



S.A.(MD)No.491 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 20.08.2024

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

S.A.(MD)No.491 of 2024

and

C.M.P.(MD)No.10948 of 2024

M.Jebamani

... Appellant

versus

1. Ramasubramanian

2. Ayyanar

... Respondents

Second Appeal filed under Section 100 of C.P.C. as against the Judgment and Decree dated 20.02.2024, made in A.S.No.11 of 2017, on the file of the Principal Sub Court, Srivilliputtur, Virudhunagar District, confirming the Judgment and Decree dated 25.10.2016 made in O.S.No. 336 of 2009 on the file of the Principal District Munsif Court, Srivilliputhur, Virudhunagar District.

For Appellant : Mr.M.Jothi Basu

JUDGMENT

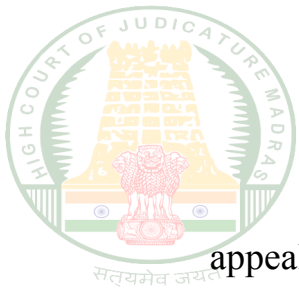
The second defendant in O.S.No.336 of 2009 has filed this Second Appeal as against the Judgment and Decree dated 20.02.2024, made in



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A.S.No.11 of 2017, on the file of the Principal Sub Court, Srivilliputtur, Virudhunagar District, confirming the Judgment and Decree dated 25.10.2016 made in O.S.No.336 of 2009 on the file of the Principal District Munsif Court, Srivilliputhur, Virudhunagar District.

2. The first respondent/plaintiff has filed the above suit in O.S.No. 336 of 2009 for redemption of mortgage and to declare the sale deed dated 09.02.2002 executed by the first defendant in favour of the second defendant as illegal. The second defendant/appellant herein has purchased the suit schedule property from the first defendant for a valuable sale consideration, by a registered sale deed (Ex.B7), dated 09.02.2002. Originally, the suit schedule property belonged to one Sanmugavel Thevar and he executed a mortgage deed in favour of the first defendant on 30.06.1973. The said Sanmugavel Thevar died on 01.12.1975. The first respondent/plaintiff is the son of one Ranjithammal, who is the daughter of the said Sanmugavel Thevar. He filed the above suit for redemption of mortgage, on 08.07.2009. The said suit was decreed by the trial Court, by its Judgment and decree dated 25.10.2016. Challenging the same, the second defendant has filed an



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appeal before the Sub Court, Srivilliputtur in A.S.No.11 of 2017. The First Appellate Court, by its Judgment and Decree dated 25.10.2016, dismissed the appeal confirming the Judgment and decree passed by the trial Court dated 25.10.2016. As against the concurrent findings of the Courts below, this second appeal is filed on the following substantial questions of law:

(i) Whether the Courts below are correct in entertaining a suit for redemption of mortgage (mortgage on 30.06.1973, the suit filed on 08.07.2009) under Article 61 (a) of Limitation Act, 1963, the limitation to file a suit is 30 years is clearly barred by limitation?

(ii) Whether the Courts below are correct in applying the principle of 'once a mortgage, always a mortgage', when it comes to an end, the limitation stated in the document is over, the limitation to file a suit for redemption is over and once mortgagee has alienated the property in favour of some other person?

(iii) Whether the Courts below are correct in dealing with the aspect the defendants took a stand, they have obtained title to the property through sale deeds (Ex.B4 and Ex.B5) dated 23.05.1975 executed by Parvathiammal, W/o.Sanmugavel Thevar, in favour of defendant No.1 and mortgage deed executed by



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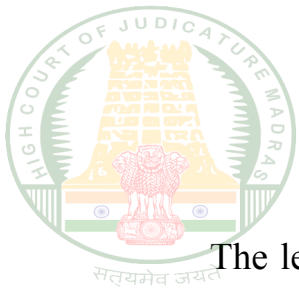
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Sanmugavel Thevar on 30.06.1973 (Ex.B2), when it is settled position of law that the defendant can be permitted to take contradictory and inconsistent pleas to defend a suit?

(iv) Whether the Courts below are correct in deciding a fact that the Judgments in the previous litigations binds the Appellant/Defendant No.2, when he is not a party in the previous litigations?

(v) Whether the Courts below are correct on 09.02.2002 the defendant No.2 has purchased the suit scheduled property from 1st defendant, but the plaintiff filed a suit only on 08.07.2009, the limitation to file a suit for declaration is 3 years?

3. The learned counsel appearing for the appellant submits that the suit schedule property originally belonged to one Sanmugavel Thevar, who executed a registered mortgage deed in favour of the first defendant on 30.06.1973. The said Sanmugavel Thevar died on 01.12.1975 without redeeming the mortgage. Under Article 61 of the Limitation Act, 1963, the limitation to redeem or recover the possession of immovable property mortgaged is 30 years. In this case, the above suit was filed on 08.07.2009, i.e. after 30 years. Therefore, the suit is barred by limitation.



