



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (PD) (MD)No.765 of 2019

K.Jayan @ Jayakumar /
Jayakumaran Nair

.. Petitioner/Plaintiff

Vs.

1. Sunitha
2. N.C.Sailal

.. Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the docket order made in unnumbered O.S.No.- of 2019, dated 18.03.2019, on the file of the learned District and Sessions Judge, Kanyakumari District at Nagercoil.

For petitioner : Mr.C.Kishore

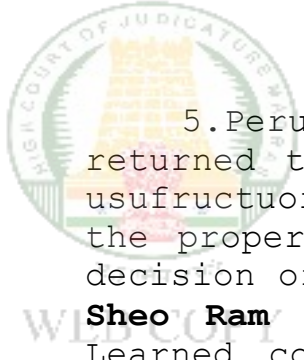
ORDER

Against the return of plaint, this revision petition is filed.

2.The petitioner / plaintiff filed a suit for the reliefs of declaration and permanent injunction restraining the defendants from altering the physical features and committing waste in the suit properties. The Court below returned the plaint stating that there is no limitation to redeem usufructuary mortgage and the mortgage cannot acquire title to the property by efflux of time. Against the order of return, the present revision has been filed.

3.The learned counsel for the petitioner would submit that the petitioner filed the suit for declaration of title and possession on the basis of barred mortgage right. The petitioner claimed the suit schedule property based on the barred mortgage right and also produced the said mortgage deed. The Will said to have been allegedly executed by Rajamma Pillai to the 1st defendant has not been challenged and therefore, question of limitation does not arise. But, the Court below has erroneously return the plaint. Thus, he prayed to direct the Court below to number the suit filed by the petitioner.

4.Heard the learned counsel for the petitioner and perused the materials available on record.



5. Perusal of return would show that the learned Judge has returned the suit stating that there is no limitation to redeem usufructuary mortgage and the mortgagee cannot acquire title to the property by efflux of time and also for verification of the decision of the Hon'ble Apex Court in **Singh Ram (D) Thr. L. Rs. v. Sheo Ram and others** reported in **AIR 2014 Supreme Court 3447**. Learned counsel for the petitioner would represent before this Court that the petitioner filed the suit on the basis of barred mortgage right and since the Will said to have been allegedly executed by Rajamma Pillai to the 1st defendant has not been challenged, question of limitation does not arise. But the petitioner without taking any steps to explain the said aspect to the Court below, has straight away come forward before this Court. Therefore, the petitioner shall explain before the Court below as to the queries raised by the Court below and thereafter, the learned Judge shall decide the same on merits.

6. With the above observations, this civil revision petition is dismissed. No costs.

7. Registry is directed to return the original plaint filed alongwith the revision, to the petitioner forthwith, after retaining a photocopy of the same.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

Smn

To

1. The Principal District and Sessions Judge,
Kanyakumari District at Nagercoil.

Copy to:-

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.C.Kishore, ADVOCATE IN SR No.71933

**ORDER MADE IN
C.R.P (MD) No.765 of 2019**

27.06.2019