



S.A.No.1828 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1828 of 2001

Saraswathi @ Mohammed Pathumal Beevi

... Appellant / Appellant /
Plaintiff

Vs.

1.C.Kumaresan (died)

2.C.Rajavelu

... Respondents 1 & 2/

Respondents / Defendants

3.K.Swornam

4.K.Pazhani

5.K.Subbah

6.Rajam

7.K.Chandran

8.Mallika

... Respondents 3 to 8

(R3 to R8 are brought on record as LRS of deceased R1 vide Court order dated 24.01.2020 made in C.M.P.(MD)No.8229 of 2016 in S.A.No.1828 of 2001)

PRAYER: This Second Appeal filed under Section 100 of the Civil Procedure Code, praying this Court to set aside the decree and judgment dated 12.02.2001 made in A.S.No.43 of 1995 on the file of the Subordinate Court,



S.A.No.1828 of 2001

Padmanabhapuram, confirming the decree and judgment dated 22.07.1991 made in O.S.No.201 of 1988 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Appellant : Mr.K.Rajeshwaran
For R2 : Mr.J.Emily Jegan
For R3 to R8 : Mr.P.Thiagarajan

JUDGMENT

The plaintiff / appellant filed a suit in O.S.No.201 of 1988 on the file of the Principal District Munsif Court, Padmanabhapuram for redemption of recovery of possession of the suit properties without payment of any mortgage amount and costs against the defendants and the same was dismissed through a decree and judgment dated 22.07.1991. On appeal in A.S.No.43 of 1995, the Subordinate Court, Padmanabhapuram, through a decree and judgment dated 12.02.2001, dismissed the same by confirming the decree and judgment of the trial Court dated 22.07.1991. Aggrieved by the same, the plaintiff is before this Court.

2.Mr.K.Rajeshwaran, learned counsel appearing for the appellant would submit that the vendor and the predecessor of the appellant is the mortgagor, who mortgaged the property in the year 1107 M.E.. Then before redemption, Act IV of



S.A.No.1828 of 2001

1938 came into force and hence, without payment of the mortgage money, he is entitled to redeem the mortgaged property. However, the Lower Appellate Court has not followed the provisions of Rule 31 Order 41 C.P.C., and the sale in favour of the defendants hit by the provisions of Section 101 of Transfer of Property Act, especially, when the mortgage in favour of the original mortgagee Pakia Neelan Nadar in the year 1107 M.E., had not been redeemed by the defendants. The plaintiff, who derives title through the purchase of equity of redemption over the portion of the property from the son of the first mortgagor and the remaining portion having purchased from the heirs of the original mortgagee, is entitled to file a suit for redemption of mortgage.

3.He would further submit that the Courts below erroneously held that the provisions of Hindu Succession Act, 1956 will apply to the case, ignoring that even prior to the commencement of the said Act, the said Palpan Subbiah died issueless and the other brother Palpan Muthaiyya, is being only the heir upon whom the entire property devolved and on his death, his son Sundararajan sold the property to the husband of the plaintiff on 26.05.1954. Admittedly, the plaintiff being the agriculturist is entitled to the benefit of Act 81 of 1973 and therefore, the suit was filed in time and not barred by limitation.



S.A.No.1828 of 2001

WEB COPY

4.It is his further contention that the defendants, who have not redeemed the original mortgage of the year 1107 M.E., are not entitled to the suit property and if at all the defendants can at the best have only equitable right to get the redemption of the money paid under Ex.A.8 and A.9, if such payment was proved to have been with *bona fide* intention. Therefore, the trial Court as well as the First Appellate Court erroneously dismissed the suit and appeal on the ground of limitation as well as the plaintiff is not entitled to file a suit as neither she is a mortgagor nor she is entitled to the benefit of Debts Relief Act.

5.The learned counsel appearing for the 2nd respondent as well as the respondents 3 to 8 would submit that within a period of 30 years from the date of mortgage, the original mortgagor should have redeemed the property. If he failed to redeem the property within the stipulated period, the suit should have been filed within 12 years. However, they have neither redeemed the mortgage within 30 years nor filed any suit within 12 years. Therefore, the suit is barred by limitation and further, the appellant is not the original mortgagor and therefore, she is not entitled for any benefit whatsoever under any of the statute. Therefore, there is no merit in this appeal and the same is liable to be dismissed.



S.A.No.1828 of 2001

WEB COPY

6.Heard the learned counsel appearing on both sides and perused the materials available on record carefully.

7.At the time of admitting this Second Appeal, this Court formulated the following substantial questions of law:-

“(a)Whether the First Appellate Court is right in dismissing the appeal on the ground of limitation?; and

(b)Whether the Trial Court is right in holding that the plaintiff is not a owner of the property and not entitled to file the suit for redemption of sub-mortgages?”

