither a borrower nor a guarantor, the bar under Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 would



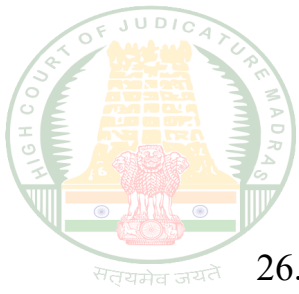
not apply, and that, therefore, the suit before the civil Court is maintainable.

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23. Though the above contention may appear attractive at first blush, it cannot be accepted in the facts and circumstances of the present case. It is no doubt true that where a plaintiff, as a third party, seeks a limited or independent relief in respect of his own rights, such as enforcement of a subsequent mortgage, without calling in question the recovery proceedings initiated by the Bank, such a suit may not fall within the bar under Section 18.

24. However, in the case on hand, the relief sought is not confined to the plaintiff's independent rights said to arise out of the subsequent mortgage dated 28.03.2008. On the contrary, the plaintiff has directly challenged: (i) the order passed by the Debts Recovery Tribunal; (ii) the Recovery Certificate issued pursuant thereto; and (iii) the auction sale conducted by the Recovery Officer, together with all consequential proceedings. All these actions are integral parts of the statutory recovery proceedings initiated against the borrower/guarantor, namely, the third defendant.

25. Such matters squarely fall within the exclusive domain of the Debts Recovery Tribunal under Section 17 of the Act. Once the relief sought relates to the validity of the recovery proceedings and the measures taken pursuant thereto, the bar under Section 18 is clearly attracted, irrespective of whether the plaintiff is the borrower, the guarantor, or a third party.



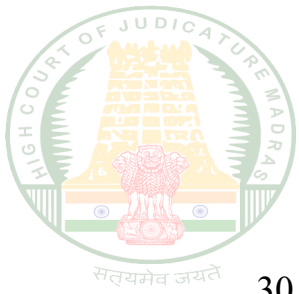
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26. In fact, the very decision relied on by the plaintiff fortifies the above position. In **Deenadayalan (supra)**, the High Court observed that where the title to the secured property stands in the name of the borrower/guarantor and the Bank has initiated recovery proceedings on the basis of such security interest, it is the Debts Recovery Tribunal alone that would have jurisdiction, and the jurisdiction of the civil Court would stand barred.

27. Applying the above principle to the facts of the present case, since the property in question formed the subject matter of recovery proceedings initiated against the guarantor and such proceedings culminated in the issuance of the Recovery Certificate and the auction sale, any challenge thereto can be adjudicated only by the DRT/DRAT and not by the civil Court.

28. Therefore, the judgment relied on by the plaintiff is clearly distinguishable on facts and, on the contrary, lends support to the case of the defendants. Hence, the said decision does not advance the plaintiff's case.

29. In the present case, the relief sought by the plaintiff is to declare as null and void the proceedings before the Debts Recovery Tribunal, including the auction sale and the sale certificate issued by the Recovery Officer. Such relief squarely relates to matters falling within Section 17 of the Act, namely, recovery proceedings and the consequential sale of secured assets.



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30. Once it is found that the subject matter of the suit falls within the ambit of Section 17, the bar under Section 18 operates with full force. The exclusion of the jurisdiction of the civil Court extends to all persons, including borrowers, guarantors, purchasers, and subsequent mortgagees, and is not confined only to Banks or Financial Institutions.

31. Therefore, this Court is of the considered view that the present suit is expressly barred under Section 18 of the Recovery of Debts and Bankruptcy Act, 1993. A reading of the plaint, on its face, makes it clear that the reliefs sought pertain to matters falling within the exclusive jurisdiction of the Debts Recovery Tribunal. Hence, the plaint is liable to be rejected under Order VII Rule 11(d) CPC as being barred by law. Thus, point no.1 is answered against plaintiff.

