

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 11.06.2018****PRONOUNCED ON : 14.06.2018****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****S.A.No.1271 of 2004**

G.Thiyagarajan

...

Appellant

Vs.

Ponmudi Pillai

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 10.03.2004 passed in A.S.No.48 of 2003 on the file of the First Additional Subordinate Court, Villupuram, reversing the Judgment and Decree dated 28.03.2002 passed in O.S.No.255 of 2000 on the file of the Principal District Munsif Court, Villupuram.

For Appellant : Mr.Manoharan S. Sundaram

For Respondent : Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 10.03.2004 passed in A.S.No.48 of 2003 on the file of the First Additional Subordinate Court, Villupuram, reversing the Judgment and Decree dated 28.03.2002 passed in O.S.No.255 of 2000 on the file of the Principal District Munsif Court, Villupuram.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Declaration and Permanent Injunction.

4. The case of the plaintiff, in brief, is that the suit property was purchased by his father Govindasami Pillai from one Jumbulingam by way of a sale deed dated 04.07.1974 as one of the items comprised in the sale deed and the plaintiff's father had also obtained the delivery receipt from his vendor in respect of the suit property and took possession of the suit property and been enjoying the same till his life time and after his demise, it is only the plaintiff, who had succeeded to the suit property and been enjoying the same without any disturbance by obtaining Patta, Chitta and Adangal and also paying kist etc., and while so, the defendant proclaimed that the suit property had been subjected to usufructuary mortgage by Manickamammal wife of Rajamanickam Pillai in his favour and thereby claimed that he has title, possession and enjoyment of the suit property. However, the defendant has no title, possession of the suit property as claimed and on that premise, the defendant attempted to trespass into the suit property without any legal authority and to the notice sent by the defendant, the plaintiff issued a suitable reply and the alleged usufructuary mortgage had been statutorily wiped out by the provisions of the Debt Relief Act and the plaintiff has prescribed title to

the suit property by way of adverse possession on account of long and continuous enjoyment and the usufructuary mortgage had become barred by limitation and the defendant had not taken any action for realising the debt in respect of the same and hence, the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The claim of title to the suit property by the plaintiff through his father is denied and it is also denied that the plaintiff's father had purchased the suit property from Jambulingam by way of a sale deed dated 04.07.1974 and been enjoying the same till his life time and thereafter, enjoyed by the plaintiff by obtaining Patta, Chitta, Adangal and also by paying kist etc., and the claim of the plaintiff that he has also perfected his title to the suit property by way of adverse possession is not admitted. Manickam ammal had created a usufructuary mortgage in respect of the suit property by way of a registered deed dated 30.03.1931 for a sum of Rs.30/- and that, the defendant has been in possession and enjoyment of the suit property following the same and on the expiry of the period for redemption of the mortgage or the possession of the suit property, therefrom the defendant's possession of the suit property has become adverse to the right of the plaintiff and his predecessor in title and as such, the defendant has prescribed his title to the suit property by way of adverse possession and reply notice sent by the plaintiff to the notice issued by

the defendant does not contain true facts and the mortgagor has failed to redeem the property within the period of limitation and therefore, the right to the property has got extinguished by virtue of Section 27 of the Indian Limitation Act and thereby, the possession of the defendant has become adverse to the real owner and the plaintiff has lost his right to the suit property and the plaintiff is not in possession of the suit property at any point of time and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 to 4 were examined and Exs.A1 to A16 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B5 were marked.

7. The trial Court, on a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, was pleased to decree the suit as prayed for. Aggrieved over the same, the defendant preferred the first appeal and during the course of the first appeal proceedings, on the side of the plaintiff, additional document has come to be marked as Ex.A17. The first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) whether the lower appellate court is correct in rejecting the documentary evidence of Ex.A1 court delivery receipt handing over possession to the appellant by his predecessor in title?

(ii) whether the possession of the appellant to the suit property is negated by the lower appellate Court is correct on the reasoning of title to the appellant is extinguished under Section 27 of the Indian Limitation Act?"

