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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) No.891 of 2019

and

CMP (MD) No.5174 of 2019

A.Palaniammal

... Petitioner/1st Respondent/
Plaintiff

vs.

1) J.Manimegalai

... 1st Respondent/Petitioner/
9th Defendant

2) M.Veluchamy

M.Narayanan (Died)

3) V.Saravanan

4) V.Selvi

5) V.Thenmozhi

6) N.Sivakumar

7) N.Kavitha

8) N.Arunkumar

... Respondents 2 to 8/Respondents
2,4 to 9/Defendants 1,3 to 8

(Respondents 2 to 8 are given up)

Petition filed under Article 227 of the Constitution of India, against the order dated 11.12.2018 passed in I.A.No.774 of 2017 in O.S.No.1177 of 2004 on the file of the Principal District Munsif of Madurai Town.

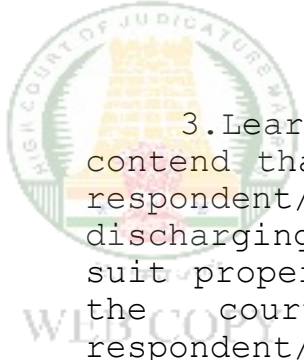
For Petitioner : Mr.M.R.Murugesan

For R1 : Mr.M.Rajasekaran

ORDER

This revision petition is filed against the order dated 11.12.2018 passed in I.A.No.774 of 2017 in O.S.No.1177 of 2004 on the file of the Principal District Munsif of Madurai Town.

2.Learned counsel for the petitioner would contend that the petitioner/plaintiff has obtained a preliminary decree for mortgage due in O.S.No.1177/2004 on 12.09.2011 and she filed final decree petition in I.A.No.186/2012 for sale of the suit property to realise the decree amount, in which, the 1st respondent/9th defendant who was the purchaser of the mortgaged property, deposited the entire decretal amount. According to the learned counsel, after discharge of the mortgage, the petitioner/plaintiff became the tenant of the suit property and therefore, she cannot be directed to hand over possession of the suit property to the 1st respondent. Thus, he prayed for allowing this revision petition.



3. Learned counsel for the 1st respondent/9th defendant would contend that even as per the petitioner's plaint averments, the 1st respondent/9th defendant has purchased the suit property before discharging the mortgage dues and he is the present owner of the suit property and he had deposited the entire mortgage dues before the court after permission from the court. The 1st respondent/plaintiff was in possession of the suit property only based on the mortgage and once the mortgage is discharged as per the preliminary decree dated 22.09.2011, it goes without saying that the plaintiff is liable to surrender possession even to any person claiming through the mortgagor. Hence, it is the duty of the plaintiff to surrender possession and to execute a receipt of discharge with respect to the suit mortgage loan amount. Thus he prayed for dismissal of this revision petition.

4. Heard the learned counsel for the petitioner as well as the 1st respondent.

5. Perusal of record shows that against the final decree, the 1st respondent/plaintiff had filed an appeal stating that even after the discharge of mortgage debt, she is having tenancy rights in the suit property and therefore she cannot be directed to surrender possession of the same. However, the appellate court directed to surrender possession of the suit property on payment of the entire decretal amount. If at all the petitioner is aggrieved by the judgment of the appellate court, her only remedy is to file a second appeal which she has not done and therefore, the petitioner is liable to surrender possession of the suit property to the 1st respondent and the learned Judge has rightly passed the order for handing over possession of the suit property to the 1st respondent which does not warrant any interference from this court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal District Munsif,
Madurai Town.

2. The Section Officer,
<https://hcservices.ecourts.gov.in/hcservices/>
VR Section, (2 copies),
Madurai Bench of Madras High Court, Madurai



+5 CC to Mr.M.RAJASEKARAN, Advocate (SR-69671[F] dated 19/06/2019)
+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-69843[F] dated
19/06/2019)

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