

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

FAO (RO).NO. 307 OF 2014 ()

AGAINST THE ORDER IN AS 6/2013 OF SUB COURT, KOCHI DATED 29-08-2014
AGAINST THE JUDGMENT IN OS 151/2011 OF MUNSIF COURT, KOCHI DATED
02-11-2012

APPELLANT(S) (DEFENDANT IN THE
TRIAL COURT AND RESPONDENT
IN THE LOWER APPELLATE COURT) :

KANAKA BAI, AGED 77 YEARS,
W/O. LATE ACHUTHA PRABHU, HOUSE NO.18/1214,
NORTH OF TD TEMPLE, NORTH CHERLAI, KOCHI-2.

BY ADVS.SRI.S.SACHITHANANDA PAI
SMT.K.S.JEENA REETHA

RESPONDENT(S) (PLAINTIFF IN
TRIAL COURT AND APPELLANT
IN THE LOWER APPELLATE COURT) :

N. BALAKRISHNA KAMATH, AGED 59 YEARS
S/O. NARASIMHA KAMATH, DOOR NO.VIII/1215
NORTH OF TD TEMPLE, NORTH CHERLAI, KOCHI-2.

BY ADV. SRI.G.KRISHNAKUMAR

THIS FIRST APPEAL FROM ORDER - REMAND ORDER HAVING BEEN
FINALLY HEARD ON 29-01-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

NS

P.B. SURESH KUMAR, J.

F.A.O. (RO). No.307 of 2014

Dated this the 29th day of January 2015

J U D G M E N T

The defendant in O.S. No.151 of 2011 on the file of the Court of the Munsiff, Kochi is the appellant in this appeal. The plaintiff in the suit is the respondent.

2. O.S. No.151 of 2011 is a suit for redemption. Ext.A1 mortgage dated 1.02.1961 was the mortgage sought to be redeemed in the suit. The suit was resisted by the defendant contending, among others, that it is barred by limitation. The trial court, after recording evidence, considered the issue relating to the limitation and held that the suit is barred by limitation. Since it was held that the suit is barred by limitation, the remaining issues framed for trial were not considered. Aggrieved by the decision of the trial court, the plaintiff preferred A.S.No.6 of 2013 before the Court of the Subordinate Judge, Kochi. The Appellate Court, on an evaluation of the materials on record, found that the suit is not barred by limitation and remitted the matter to the

trial court for deciding the remaining issues. This appeal is preferred aggrieved by the said order of remand.

3. It is not disputed that if the transaction is a usufructuary mortgage, in view of the decision of the Apex Court in **Singh Ram (Dead) through Legal Representatives V. Sheo Ram and Others** (2014 (9) SCC 185), the suit is well within the period of limitation. The question as to the nature of transaction is not seen considered by both the courts below. The copies of the plaint and written statement which were made available to me at the time of hearing do not indicate that there is any admission as to the nature of Ext.A1 transaction. The learned counsel for the appellant submits that the transaction is an anomalous mortgage, whereas the learned counsel for the respondent submits that the transaction is a usufructuary mortgage. The nature of transaction is purely a question of fact to be decided based on the materials on record in the suit.

4. In the said circumstances, I confirm the

decision of the Appellate Court with the modification that the question of limitation shall be decided afresh by the trial court, after rendering a finding as to the nature of transaction, along with other issues arising for decision in the suit. In so far as the suit being one instituted to redeem a mortgage of the year 1961, I feel it appropriate to direct the trial court to dispose of the suit finally, as expeditiously as possible, at any rate on or before 31.03.2015.

Sd/-
P.B. SURESH KUMAR,
JUDGE

NS