8.The case of the plaintiff is that the suit properties originally belonged to one Palpan Velan Subbian Velar and his brother Palpan Velar Muthayyan. They jointly executed usufructuary mortgage of the suit properties to one Pakia Neelan Nadar under a mortgage deed No.1474 of 1107 M.E for a sum of Rs.3,000/- (Rupees Three Thousand Only) and handed over the possession to the mortgagee. The mortgagee, while in possession of the suit properties, filed a suit in O.S.No.479 of 1110 M.E for mortgage money against the mortgagor and the same



S.A.No.1828 of 2001

was dismissed. On appeal, they entered into a compromise and the matter was settled for the amount of Rs.2000/- (Rupees Two Thousand Only). Subsequently, the said mortgagee, namely, Pakia Neelan Nadar executed a sub-mortgage of some of the suit properties to one Narayanan Velar, S/o.Sudalamuthu Velar, reserving an intermediary right of redemption one for himself under Document No.3153 of 1116 for an amount of Rs.499/- (Rupees Four Hundred and Ninety Nine Only). Therefore, the sub-mortgagee-Narayanan Velar got possession of the mortgaged property.

9.The remaining portion of the suit properties was sub-mortgaged to one Esakki, S/o.Nadan by the original mortgagee-Pakia Neelan Nadar, reserving an intermediary right of one Fanam for himself under Document No.3154 of 1116 surrendering the possession forthwith. In the year 1119 M.E., the above said sub-mortgagee-Esakki surrendered his sub-mortgage right to the other sub-mortgagee-Narayanan Velar under Document No.2260 of 1119 M.E., and thus, the said Narayanan got possession of the entire suit properties.

10.While so, one of the original owners Palpan Velan Subbian Velar died issueless and his right over the equity of redemption devolved on his brother,



S.A.No.1828 of 2001

namely, Palpan Velar Muthayyan and he became the absolute owner. His only son, namely, Sundararajan, sold the equity of redemption over the suit item 2 to the husband of the plaintiff for valid consideration on 26.05.1954 under Document No.2093. The heirs of the original mortgagee's executed a deed with a recital to redeem the sub-mortgages on 23.05.1981 over the suit properties to the husband of the plaintiff. The husband of the plaintiff gifted the suit properties and other properties to the plaintiff on 05.02.1982 and the same was accepted. Therefore, the plaintiff is entitled to redeem the sub mortgages of the year 1116 M.E., as the owner of the suit item 2 and as the original mortgagee also with regard to both the items. The sub mortgages of the year 1116 M.E., and 1119 M.E., passed hands and now, the defendants were in possession of the suit properties as assignee-mortgagees.

11.Since the plaintiff is an agriculturist and a debtor as defined in Act IV of 1938 and as the mortgages sought to be redeemed are more than 30 years, no mortgage amount need to be paid. As Act IV of 1938 applies, the plaint mortgage is not barred by limitation. Therefore, the plaintiff requested the defendants to surrender the possession of the suit properties orally on 28.02.1988, for which, they are not amenable. Hence, the suit for redemption is filed.



S.A.No.1828 of 2001

12.It is the case of the defendants that for the mortgage of the year 1107 M.E., limitation for redemption of mortgages is 30 years. Therefore, the original mortgagor should have redeemed the property within 30 years. If he failed to redeem the property within 30 years, the suit should have been filed within 12 years. However, they have neither redeemed the mortgage within 30 years nor filed any suit within 12 years. Therefore, the suit is barred by limitation and further, the plaintiff is not the original mortgagor or she did not get any assignment from the mortgagors and hence, she is not entitled to get any benefit and as the original mortgagors themselves lost their right, the alleged purchase of the plaintiff is not valid under the law.

13.Admittedly, the original mortgage was in the year 1107 M.E., and the original mortgagors had not repaid the mortgage money or redeemed the mortgaged property or filed any suit for redemption of the suit properties within a period of limitation. Therefore, they lost their right of redemption. Further, the appellant / plaintiff is neither the mortgagor nor the assignee. Therefore, the suit filed by the plaintiff in the year 1988 is obviously barred by limitation and she is not entitled to file a suit for redemption. Such view of the matter, the substantial questions of law formulated by this Court are answered accordingly.



S.A.No.1828 of 2001

WEB COPY

14.In view of the above, this Court is of the view that both the Courts below have rightly appreciated both the oral and documentary evidence and given its finding and the same do not warrant any interference by this Court. Accordingly, this Second Appeal stands dismissed. No costs.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

MYR

To

- 1.The Subordinate Court,
Padmanabhapuram.
- 2.The Principal District Munsif Court,
Padmanabhapuram.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.1828 of 2001

P.VELMURUGAN, J.

MYR

**Judgment made in
S.A.No.1828 of 2001**

05.04.2023