IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.586 of 2022
and
C.M.P.No.3060 of 2022

1.Malini @ Leela
2.Meenakshi
3.S.Sri Venkatesh ... Petitioners

vs

S.Sengalvarayan ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Order dated 22.10.2021 passed in I.A.No.1 of 2020 in O.S.No.39 of 2019 on the file of the Principal District Judge at Perambalur and allow the application.

For Petitioners : Mr.S.Sadasharam

For Respondent : Mr.R.Venkatesulu
for Mr.Usha Ramman

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the defendants seeking to reject the plaint under Order 7 Rule 11(a) and (d) of Code of Civil Procedure.

2. The respondent herein filed a suit for recovery of Rs.83,97,914/-

against the petitioners towards their share of contribution regarding the mortgaged debt discharged by him on 26.06.2015. According to the respondent/plaintiff, the husband of the 1st petitioner and father of the petitioners' 2 and 3 viz., Samiyappan who is the brother of the respondent availed the loan from Punjab National Bank by mortgaging the joint family property. When the said Samiyappan committed default, the Bank had taken coercive steps against the mortgaged family property and in order to save the family property, the respondent/plaintiff discharged the entire outstanding loan amount in the name of Samiyappan to the tune of Rs.61,30,000/- with interest and redeemed the family property. The respondent in his plaint had averred that the payment made by the respondent to bank to save the family property was known to the petitioners and as they failed to pay their share of the said loan amount discharged by the respondent, he was constrained to file a suit against the petitioners for recovery of their share of discharged loan amount together with interest.

3. The petitioners/defendants filed an application for rejection of the

plaint by raising the plea of limitation and non-joinder of necessary parties viz., the other sharers. According to the petitioners, the respondent discharged the mortgaged debt by paying amount due in the name of Samiyappan on 05.05.2015 and the present suit has been filed only on 31.07.2019 well beyond the limitation period of three years. It was also submitted that the suit is a simple suit for recovery of money and the suit claim cannot be treated as an amount due under the mortgage and therefore, the question of applying twelve years limitation period does not arise. Therefore, it is the contention of the learned counsel for the petitioners the suit is barred by limitation. It is further submitted by the learned counsel for the petitioners that the respondent claimed in the plaint averment that they had paid the amount due to the Panjab National Bank and hence, the said Bank is a necessary party to the litigation. It was further submitted that another brother of respondent/plaintiff viz., Thanigaivel was also a partner of business, which was carried out by deceased Samiyappan and hence, he is also a necessary party to the suit. In nutshell, it is the contention of the learned counsel for the petitioners, the suit is bad for non-joinder of necessary parties viz., Bank and other sharers.

4. The learned counsel for the respondent submitted that the respondent/plaintiff discharged the mortgaged debt in the name of deceased Samiyappan under whom the petitioners are claiming right. The learned counsel by relying on Sections 92 and 100 of the Transfer of Property Act, 1882 submitted that on discharge of mortgage debt, the respondent acquired right of charge over the property mortgaged and hence, the limitation for recovery of the amount based on charge is twelve years. The learned counsel also relied on the Full Bench judgement of this Court reported in ***AIR 1964 Mad 269 (FB) (Vallamma Champaka vs. Sivathanu Pillai)*** for the proposition that a person who discharged the mortgage debt steps into shoes of the mortgagee and he is entitled to recover contribution and the limitation for enforcing the right to contribution is twelve years under Article 62 of the Limitation Act 1963.

5. Heard the arguments of the learned counsel for the petitioners and learned counsel for the respondent.

6. Article 62 of the Limitation Act, 1963, reads as follows:-

Description of suits	*Period of limitation*	*Time from which period begins to run*
PART V-Suits relating to immovable property		
62.To enforce payment of money secured by a mortgagee or otherwise charged upon immovable property.	*Twelve years*	*When the money sued for becomes due.*

7. Therefore, it is clear that the limitation for enforcement of money secured by mortgagee or otherwise charge upon immovable property is twelve years. As far as the limitation for enforcing the right of contribution is concerned, the law on the subject is very well settled by the Full Bench of this Court reported in ***AIR 1964 Mad 269 (FB) (Vallamma Champaka vs. Sivathanu Pillai)*** wherein the Full Bench observed as follows:-

> *"In Ganeshilal v. Joti Persad the Supreme Court has laid down as a principle of equity that if a co mortgagor redeems a mortgage over a property which belongs to him and another, the former will have a right to call upon his co-mortgagors to contribute towards the excess which he has paid over his share. S. 82 of the Transfer of Property Act provides a liability on the property for contribution. A redeeming co-mortgagor,*

therefore, will and indeed must have two distinct rights in respect of moneys paid by him in excess of his share for discharging a common mortgage; (i) a right to step into the shoes of the mortgagee satisfied by him; and (ii) a right to recover contribution. Where a right of contribution exists, the redeeming co-mortgagor will, under Art. 132, have a period of 12 years within which to recover the amount due to him from his co-mortgagor. The right to contribution which a co-mortgagor by paying off the entire mortgage, has as against his other co-mortgagor can arise only on the date of payment by him. Correlative to the two rights possessed by the redeeming co-mortgagor, there will naturally be a right in the non-redeeming co-mortgagor to redeem his property on payment of his share of the liability either (i) within the period allowed for redemption of the original mortgage the rights to which the redeeming co-mortgagor has been subrogated, or (ii) within 12 years of the date of payment of mortgage debt by the redeeming co-mortgagee."

8. Therefore, it is clear that the limitation for enforcing the right of contribution is twelve years not three years as contended by the learned counsel for the petitioners. Admittedly, in the case on hand, the respondent

discharged the mortgage debt contracted by deceased Samiyappan on 05.05.2015 and the present suit was filed on 31.07.2019 very well within a period of twelve years from the date of payment of the mortgage debt. Therefore, the present suit filed for recovery of money on the basis of right of contribution available to the respondent is well within time allowed by the law of limitation. Therefore, the 1st contention made by the learned counsel for the petitioners cannot be accepted.

9. As far as the second contention made by the learned counsel for the petitioners is concerned whether the original mortgagee viz., the Punjab National Bank and another sharers viz., Thanigaivel are all necessary parties to the suit or not has to be considered at the time of final disposal of the suit. As per the plaint averment, the suit for recovery of money based on right of contribution available to the respondent is filed against the legal heirs of deceased Samiyappan who contracted mortgage debt. As per the plaint averment the entire mortgaged debt was discharged by the respondent. Therefore, he filed the present suit seeking contribution from the legal heirs of Samiyappan. From the averments contained in the plaint it cannot be said that

the Punjab National Bank and another brother of the respondent viz., Thanigaivel are necessary parties to the present suit. However, in view of the pleas raised by the petitioners in the written statement in respect of the partnership business of Samiyappan and the other facts, this Court is not inclined to record any positive findings on the question of non-joinder of necessary parties. The petitioners herein are given liberty to raise the question of non-joinder of necessary parties before the Trial Court at the time of final disposal of the suit.

10. With these observations, the Civil Revision Petition is dismissed. No costs.

30.11.2022

Index : Yes / No
Speaking Order : Yes / No
dm

To

The Principal District Judge,
Perambalur.

S.SOUNTHAR, J.

dm

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