



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

CRP(MD)No.113 of 2021

WEB COPY

Chellappan Pillai

... Petitioner/Petitioner/
Appellant/Plaintiff

versus

Balakrishna Pillai

... Respondent /Respondent/
Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreeal order dated 22.02.2020 made in I.A.No.2 of 2020 in A.S.No.91 of 2016 on the file of the Camp Court Judge at Kuzhithurai (II Additional Subordinate Court, Nagercoil).

For Petitioner : M/s.J.Anandhavalli

For Respondent : No appearance

ORDER

This Civil Revision Petition is at the instance of the appellant in A.S.No.91 of 2016. The challenge is to the order of the Appellate Court dismissing the application in I.A.No.2 of 2020 filed by the appellant, seeking to record a compromise, entered into between the parties.

2. The plaintiff sued for declaration of title and a consequential injunction, contending that he had obtained an assignment of the usufructuary mortgage on 10.08.1966 from Gnanaprakasam, who was the original mortgagee. It is also claimed that the original owners, Ananthapalpu and his wife had executed a mortgage in favour of Gnanaprakasam, S/o.Vyakappa on 05.05.1951. The plaintiff would also contend that since the mortgagor had not chosen to redeem the mortgage, he has become the absolute owner of the property. On the above pleadings, he sought for declaration of title and consequential injunction.

3. This suit was resisted by the defendant claiming that the original mortgagor and mortgagee are necessary parties to the suit, since the plaintiff is seeking a declaration of his title. It was also contended that the description of the property in the plaint is wrong and misleading.

4. The trial Court, upon consideration of the evidence on record, concluded that the issue raised in the suit cannot be conveniently gone into, in the absence of original mortgagor and



mortgagee as parties. It is also held that the suit is bad for non-joinder of necessary parties. The trial Court faulted the plaintiff for non-impleading the original mortgagor and mortgagee, who have interest over the property, as parties to the suit, more particularly, when he seeks for declaration of title and injunction. Aggrieved upon the said dismissal, the plaintiff had preferred an appeal in A.S.No.91 of 2016 on the file of the Sub Court, Kuzhithurai. Pending appeal, it appears some sort of compromise between the plaintiff and defendant, wherein, they agreed to have the property divided among themselves. A compromise memo along with an application to record compromise was filed before the Appellate Court. The parties also appeared before the Appellate Court and requirements under order 23 Rule 3 of C.P.C. were satisfied. The Appellate Court, however, refused to record the compromise on the ground that since the suit had been dismissed for non-joinder of necessary parties, the compromise, in the absence of those parties, cannot be recorded. As against the said order, the petitioner/appellant has come up with this Civil Revision Petition.

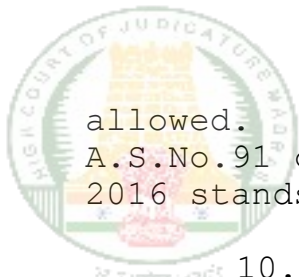
5. I have heard Ms.J.Anandavalli, learned counsel for the petitioner. Despite service, the respondent is not appearing through a counsel duly instructed.

6. The learned counsel for the petitioner would vehemently contend that the Appellate Court was not right in rejecting the compromise. She would submit that all that is sought to be done under the compromise is to split the property between the parties and any compromise entered into is not going to be binding on the original mortgagor and mortgagee and it is always open to them to seek redemption including the respondent also, since he would be in possession of a portion of the property.

7. I see a considerable force in the submissions of the learned counsel for the petitioner.

8. No doubt, the suit was dismissed for non-impleading the necessary parties. The trial Court also observed that the plaintiff could protect his possession against strangers even without impleading the mortgagor and mortgagee. What is sought to be done under the compromise is to split the property and continue in possession of a portion of the property. This compromise, even if it is recorded, in my opinion, would not denude rights of the original mortgagor and mortgagee, if they seek redemption at the later point of time. It is also open to them to include the present defendant/respondent also to seek redemption. Therefore, the appellate Court was not right in rejecting the compromise outright. It should have been recorded with the rider that this compromise would not confer any absolute right as against the mortgagor and mortgagee on the parties to this proceedings.

<https://hcservices.ecourts.gov.in/hcservices/> In view of the above, the Civil Revision Petition is



allowed. The order, dated 22.02.2020 made in I.A.No.2 of 2020 in A.S.No.91 of 2016, is set aside and I.A.No.2 of 2020 in A.S.No.91 of 2016 stands allowed.

10. The Appellate Court shall record the compromise with the rider that this compromise will not affect the rights of the original mortgagor and mortgagee, if any available to them, under the law, if they choose to seek redemption at the later point of time and pass a decree in terms of compromise. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1. II Additional Subordinate Court,
Nagercoil.

+1 CC to M/s.J.ANANTHAVALLI, Advocate (SR-12045[F] dated 18/03/2021)

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