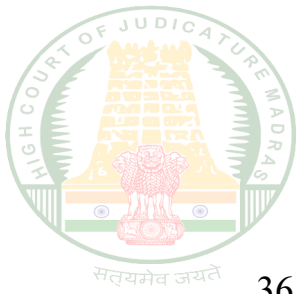
**32.Point No.2:** The learned counsel appearing for the petitioners/defendants would contend that the suit is barred by limitation. It is no doubt true that the question of limitation is ordinarily a mixed question of law and fact. However, it is equally well settled that where, on a meaningful reading of the plaint, the suit appears ex facie to be barred by limitation, the plaint can be rejected under Order VII Rule 11(d) CPC. On the other hand, where the issue of limitation requires adjudication upon disputed questions of fact, the plaint cannot be rejected at the threshold.



33. In the present case, it is necessary to examine, on the basis of the averments contained in the plaint, whether the suit is ex facie barred by limitation. The plaintiff has instituted the suit seeking a declaration that: (i) the equitable mortgage alleged to have been executed by the third defendant in favour of the first defendant Bank is null and void; (ii) the Recovery Certificate issued by the Debts Recovery Tribunal-I, Chennai, in O.A. No.137 of 2003 is null and void; (iii) the auction sale conducted by the second defendant in D.R.C. No.119 of 2008 is null and void; and (iv) all consequential proceedings, including delivery of possession to the fourth defendant and demolition of the building, are null, void and non est in law.

34. In the case of a suit seeking declaratory relief, the applicable provision under the Limitation Act, 1963 is Article 58, which prescribes a period of three years from the date on which the right to sue first accrues.

35. In the case on hand, the material dates, as borne out by the plaint averments, are as follows: the equitable mortgage in favour of the first defendant Bank is stated to have been created on 23.04.1998; the Recovery Certificate in O.A. No.137 of 2003 is stated to have been issued on 28.07.2008; the auction sale was conducted on 27.10.2009; and the sale was confirmed on 03.03.2010.



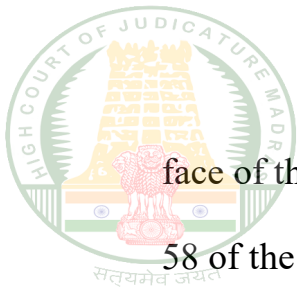
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36. The present suit came to be instituted only on 20.07.2016, originally before this Court in C.S. No.512 of 2016, and was thereafter transferred and renumbered as O.S. No.3969 of 2019 on the file of the IV Additional City Civil Court, Chennai.

37. It is further evident from the averments in the plaint that the plaintiff entered into the transaction on 28.03.2008 by advancing a sum of Rs.1 crore to the third defendant on the strength of a mortgage. The plaintiff has also categorically stated that he had become aware of the proceedings before the Debts Recovery Tribunal and of the Recovery Certificate issued therein, and that he had, in fact, filed I.A. No.2 of 2009 before the Recovery Officer challenging the same. It is thus clear that the plaintiff had knowledge of the prior mortgage, the proceedings before the Debts Recovery Tribunal, and the Recovery Certificate, at least by the year 2009.

38. Further, during the pendency of Appeal No.11 of 2009, the auction sale was conducted on 27.10.2009 and the sale was confirmed on 03.03.2010. It is, therefore, manifest that the plaintiff had full knowledge of all the material transactions at least by the year 2010.

39. Despite such knowledge, the present suit came to be filed only on 20.07.2016, well beyond the prescribed period of three years. Hence, on the



face of the plaint averments, the suit is clearly barred by limitation under Article 58 of the Limitation Act, 1963.

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40. On the side of the appellant/plaintiff, reliance is placed on the judgment of the Madras High Court in **C.S. Ramaswamy v. Nanjammal and others, 2020 SCC OnLine Mad 28045**. In the said case, the suit had been instituted in 2016 seeking cancellation of a sale deed dated 12.09.2005. An application under Order VII Rule 11(d) CPC was filed for rejection of the plaint on the ground of limitation; however, the same was dismissed. The High Court confirmed the said dismissal on the ground that the plaint contained specific averments of fraud and that the plaintiff had pleaded knowledge of the sale deed only in April 2015, immediately upon which the suit came to be filed. In those circumstances, the Court held that the issue of limitation, being dependent upon proof of fraud and the date of knowledge, required a full-fledged trial and could not be decided at the threshold.

