



CRP(MD)No.1157 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1157 of 2016

Selvanayagam

: Petitioner

Vs.

Sulojana Bai

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India for a direction to the learned Subordinate Judge, Kuzhithurai, to number the plaint in O.S.No.CF220570000244 of 2016 on the file of the Sub Court, Kuzhithurai.

For Petitioner : Mr.V.M.Balamohan Thambi

ORDER

This revision petition is filed by the petitioner for a direction to the learned Subordinate Judge, Kuzhithurai, to number the plaint in O.S.No.CF220570000244 of 2016.

2.The petitioner, as plaintiff, has proposed to file a suit for declaration of title based on a time barred mortgage deed. The trial Court returned the plaint on



the ground of maintainability. The petitioner has re-presented the papers that the maintainability of the suit would arise only during the time of trial and has also relied upon the decision in 1999 L.W. page 711. Even then, the trial Court returned the plaint on 25.04.2016 with the following endorsement:

“No period of specified for mortgage and as per the deed, it can be redeemed at any time. Then how the plaintiff says that he got title since mortgage is not redeemed is to be explained. Further 'once a mortgage is always a mortgage' is the general rule. How the plaintiff claims exemption to be stated.”

Aggrieved over the same, the petitioner has filed the present revision.

3.Learned Counsel appearing for the petitioner, by relying upon the decision of this Court in ***Selvaraj and Others v. Koodankulam Nuclear Power Plant India Ltd., and Others***, reported in **2021 (4) CTC 539**, submitted that numbering a plaint is only a ministerial act and the Court, at the time of pre-registration stage of the plaint, is having a minimum role and that the Court cannot decide whether the plaintiff is having a right or not at that stage. He further submitted that at the pre-registration stage, roving enquiry into the merits of the matter by testing the correctness of the plaint should not be conducted.



4.This Court paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the materials placed on record.

5.The petitioner, claiming to be mortgagee, filed the suit that the mortgagor has failed to redeem the property and sought for a decree of declaration of title. The trial Court returned the papers that once a mortgagee is always a mortgagee and as such, how he is entitled for the relief of declaration. Finding fault with this return, the petitioner has moved the instant revision petition.

6.In the decision relied upon by the petitioner's Counsel in *Selvaraj*'s case (supra), this Court, after a detailed discussion with regard to the role of the Registry in numbering a plaint and an application, has passed an elaborate order with certain guidelines. No doubt, in the said decision, it has been held that numbering a plaint or an application is only a ministerial act and that the Courts are not supposed to decide the rights of the plaintiff at the stage of numbering the petition itself. However, in the decision, it has also been held that the Courts may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity. If the allegations in the plaint does not constitute a



legally recognized right, then also the Courts can reject the plaint at the pre-registration stage itself.

7. In *Re Jayasingh Dnyanu Mhoprekar and Another v Krishna Babaji Patil and Another* [(1985) 4 SCC 162], the Hon'ble Supreme Court has held as follows:-

“6. ... It is well settled that the right of redemption under a mortgage deed can come to an end only in a manner known to law. ... This flows from the legal principle which is applicable to all mortgages, namely, 'Once a mortgage, always a mortgage'.”

8. In a usufructuary mortgage, there is no personal liability of the mortgagor. The mortgagee cannot sue the mortgagor personally for payment of debt. He is entitled only to retain the possession of the mortgaged property till his debt is fully paid. He can neither sue the mortgagor personally nor can exercise his right of foreclosure under Section 67 of the Transfer of Property Act, since in the usufructuary mortgage, no time limit is fixed for payment.

9. In view of the foregoing discussions and the ratio laid down by the Hon'ble Supreme Court as well as this Court in the decisions referred to supra, this



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Court does not find any error in the return made by the trial Court. Accordingly, this revision petition stands dismissed. The petitioner shall establish his rights for maintaining the suit for declaration on a mortgaged property or it is always open to him to file necessary suit to recover the mortgage amount. There shall be no order as to costs.

Index : Yes / No
Internet : Yes
gk

20.12.2022

To

The Subordinate Judge,
Kuzhithurai.



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B.PUGALENDHI, J.

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