BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **25.03.2021**
CORAM:
THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
S.A.(MD).No.313 of 2015

P.Sundarraj ..Appellant/Appellant/Plaintiff
Vs.
Velu ...Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 29.11.2013 in A.S.No.11 of 2012 on the file of the Subordinate Court, Sankarankovil, confirming the judgment and decree dated 07.12.2011 in O.S.No.30 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri.

For Appellant : Mr.K.K.Ramakrishnan
For Respondent: Mr.S.P.Maharajan

JUDGMENT

The plaintiff in O.S.No.30 of 2006, whose suit for redemption was dismissed by the trial Court, upon affirmation of the said dismissal by the lower appellate Court in A.S.No.11 of 2012, has come up with this second appeal.

2.According to the plaintiff, the suit properties belonged to one Ramachandran Pillai, a mentally ill person looked after by his maternal uncle, Sanmugasundaram Pillai, as his curator. The said Sanmugasundaram Pillai, in the course of management of the properties, had executed two mortgage deeds, covering to an extent of 21 acres and 24 cents of agricultural land in favour of one Ramaiya Konar, S/o.Thirumalai Konar. The consideration for the usufructuary mortgages dated 15.11.1966 and 02.07.1967, was Rs.3,500/- and 1,500/- respectively.

3.The said Ramaiya Konar assigned those two mortgages to the defendant in the suit, namely, Velu under two registered instruments dated 15.06.1985. The plaintiff would further contend that the original owner, Ramachandran Pillai died unmarried and his parents predeceased him. The suit properties devolved on his maternal uncle, Sanmugasundaram Pillai, who also, according to the plaintiff, died issueless leaving behind his brother, Ramalingam Pillai to succeed to his estate. It is the further claim of the plaintiff that the said Ramalingam Pillai had inherited the mortgaged properties and had sold an extent of 1 acre 50 cents in S.No.719/1 and 1 acre 13 cents in S.No.719/4-1 to one Lakshmi. The said Lakshmi had paid a sum of Rs.1,000/- to the defendant and had obtained redemption of the mortgage, insofar as those two items of properties measuring an total extent of 2 acre 63 cents were concerned. Referring to the said act of the defendant, the plaintiff would claim that the defendant is estopped from denying the title of Ramalingam Pillai over the suit properties as the successor in interest. Contending that since the purchase made by the plaintiff is subject to the mortgage, he is entitled to redeem the mortgage. The plaintiff would seek redemption of three items of properties that were purchased by him from Ramalingam Pillai under the sale deed, Ex.A5 dated 06.09.2005. Though the plaintiff had sought for redemption of three items of properties, namely, an extent of 3.24 acres in S.No.3/1, 5.52 acres in S.No.345/2 and 5.98 acres in S.No.671, he had offered to pay the entire mortgage money of Rs.5,000/-.

4.This action for redemption was resisted by the defendant contending that the suit as framed is not maintainable. It is also claimed that the maternal uncle of Ramachandran Pillai, namely, Sanmugasundaram Pillai did not die issueless. He had in fact left behind his children. It was also claimed that there was one sister to Sanmugasundaram Pillai, by name, Thangatthammal and her heirs would also have a share in the property. The defendant would further claim that he had entered into a registered agreement of sale with the heirs of Sanmugasundaram Pillai and therefore, the plaintiff cannot redeem the entirety of the property. It was further contended that the plaintiff, who came to Court with the false case suppressing the existence of other legal heirs of Ramachandran Pillai, the original owner, is not entitled to redemption. It is the further case of the defendant that the suit is barred by limitation.

5.At trial, the plaintiff was examined as P.W1 and one Sanmugasundaram, was examined as P.W2. The defendant examined himself as D.W1 and one Thanam, was examined as D.W2. Exs.A1 to A14 were marked on the side of the plaintiff and Exs.B1 to B7 were marked on the side of the defendant.

6.Upon a consideration of the evidence on record, the learned trial Judge concluded that Sanmugasundaram Pillai had in fact married and had left behind his children. The trial Court also found that the plaintiff being a purchaser from Ramalingam Pillai cannot claim absolute ownership over the property. The trial Court further found that the suit is barred by limitation. The trial Court also concluded that the suit is barred for non joinder of necessary parties, since the other legal heirs, namely, the children of Sanmugasundaram Pillai, have not been impleaded. On the above findings, the learned trial Judge dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.11 of 2012. On a reconsideration of the evidence on record, the learned appellate Judge concurred with the findings of the trial Court and dismissed the appeal. Hence, the second appeal.