9. The plaintiff claims title to the suit property by way of a sale deed dated 04.07.1974. According to the plaintiff, his father had acquired title to the suit property by way of the abovesaid sale deed and it is stated that his father had purchased the suit property from one Jambulingam. According to the plaintiff, after the demise of his father, it is only he, who had inherited the title to the suit property and by obtaining Patta, Chitta, Adangal etc., and paying kist, he has been enjoying the suit property by retaining the same in his possession and inasmuch as the defendant claiming that the suit property had been subjected to usufructuary mortgage in his favour, attempted to interfere

with his possession and enjoyment, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that the suit property had been subjected to usufructuary mortgage in his favour by Manickam Ammal and thereafter, the mortgagor had not cared to redeem the suit property within the period of limitation and thus, according to the defendant, following the expiry of the period of limitation for the redemption of the mortgage, it is only the mortgagee, who had been in possession and enjoyment of the suit property as the real owner and thus, it is contended that the mortgagor or any one claiming under the mortgagor had lost their right by virtue of Section 27 of the Indian Limitation Act and further, according to the defendant, it is only he, who has been in possession and enjoyment of the suit property and the plaintiff has never been in possession and enjoyment of the suit property at any point of time even on the date of the suit and hence, according to the defendant, the suit laid by the plaintiff is liable to be dismissed.

11. It is found that the defendant has claimed the suit property in his favour by way of a notice marked as Ex.A3 and it is found that the plaintiff has issued a reply to the same marked as Ex.A4. In the plaint, the plaintiff as such has not disputed the plea of usufructuary mortgage putforth by the defendant in respect of the suit property. What the

plaintiff would plead with reference to the same is that the alleged usufructuary mortgage had been statutorily wiped out as per the provisions of the Debt Relief Act and further, according to the plaintiff, he has prescribed his title to the suit property by way of adverse possession. It is thus found that the plaintiff has taken two inconsistent claims of title to the suit property one by way of a regular title and another by way of the plea of adverse possession. Be that as it may, on the basis of the materials placed on record, particularly, through the evidence of the plaintiff examined as PW1, it is found that the plaintiff has admitted that the original title holder Manickam ammal had mortgaged the suit property and further, according to the plaintiff, their vendor Jambulingam had acquired title to the suit property only from Manickam ammal and though the plaintiff would claim that the document executed by Manickam ammal in favour of Jambulingam is in his custody, for the reasons best known to him, the said document has not seen the light of the day. As such, it is found that as determined by the first appellate Court, the plaintiff has admitted the usufructuary mortgage in respect of the suit property and the same could also be seen from the mortgage deed marked as Ex.A1 and it is found to be dated 30.03.1931. It is thus found that the suit property had been mortgaged in favour of the defendant's father by way of Ex.B1 and the mortgage being a usufructuary mortgage, it is found that the possession of the suit property had been entrusted to the mortgagee on the date of the mortgage. Now, according to the plaintiff,

though he would claim during the course of evidence that the mortgage had been discharged, however, with reference to the abovesaid claim of the plaintiff, there is no proper plea in the plaint as well as no material worth acceptance had been projected by the plaintiff. In the plaint, the plaintiff has not averred that the usufructuary mortgage Ex.B1 had been duly discharged either by his father or their vendor Jambulingam as the case may be. During the course of evidence, the plaintiff has chosen to produce a diary entry marked as Ex.A11, through which, it is contended that the mortgage had been discharged. However, when the usufructuary mortgage is found to have come into existence by way of a document, as determined by the first appellate Court, it does not stand to reason as to how an entry made by the plaintiff's father in a diary to suit his convenience could be construed as a valid discharge of the mortgage in question as putforth by the plaintiff. When the parties to Ex.A11 entry are not made clear and when the plaintiff has not chosen to examine any one to buttress the said entry and when the plaintiff has not taken the plea of discharge in the plaint and when it is found that the claim of the plaintiff during the course of evidence is that the mortgage had been executed in favour of three persons and when from the entry marked as Ex.A11 it is not made clear as to how and in whose favour the amount had been paid and the mortgage had been discharged and when the plaintiff has also admitted that he had not taken the plea of discharge of the mortgage in the plaint and also not able to throw a clear picture

about the mortgage during the course of evidence, other than marking Ex.A11 and Ex.A11 entry cannot be construed that the mortgage in question had been duly discharged as per law, as rightly determined by the first appellate Court, no safe reliance could be attached to Ex.A11 entry for upholding the claim of the plaintiff that the usufructuary mortgage had been discharged in the manner known to law.

