



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.63 of 2013

and

M.P.(MD)No.1 of 2013

Palaniammal ... Appellant/Appellant/Defendant

-Vs-

1.Ramalakshmi ... 1st Respondent/1st Respondent/1st Plaintiff

2.M.Kamala

3.M.Dhanapalan

4.M.Kanmani

... 2 to 4 Respondents/Respondents 3 to 5

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the learned Subordinate Judge, Srivilliputhur in A.S.No.54 of 2006 dated 22.08.2011 confirming the judgment and decree of learned Principal District Munsif, Srivilliputhur in O.S.No.127 of 2003, dated 17.10.2005.

For Appellant : Mr.M.Ashok Kumar

For R1 to R3 : Mr.G.Marimuthu

For R4 : No appearance

JUDGMENT

The defendant in the suit in O.S.No.127 of 2003 on the file of the Principal District Munsif Court, Srivilliputhur is the appellant in this second appeal. The suit in O.S.No.127 of 2003 on the file of the Principal District Munsif Court, Srivilliputhur was filed for redemption of a mortgage, dated 05.10.1981.

2.The case of the plaintiff in the plaint in O.S.No.127 of 2003 are as follows:-

The suit property originally belonged to one Balakrishnan Asari. The said BalaKrishna Asari died leaving behind his wife, namely, Veerammal and his two daughters, namely, Gomathi and Ramalakshmi/first plaintiff as legal heirs. After the death of Balakrishnan Asari, the suit property was jointly enjoyed by his wife and daughters and they executed a mortgage deed (othi) on 05.10.1981 for a sum of Rs.4,000/- in favour of one Ponnammal. The time for redemption was also specified in the mortgage deed as five years. After some time, the first plaintiff and her mother approached the mortgagee to hand over the



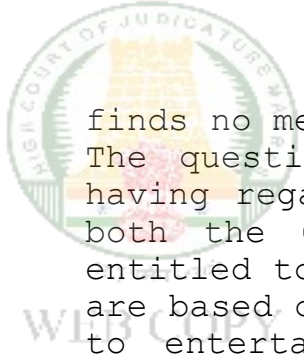
possession on payment of mortgage money. The said Ponnammal/mortgagee refused to receive the amount as the mortgagors have no right to redeem the property within the period mentioned in the document.

3.The first plaintiff and her sister divided suit property in a partition dated 09.12.1988 and the second plaintiff has purchased the share of Gomathi who is the sister of the first plaintiff. Thus, after death of the first plaintiff's mother, the plaintiffs 1 and 2 are entitled to redeem the property as owners.

4.The defendant's mother Ponnammal is the original mortgagee. Since Ponnammal died about 10 years back, the defendant as the sole legal heir of Ponnammal is now the mortgagee in possession of the property. Though the defendant is bound to hand over the possession on payment of the mortgage amount of Rs.4,000/-, she refused to hand over the possession when the plaintiffs approached her after the period of redemption is over. Therefore, it is stated that the plaintiffs were constrained to file the suit.

5.The suit was contested by the defendant only on the ground that earlier there was a mortgage that was executed by the first plaintiff's father by name Balakrishnan Asari in favour of Ponnammal on 25.02.1959 and that the said mortgage was never redeemed. Hence, it is stated that without redeeming the earlier mortgage, the suit for redemption of subsequent mortgage is impermissible and hence, the suit is liable to be dismissed.

6.In the written statement, the earlier mortgage deed dated 25.02.1959 is not disputed. The ownership of the property is not disputed. It is further stated in the written statement that the defendant's mother has put up construction in a portion of the property with the permission of first plaintiff's father and the plaintiffs refused to redeem the earlier mortgage and therefore, they are not entitled to seek redemption, since the prior mortgage is time bound. The plaintiffs filed a reply statement denying the averments in the written statement. The trial Court decreed the suit for redemption. However, the trial Court has observed that the superstructure put up by the defendant to an extent of 223 square feet should be excluded from redemption. Hence, the suit was decreed after excluding the superstructure which is an extent of 17 feet X 9 feet and 7X10 square feet. The trial Court categorically found that the earlier (othi) dated 25.02.1959 under Ex.B1 was discharged. Aggrieved by the judgment and decree of the trial Court, the defendant preferred an appeal in A.S.No.54 of 2006 on the file of the Sub Court, Srivilliputhur and the appellate Court confirmed the judgment and decree of the trial Court after finding that the plaintiffs are entitled to seek redemption as the earlier mortgage executed by the Balakrishnan Asari in favour of Ponnammal in the year 1959 was discharged and the Appellate Court also disbelieved the contention of the appellant.



finds no merit in any of the questions of law raised in this appeal. The questions of law framed by the appellant have no substance, having regard to the specific findings of the lower Courts. Since both the Courts have concurrently held that the plaintiffs are entitled to seek for redemption and the findings of the Courts below are based on evidence and supported by reasons, this Court is unable to entertain this second appeal. Hence, this second appeal is dismissed confirming the judgment and decree of the learned Subordinate Judge, Srivilliputhur in A.S.No.54 of 2006, dated 22.08.2011. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

- 1.The Subordinate Judge, Srivilliputtur.
- 2.The Principal District Munsif, Srivilliputtur.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.M.Law Office, Advocate SR.No. 71418
+1cc to M/S.M.Ashok Kumar, Advocate SR.No. 71787

Judgment made in
S.A.(MD)No.63 of 2013
and
M.P.(MD)No.1 of 2013
05.07.2018

rmi
JM/KAK/SAR 2/13.08.2018/4P/7C