41. However, the said decision is clearly distinguishable on facts. In the present case, the plaintiff has admitted knowledge of the entire transaction as early as the year 2009 and had, in fact, filed I.A. No.2 of 2009 before the Recovery Officer challenging the recovery proceedings. Thus, the plaintiff's knowledge of the prior mortgage, the proceedings before the Debts Recovery Tribunal, and the consequential actions taken in respect of the suit property is not in dispute.



42. Despite such admitted knowledge in the year 2009, the present suit came to be filed only in the year 2016, far beyond the prescribed period of limitation of three years. Therefore, unlike the decision relied on by the plaintiff, where the date of knowledge itself was in dispute and required adjudication, in the present case the date of knowledge stands admitted and undisputed.

43. Hence, the judgment relied on by the plaintiff does not advance his case. On the contrary, a reading of the plaint itself makes it clear that the present suit is barred by limitation and is, therefore, liable to be rejected.

44. The further contention of the plaintiff that, since he is in possession of the original title deeds, the cause of action is a continuing one, cannot be accepted. Section 22 of the Limitation Act applies only to cases of continuing breach of contract or continuing tort, where each successive breach gives rise to a fresh cause of action. In the present case, the acts complained of, namely, the execution of the mortgage, issuance of the Recovery Certificate, conduct of the auction sale, and confirmation of the sale, are all completed events. Therefore, the doctrine of continuing cause of action has no application to the facts of the present case.

45. Accordingly, this Court holds that the suit is ex facie barred by limitation and is, therefore, liable to be rejected under Order VII Rule 11(d) CPC. Thus, point no.2 is answered against plaintiff.



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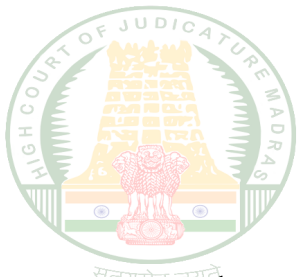
**Point No.3:** On the side of the applicants/defendants, it is contended that the plaint is liable to be rejected on the grounds of res judicata and estoppel. In **Srihari Hanumandas Totala v. Hemant Vithal Kamat and others, (2021) 9 SCC 99**, the Apex Court held that the plea of res judicata cannot be made a ground for rejection of a plaint under Order VII Rule 11 CPC. The said principle has also been reiterated in **Pandurangan v. T. Jayarama Chettiar and another, Civil Appeal No.7743 of 2025, dated 14.07.2025**. In view of the above Apex court citations the plea of resjudicata is not fit for consideration. Thus this point is answered.

47.

**Point No.4:** From the averments in the plaint, it is seen that the third defendant had earlier instituted C.S. No.796 of 2009 seeking substantially identical reliefs, namely, a declaration that no valid mortgage had been created over the suit property and that the recovery proceedings culminating in D.R.C. No.119 of 2008 are illegal, void and non est in law. The plaint in the said suit came to be rejected under Order VII Rule 11 CPC by order dated 02.03.2010.

48.

The appeals preferred against the rejection of the plaint, in O.S.A. Nos.64 and 65 of 2010, were dismissed by the Division Bench of this Court on 30.03.2010, and the Special Leave Petitions in SLP Nos.13608 and 2309 of 2010 were also dismissed by the Hon'ble Supreme Court on 08.07.2010. Thus, the issue relating to the validity of the equitable mortgage and the consequential recovery proceedings has attained finality. Though the plaintiff was not a party

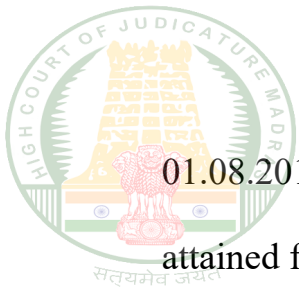


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to the earlier suit/proceedings, the pleadings unmistakably disclose that he is setting up a claim through and under the third defendant. The foundation of the present suit is also identical, namely, the denial of the execution of the equitable mortgage by the third defendant in favour of the Bank and the challenge to the recovery proceedings, on grounds that were directly raised and decided in the earlier proceedings.

