



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.(MD)No.760 of 2006

and

M.P.(MD)No.1 of 2006

WEB COPY

Christhudas

...Appellant/Appellant/2nd Plaintiff

Vs.

1.Rosili	..1 st Respondent/1 st Respondent/1 st Defendant
2.Kamalamma	..2 nd Respondent/2 nd Respondent/3 rd Defendant
3.Ponnachi	..3 rd Respondent/3 rd Respondent/4 th Defendant
4.Isaac	
5.Suseela	
6.Raveendran (Minor)	
7.Kumar (Minor)	
8.Reji Kumar (Minor)	
9.Lethika (Minor)	..4-9 Respondents/4-9 Respondents/6-11 Defendants

(Respondent 6 to 9 are represented
by their mother and guardian 5th respondent)

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 19.04.2005 passed in A.S.No.92 of 2002 by the Subordinate Court, Kuzhithurai confirming the judgment and decree dated 05.08.2002 passed in O.S.No.61 of 1983 by the Principal District Munsiff, Kuzhithurai.

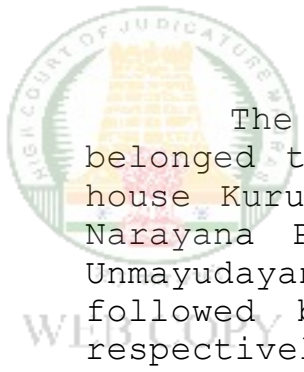
For Appellant: Mrs.J.Anandhavalli
For R1 to R3 : No Appearance
For R4 : Mr.K.Vamanan
For R5 : Mr.N.Edwin Jayakumaran
For R6 to R9
(Minor) : Represented by R5

JUDGMENT

Aggrieved over the concurrent finding of the Courts below dismissing the suit for redemption, the present second appeal is filed.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

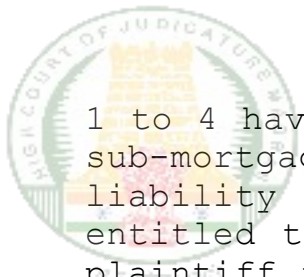
3.The brief facts, leading to the filing of this Appeal Suit, are as follows:-



The suit properties and other properties originally belonged to one Padmanabhapillai and Narayana Pillai, Panthakkal house Kurumathoor. On 21.12.1903, the said Padmanabhapillai and Narayana Pillai mortgaged the property to Unmayudayan Pethiru, Unmayudayan Masilamony and Kaliannamuthu. The said mortgage was followed by 2 purakkadams dated 24.02.1912 and 13.02.1909, respectively executed by the jenmies. The entire jenmom right over the plaint schedule property was purchased by Rajamma under two sale deeds dated 12.12.119 and 25.04.1119 M.E., from the successors in interest of Padmanabha Pillai, Narayana Pillai, the mortgagor and released the mortgage deed from the heirs of Unmayudayan Masilamony and Kaliannamuthu in respect of 2/3 share. She had to release 1/3 share from Unmayudayan Pethiru. The rights of Rajamma devolved on her son, namely Isac. The said Isac gave Othi to the plaintiff with a direction to redeem the mortgage in the name of Unmayudayan Pethiru. In the meanwhile, the said Pethiru gave a sub mortgage on 11.02.1124 M.E., to the fifth defendant, and accordingly, the fifth defendant was in possession of the property. The property sought to be redeemed in the plaint 'B' Schedule property. The plaintiff is an agriculturist and he is entitled to all the benefits under the Agriculturists Relief Act. No mortgage money is liable to be deposited, since the mortgage money has been wiped out under the Agriculturist Relief Act. In spite of the repeated demands, the defendants are not amenable and hence, the suit.

4. Before the trial Court, on the side of the plaintiffs P.W.1 was examined and Exs.A1 to A5 were marked and on the side of the defendants D.W.1 and D.W.2 were examined and Exs.B1 to B29 were marked.