7.The following questions of law were framed at the time of admitting this Second Appeal:

"i) Whether the Courts below have wrongly held that Ex.A3 dated 15.06.1985 did not amount to an acknowledgement of the jural relationship of mortgagor or mortgagee giving a fresh start of limitation for resumption and recovery of possession?

ii) Whether the Courts below have committed an error in holding that, by executing Ex.A7, dated 19.01.1998, the defendant had not made acknowledgement in respect of the third item of the suit property?

iii) Whether the Courts below have committed an error in law in applying the principles of law relating to limitation?"

8.I have heard Mr.K.K.Ramakrishnan, learned counsel appearing for the appellant and Mr.S.P.Maharajan, learned counsel for the respondent.

9.Mr.K.K.Ramakrishnan, learned counsel appearing for the appellant would contend that the Courts below grievously erred in concluding that the suit is barred by limitation. Apart from contending that the execution of Ex.A3, dated 15.06.1985 would amount to acknowledgement of the jural relationship between the parties, Mr.K.K.Ramakrishnan would draw my attention to the judgment of the Hon'ble Supreme Court reported in ***(2014) 9 Supreme Court Cases 185, (Singh Ram (dead) through legal representatives Vs. Sheo Ram and others),*** wherein, the Hon'ble Supreme Court had held that in cases of usufructuary mortgages, where, no period is fixed for redemption, the right to redeem will start from the date on which redemption is sought for and therefore, the period available for redemption would be from the date on which, the plaintiff actually seeks redemption by tendering the mortgage money.

10.The recitals in both the mortgage deeds, dated 15.11.1966 and 02.07.1967, marked as Exs.A1 and A3, are identical. They read as follows:

"அசல் தொகையை (ME) 1146ம் வருடம் ஆடிக் கரந் தையிலாவது அல் லது மேலெந் த ஆண் டு ஆடிக் கரந் தையிலாவது வேண் டும் போது கொடுத் து இதில் செல் லெழுதி மீட் டிக் கொள் வேனாகவும் "

The above recitals would show that the mortgagor was given the liberty or right to redeem the mortgage by 1971 or during Adi month of any subsequent year. The mortgage documents do not fix the time limit for redemption. Therefore, the judgment of the Hon'ble Supreme Court in the case of ***(Singh Ram (dead) through legal representatives Vs. Sheo Ram and others)*** reported in ***(2014) 9 Supreme Court Cases 185*** would directly apply to the facts of this case. After considering the distinction between the usufructuary mortgage and any other mortgage, the Hon'ble Supreme Court had held as follows:-

> *"21.We need not multiply reference to the other judgments. Reference to the above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the TP Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of the right of redemption after 30 years.*
>
> *22.We, thus, hold that special right of usufructuary mortgagor under Section 62 of the TP Act to recover possession commences in the manner specified therein ie., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by the mortgagor. Until then, limitation does not start for the purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly."*

11.In view of the above dictum of the Hon'ble Supreme Court, the conclusions of the Courts below, *de hors* the question of acknowledgement of jural relationship, on the question of limitation is clearly wrong. Therefore, the questions of law 1 to 3 are answered in favour of the appellant. However, the contentions of Mr.S.P.Maharajan also need to be mentioned. Though the plaintiff claims to have purchased the entire property from Ramalingam Pillai, the heirs of Sanmugasundaram Pillai have claimed absolute right and have also filed a suit seeking declaration and recovery of possession from Lakshmi, the other assignee, in respect of two of the mortgaged properties, which have been redeemed by her from the defendant, namely, S.Nos.719/1 and 719/4-1, which are covered by Ex.A3. Therefore, the plaintiff cannot redeem the entirety of the property. The law in this regard is governed by Section 60 of the Transfer of Property Act, 1882. Section 60 of the Transfer of Property Act confers a right of redemption on the mortgagor or even a person, who is entitled to a moiety of the mortgaged property. The only prohibition enacted by the second half of Section 61 is that the redemption should be half of the whole of the property and not the share or shares of the person/persons, who sought for redemption. It will be convenient to extract the second part of Section 60 of the Transfer of Property Act, 1882.