49. The plaintiff's case is not founded on any independent or distinct cause of action, but is wholly derivative of the rights asserted by the third defendant. The allegations of fraud, non-availability of the original title deeds, and invalidity of the mortgage are only a reiteration, or at best a re-characterisation, of the very same grounds urged by the third defendant in the earlier suit in C.S. No.796 of 2009.

50. Further, the very same grounds were also raised by the first respondent/plaintiff in I.A. No.2 of 2009 in D.R.C. No.119 of 2008 in O.A. No.137 of 2003 before the Recovery Officer, seeking a declaration that the mortgage and the Recovery Certificate were nullities. The said application was dismissed on merits after contest. The appeal preferred before the Debt Recovery Tribunal in Appeal No.11 of 2009 was also dismissed on merits, after contest, on 27.2.2015. The further appeal filed before the Debt Recovery Appellate Tribunal, Chennai, in A.I.R. No.229 of 2015 was dismissed on

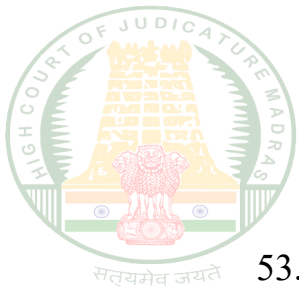


01.08.2017. No further appeal having been preferred thereafter, the matter has attained finality.

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51. Thus, the challenges laid on the very same grounds by the third defendant, as plaintiff in C.S. No.796 of 2009 before this Court, and by the present plaintiff in I.A. No.2 of 2009 before the Debt Recovery Tribunal, were both negated on merits. Despite the same, the plaintiff has now instituted the present suit in O.S. No.3969 of 2019 on the very same grounds.

52. When the third defendant had already failed in her challenge, and the findings rendered therein have attained finality up to the Hon'ble Supreme Court, and when the present plaintiff had also challenged the very same proceedings before the Debt Recovery Tribunal and failed, he cannot now be permitted to reargue the very same issues under the guise of a fresh suit. Such an attempt, in the considered view of this Court, amounts to a clear abuse of process of law, and the present suit is vexatious in nature. Hence, as held by the Hon'ble Apex Court in **T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467**, such a suit is liable to be rejected at the threshold. In the above circumstances, the fair and decretal orders passed by the learned trial Judge in I.A. Nos.1 and 2 of 2019 in O.S. No.3969 of 2019 are liable to be confirmed. Thus, point no.4 is answered.



53. In the result, in view of the findings rendered on Point Nos.1, 2 and 4, the fair and decretal orders passed in I.A. Nos.1 and 2 of 2019 in O.S. No.3969 of 2019 are confirmed, and the rejection of the plaint in O.S. No.3969 of 2019 is upheld. Accordingly, both the appeals are dismissed with costs. Consequently, connected miscellaneous petitions, if any, are closed.

**24.03.2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

sms

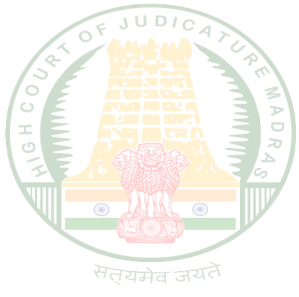
To

1.VI Addl City Civil Court,  
Chennai.

2.Punjab National Bank  
Rep By Its Chief Manager, Asset Recovery Management Branch, Khivraj  
Building , 1st Floor, No.624, Anna Salai, Chennai -600 006

3.Recovery Officer  
DRT-I, Chennai

4.V.R.Section  
High Court, Madras.



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AS No. 266 of 2



**DR.A.D.MARIA CLETE, J.**

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**Pre-delivery order made**  
**in**  
**AS Nos. 266 & 267 of 2021**

**24-03-2026**