5. It is the contention of the defendants 1 to 4 that Rajamma did not purchase 2/3 share of the suit property from the heirs of Naryana Pillai. The plaintiff has not produced the sale deed to prove the same. The mortgage right belonging to Masilamony and Kali Annamuthu had devolved on Abraham by subsequent document. Rajamma also did not get release of the mortgage right. Snehappu was never in possession of any portion of the suit property. The defendants 1 to 4 are the heirs of Pethiru. The said Pethiru had executed a sub mortgage in 1124 to Abraham and he was in possession of the same. While so, the defendants 1 to 4 filed a suit in O.S.No.386 of 1980 and got a decree for redemption on 14.09.1982 and Abraham has filed appeal in A.S.No.143 of 1982 of Sub Court, Kuzhithurai and the same is pending. The plaint mortgage dated 21.09.1982, there is a term of five years that period is over and the superior mortgage has become infructuous and the plaintiff has no right to redeem. The exemption from limitation pleaded is not correct. The mortgage had become time barred and the heirs of Pethirus. the defendants



1 to 4 have obtained jenmon right over the suit property. In the sub-mortgage of the year 1124 Pethiru has not admitted his liability to be redeemed by the owner. The plaintiff is not entitled to the benefit of the Tamil Nadu Debt Relief Acts. The plaintiff is not a debtor as defined in the Act.

WEB COPY

6. The defendants 7 to 11 has also adopted the written statement of the defendants 1 to 4.

7. Based on the above pleading, the following issues were framed by the trial Court:-

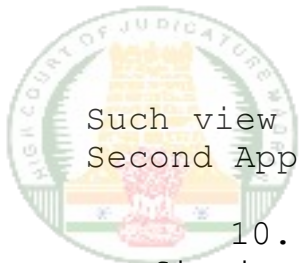
- 1.Has the plaintiff got equity of redemption over the suit property?
2. Is the plaintiff entitled to redeem the suit mortgage?
- 3.Whether the suit mortgage has become time barred?
- 4.Is the suit within time for the reasons stated in para 5 of the plaint?
- 5.What is the value of improvements?
- 6.Reliefs and costs?

Additional issues:-

- 1.Whether the 6th defendant is a Government Servant and thus disabled from claiming the benefits of the Tamil Nadu Debt Relief Act and if so whether the suit is barred by limitation?
- 2.Whether the suit Othi is vitiated due to collusion and lack of good faith?

8. The trial Court after analyzing the documents on record came to the conclusion that the suit is barred by limitation. The trial Court has also found that the period for redemption will begin to run from 1103 M.E., i.e., from 18.01.1928 A.D., and as per the old Limitation Act, the period of redemption of mortgage is 60 years. Hence, the time for redemption expires only in the year 1988. However, as per the new Limitation Act, which came into force from 01.01.1964, the period of redemption is only 30 years. Since the prescribed period under the new act is shorter than the old Act, grace period of 7 years is also given for filing suits. Accordingly, the trial Court has held that the suit is barred by limitation. The First Appellate Court has also confirmed the judgment and decree of the trial Court.

9. After hearing the learned counsel appearing for the appellants and perusing the judgment of the Courts below, this Court is of the view that the Courts below has rightly appreciated the documents and came to the conclusion that the suit is barred by limitation. The Courts below not only considered the limitation, but also factually arrived at a conclusion on various other aspects and non-suited the plaintiff. The learned counsel for the appellants could not make out any case for admission.



Such view of the matter, I do not find any materials to admit this Second Appeal and to interfere with the order of the Courts below.

10. In the result, this Second Appeal is dismissed confirming the judgment dated 19.04.2005 passed in A.S.No.92 of 2002 by the Subordinate Court, Kuzhithurai confirming the judgment and decree dated 05.08.2002 passed in O.S.No.61 of 1983 by the Principal District Munsiff, Kuzhithurai. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ta
To

- 1.The Judge, Subordinate Court, Kuzhithurai.
- 2.The Principal District Munsif, Kuzhithurai.
- 3.The Record Keeper-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mrs.J.ANANDHAVALLI, Advocate (SR-6265[F] dated
19/02/2021)

Judgment made in
S.A. (MD) No.760 of 2006
18.02.2021

KM (12.03.2021) 4P 6C