



WEB COPY

S.A(MD).No.598 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A(MD) .No.598 of 2010

and

M.P(MD) .No.2 of 2010

Saraswathy

... Appellant/Appellant/Defendant
Vs.

1.Ponnuthai

2.Irulayee

3.Amaravathy

... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, to pass a decree and judgment in favour of the appellant by setting aside the decree and judgment dated 17.08.2009 made in A.S.No.16 of 2008 on the file of the learned Principal District Judge, Virudhunagar at Srivilliputhur, confirming the decree and judgment dated 02.01.2008 made in O.S.No.24 of 2004 on the file of the learned Subordinate Judge, Aruppukkottai and dismiss the suit with costs throughout.

For Appellant

: Mr.S.Parthasarathy

For R1 to R3

: Mr.S.Natarajan

JUDGMENT

A certain Ganapathy Thevar had left behind him surviving his four daughters and left certain 19 items of properties for them to take. Three of the daughters have filed a suit in O.S.No.24 of 2004 for partition against the fourth daughter. The only defence taken by the defendant is that Ganapathy Thevar, on 09.07.2001, Ganapathi Thevar had created a simple mortgage Vide Ex.B-8 in favour of the husband of the defendant for Rs.2,00,000/-.

2. The matter went to trial and the trial Court passed a preliminary decree. Vis-a-vis the contention of the defendant to include the liability on the estate in the partition suit, the Court has held that the said aspect needs to be worked out in a separate suit. Aggrieved by the same, the defendant has preferred an appeal in A.S.No.16 of 2008, and the First Appellate Court concurred with the trial Court and confirmed the decree passed by it. The defendant is hence before this Court in this second appeal.

3. This appeal is admitted for considering the following substantial question of law.

1. Whether it was incumbent on the part of the Courts below to have decided as to the respective



liabilities of parties to bear the burden of the mortgage debt (EX.B-8) on the suit properties?

2. Whether the Courts below ought to have drawn adverse inference against the plaintiffs for not having entered into the witness box, when the defendant had sufficiently pleaded and let in evidence to show the existence of the mortgage transaction binding the suit properties?

3. Whether the estate of the deceased includes the liabilities there on?

4. Heard both sides. Mr.S.Parthasarathy, the learned counsel for the appellant, submitted that even during the pendency of the suit, the husband of the defendant had filed a suit for recovery of mortgage money in O.S.No.51 of 2008, in which, a preliminary decree has since come to be passed on 08.10.2020. He added that to his knowledge, no appeal has been filed against it and the defendant's husband has taken out I.A.No.1 of 2021 for passing a final decree.

5. The learned counsel for the respondents would interject to inform the Court that an appeal has been preferred against the decree passed in O.S.No.51 of 2008 before the Principal District Court, Srivilliputhur.

6. The turn of events as narrated before this Court indicate that the defendant's husband has already taken recourse to realize the mortgage debt due to him and this precisely is the line of action proposed by the Courts below.

7. This Court, therefore, considers that there is nothing more remains to be decided in this appeal and hence, this Second Appeal is dismissed. No costs. Consequently, connected M.P(MD).No.2 of 2010 is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

rmk/cm



To

1.The Principal District Judge, Virudhunagar at Srivilliputhur.

2.The Subordinate Judge, Aruppukkottai.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s.S.NATARAJAN, Advocate (SR-24741[F] dated 09/06/2022)

+1 CC to M/s.S.PARTHASARATHY, Advocate (SR-24929[F] dated 09/06/2022)

S.A(MD).No.598 of 2010

08.06.2022

SJ(CO)

KB(29.06.2022) 3P 7C