12. As found and determined by the first appellate Court, Ex.A2 by itself could not be construed as a piece of valid evidence with reference to the discharge of the mortgage in question. Even the plaintiff has not produced the said document in proof of the discharge of mortgage and on the other hand, would only rely upon the said document for his claim of title to the suit property. Further, as rightly determined by the first appellate Court, when it is found that the property detailed in Ex.A2, the mortgage deed Ex.B1 and the description of the property as found in the plaint schedule differs, by way of Ex.A2 alone, we cannot come to the conclusion that the usufructuary mortgage in question had been duly discharged. Thus, it is found that the first appellate Court has rightly not placed reliance upon Ex.A2 for upholding the plea of discharge put forth by the plaintiff during the course of his evidence.

13. In the light of the materials placed on record, when it is found that the mortgagee had been put in possession of the suit property under the mortgage deed Ex.B1 and till date, there is no valid material placed by the plaintiff to show that the said mortgage had been discharged and that, he had retrieved the possession of the suit property as per law, it is found that it is only the mortgagee, who continue to be in possession of the suit property as such. Ex.B1 mortgage deed is found to be executed on 30.03.1931 and till this point of time, there is no material placed to show that the said mortgage had been duly redeemed as per law within the period of limitation. Thus, it is found that the period of limitation for the redemption of the mortgage has expired and thus, it is found that even today, the mortgagee continues to be in the possession of the suit property on the strength of the mortgage deed. In such view of the matter, as found by the first appellate Court, when the mortgagor had failed to redeem the mortgage and recover the possession of the suit property as per law within the period of limitation, it is found that Section 27 of the Limitation Act would come into play and accordingly, it is seen that at the determination of the period limited to any person for instituting a suit for possession of any property, his right to such property gets extinguished and when it is found that a suit for redemption of mortgage is virtually a suit for possession of the suit property, it is seen that the redemption having not been exercised or put into action as per

law within the time allowed by law, it is seen that the right of the mortgagor or any one claiming under the mortgagor gets extinguished as per law and in such view of the matter, it is found that it is only the mortgagee, who continue to be in possession of the suit property on the strength of the mortgage deed.

14. In this connection, no doubt, some revenue documents have come to be projected by the plaintiff to establish that he is in possession and enjoyment of the suit property. However, as rightly found by the first appellate Court, when all the revenue documents projected by the plaintiff are found to have emanated only from the year 1995 and when there is no document placed by the plaintiff to show that he and his predecessor in interest had been in possession and enjoyment of the suit property right from the year 1931 or right from the date of Ex.A1 sale deed i.e. 04.07.1974 and when it is found that the revenue documents projected by the plaintiff have originated only from 1995 and when there is no material placed by the plaintiff worth acceptance to show that the revenue records had been issued in favour of the plaintiff based on the verification of his valid title and possession of the suit property as such by the concerned officials and when it is found that the witnesses examined on the side of the plaintiff do not support the case of the plaintiff as such and when it is seen from the evidence of the Village Administrative Officer examined as PW4 that the revenue document, particularly, Ex.A12 had

been issued based on the order passed by the Taluk office and when the said order has not been projected and when the witness examined on behalf of the plaintiff, including the plaintiff had admitted that the suit property had been put to usufructuary mortgage as claimed by the defendant and till date, the said mortgage had not been shown to be discharged as per law, the first appellate Court is justified in not placing reliance upon the revenue documents projected by the plaintiff for upholding his claim of title, possession and enjoyment of the suit property as pleaded in the plaint. As rightly found by the first appellate Court, when with reference to the discharge of mortgage, even the plaintiff has not pleaded any convening of panchayat, it is found that the witness PW3 has gone one step ahead and deposed about the convening of Panchayat in connection with the discharge of the mortgage. This would only go to show that even though the plaintiff had been making fervent attempts one way or the other to establish the plea discharge of the mortgage, when as rightly determined by the first appellate Court, the records produced by the plaintiff, in connection with the same, are not shown to be pleaded and also not come into existence as per law, it is seen that there is absolutely no material on the part of the plaintiff to hold that the mortgage in question had been duly discharged and that, either the plaintiff or his predecessor in interest had derived the possession of the suit property mortgaged as per law. In such view of the matter, it is found that the plaintiff's claim of possession of the suit property on the

date of the suit or prior to the same based on the revenue documents cannot be accepted.