> *"Nothing in this Section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money."*

12.A reading of second part of Section 60 makes it clear that even a person, who owns a moiety in the mortgaged property, has got a right of redemption. The only prohibition is that he or she shall redeem the entirety of the property and not offer to redeem his or her share by offering the proportionate share of the mortgaged money. In the case on hand, the plaintiff claims to have purchased three items of the mortgaged property from Ramalingam Pillai through his power agent under Ex.A5, dated 06.09.2005. The plaintiff has sued for redemption of the entire mortgage and he has offered to pay of the entire mortgage amount of Rs.5,000/-, which was paid by the defendant as mortgage money. So the plaintiff has in fact complied with the provisions of the second part of Section 60, while seeking redemption. Therefore, the claim of Mr.S.P.Maharajan that some other persons also have a share in the property and therefore, the plaintiff cannot sue for redemption cannot be countenanced. The plaintiff can very well be allowed to redeem but the redemption will be subject to the rights of the other sharers, if any available. The plaintiff can also claim contributions from the other sharers towards their share of the mortgage money, since he steps into the shoe of the mortgagee in respect of the other sharers' right over the mortgaged property.

13.In the light of the above principle of law, which has been consistently followed by the Courts right from the days of ***Mirza Yadalli Beg Vs. Tukaram and another*** reported in ***AIR 1921 PC 125,*** I do not think that the fact that some other persons have a share in the mortgaged property would denude the plaintiff's right to redeem the entirety of the property.

14.The next contention of Mr.S.P.Maharajan is that the plaintiff has come to the Court with unclean hands and therefore, he should be non suited. I do not think that the said principle can be applied to a redemption suit, which is a statutory right and is not a discretionary relief. Non suiting a plaintiff for coming up with a false case can happen only in cases, where, the relief sought for is a discretionary relief and not a statutory right conferred on a mortgagor or a successor or on the interest of mortgagor expressly under Section 60 of the Transfer of Property Act, 1882. Even assuming that the plaintiff had attempted to suppress the presence of other heirs, he cannot be non suited. Their rights will not be affected by the redemption. The redemption will be subject to the rights of the other heirs of Ramachandran Pillai or his legal representatives. I, therefore, do not think that the Courts below were right in non suiting the plaintiff on the ground of non-joinder of necessary parties.

15.In fact, the other heirs of Ramachandran Pillai are not necessary parties to this suit for redemption, which is laid by the plaintiff against the mortgagee. They can at best be termed as proper parties, but the non impleading of those persons by itself cannot be a ground to dismiss the suit for redemption filed by the plaintiff, who is a purchaser from one of the sharers. The fact that Ramalingam Pillai is the uncle of Ramachandra Pillai is not denied. He claims absolute right as according to him, Sanmugasundaram Pillai had died issueless. If that statement is found to be false and there are heirs of Sanmugasundaram Pillai, who are alive, it is always open to them to assert their rights over the property de hors the redemption decree. The defendant who claims to be holding an agreement of sale from the heirs of Sanmugasundaram Pillai can also seek his remedy against the heirs of Sanmugasundaram Pillai in respect of the property so redeemed. I am therefore unable to uphold the conclusions of the Courts below on the so called non joinder of necessary parties to the suit.

16.In fine, the substantial questions of law are answered in favour of the appellant. This second appeal stands allowed. There will be a decree for redemption as prayed for in respect of the suit properties only. It is made clear that this judgment will not affect the rights of the other heirs of Ramachandra Pillai or Sanmugasundaram Pillai, who may have a right over the properties as well as the rights of the defendant under the agreement of sale, which he has entered into with those legal heirs. No costs.

Sd/-

Assistant Registrar(CS-)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Sankarankovil.

2.The District Munsif cum Judicial Magistrate,
Sivagiri.

Copy to
The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-13935[F] dated 26/03/2021)

+1 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-14161[F] dated 29/03/2021)

S.A.(MD).No.313 of 2015
25.03.2021

KMK(CO)
TR(28.04.2021) 7P 7C