15. In the light of the above discussions, the first appellate Court is correct and justified in not taking into account the documents projected by the plaintiff qua the discharge of the mortgage in question and the reasons given by the first appellate Court for rejecting the same are found to be in accordance with law and in such view of the matter, no interference is called for with reference to the abovesaid determination of the first appellate Court. Similarly, the first appellate Court is also justified in relying upon Section 27 of the Indian Limitation Act for holding that the plaintiff and his predecessor in title having failed to establish the plea of discharge and also having failed to retrieve the suit property by seeking the redemption of the mortgage as per law within the time limited by law, it is found that their title of the suit property gets extinguished on the expiry of the period of limitation and accordingly, it is found that the first appellate Court is justified in negating the reliefs sought for by the plaintiff. The substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff and in favour of the defendant.

16. The plaintiff's counsel in support of his contention placed reliance upon the decision reported in **1991-1-L.W.244(C.Ramasami Vs.Kuruva Boyan and others)**. However, as rightly put forth by the defendant's counsel, the abovesaid decision, in my considered opinion, would not apply to the facts and circumstances of the case at hand.

In fine, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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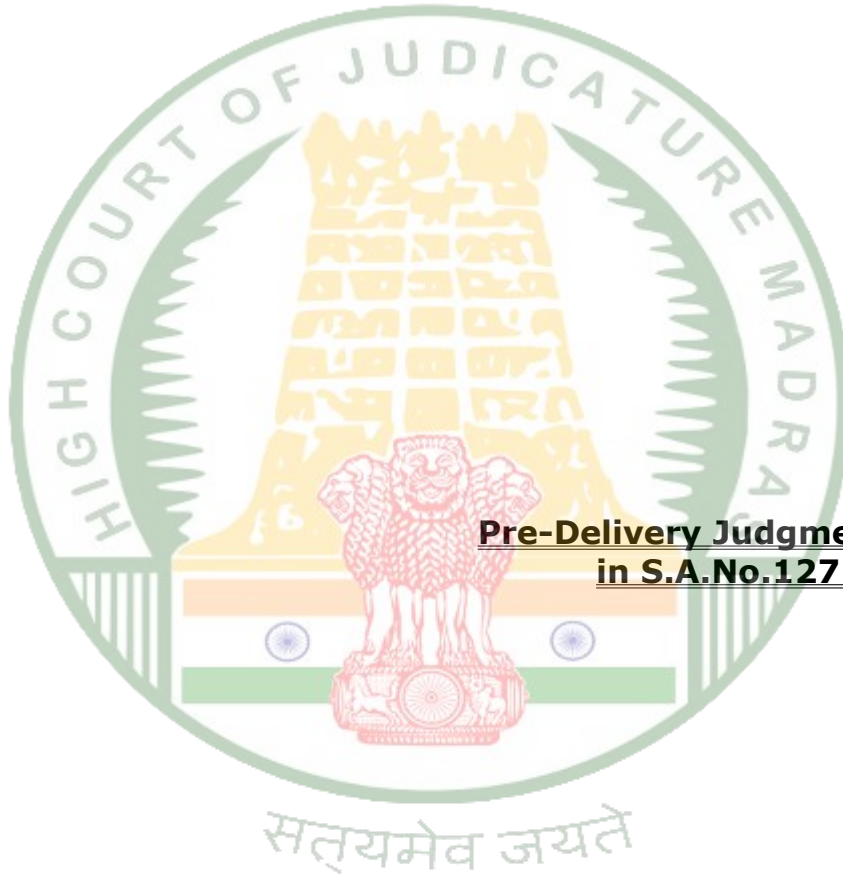
To

- 1.The First Additional Subordinate Court,
Villupuram.
- 2.Tthe Principal District Munsif Court, Villupuram.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1271 of 2004**

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