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The learned counsel has also pointed out that without framing any issue for limitation, the trial Court decreed the suit in O.S.No.336 of 2009 and the First Appellate Court has also dismissed the first appeal confirming the Judgment and Decree passed by the trial Court.

4. The learned counsel appearing for the appellant, by referring to Ex.B2-mortgage deed, submits that the mortgage deed itself prescribes the limitation period for redemption of mortgage is 3 years. The limitation period for redemption of mortgage is over and the mortgagee has also executed a sale deed in favour of the second defendant/appellant, vide a registered sale deed dated 09.02.2002, which is marked as Ex.B7. The learned counsel further submits that as per Sections 56 and 58 of the Limitation Act, 1973, the limitation to file a suit to challenge the document is 3 years. In this case, the sale deed was executed in favour of the second defendant/appellant was registered in the year 2002. But, the plaintiff has filed the above suit in the year 2009. Therefore, on this ground, the above suit is liable to be rejected.

5. The learned counsel appearing for the appellant further submits



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that the said Sanmugavel Thevar executed a registered Will (Ex.B1) in favour of his wife Parvathiammal on 13.06.1973. On 23.05.1976, the said Parvathiammal executed a sale deed (Ex.B4) in favour of the first defendant, namely, Ayyanar, S/o.Andi Thevar in respect of the property in Survey No.1570 to an extent of 32 cents, based on which, the first defendant has executed a sale deed (Ex.B7) in favour of the second defendant. However, the trial Court as well as the First Appellate Court decreed the suit in favour of the plaintiff, by considering the Judgment and Decree passed in O.S.No.105 of 1997, which was confirmed in S.A.No.1005 of 2000. Further, the trial Court has erred in calculating the cause of action and the period of limitation from the date of partition effected between one Muthammal and the legal heirs of Ranjithammal.

6. This Court considered the submissions made by the leaned counsel appearing for the appellant, the materials placed on record and the substantial questions of law raised in support of the appeal.



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7. The appellant/second defendant has purchased the suit scheduled property in Survey No.1570 of Villupanur Village, Srivilliputtur Taluk, Virudhunagar District, from the first defendant by way of a registered sale deed dated 09.02.2002. Admittedly, the first defendant is a mortgagee of the suit scheduled property. The original owner of the property/mortgagor, namely, Sanmugavel Thevar, mortgaged the suit schedule property in favour of the first defendant on 30.06.1973. Within two years, he died on 01.12.1975 without redeeming the mortgage. One Muthammal and Ranjithammal, who are the legal heirs of the said Sanmugavel Thevar. have effected partition between them and the said Muthammal also filed a suit for partition before the District Munsif Court, Srivilliputhur, in O.S.No.540 of 1983, wherein, the property in Survey No.1571 was shown as item No.9. The first defendant Ayyanar was arrayed as a party in the suit. The said suit was decreed and out of 32 cents, 16 cents of western side was allotted to Muthammal and 16 cents of eastern side was allotted to Ranjithammal, who is the mother of the plaintiff. Based on the decree passed in O.S.No.540 of 1983, the said Muthammal filed a suit in O.S.No.105 of 1997 for redemption of mortgage in respect of her share of 16 cents in



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Survey No.1570. The said suit was decreed in her favour on 18.12.1998 in O.S.No.105 of 1997. As against the Judgment and Decree passed by the trial Court in O.S.No.105 of 1997, the first defendant has preferred an appeal before the Sub Court, Srivilliputtur, in A.S.No.36 of 1999 and the same was dismissed by the Sub Court, Srivilliputtur, by its Judgment and Decree dated 12.01.2000. The second appeal filed by the first defendant before this Court in S.A.No.1005 of 2005 was also dismissed and the share of Muthammal was granted in E.P.No.56 of 2009. The plaintiff is the son of Ranjithammal, who is the daughter of Sanmugavel Thevar. In the partition suit in O.S.No.540 of 1983, the first defendant was also a party to the suit proceeding. The eastern side in survey No.1571 to an extent of 16 cents was allotted to Ranjithammal. Therefore, the plaintiff filed the suit in O.S.No.336 of 2009 before the District Munsif Court, Srivilliputtur, for redemption of mortgage. In the meantime, the first defendant executed the document in favour of the second defendant on 09.02.2002. Therefore, the plaintiff has sought for declaration, declaring the sale deed dated 09.02.2002 as null and void.



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8. The principle of “Once a mortgage, always a mortgage” is a well established doctrine under Indian Property law which implies that a mortgage cannot be turned into an arrangement that defeats the mortgagor's right to redeem the property. This principle was evolved as early as 17th century in **Vermmi v. Bethell (1762) 2 Eden 110, 113**, wherein, it was held that a court of conscience cannot allow the securities taken for a loan to be converted into purchases.

9. Section 60 of the Transfer of Property Act makes it clear that the mortgagee has a statutory right to pay the mortgage money (redeem the mortgage money) at any time after the principal money has become due. This right conferred under Section 60 of the Transfer of Property Act cannot be taken away except by the act of the parties or by a decree of the Court.

10. As per Section 62 of the Transfer of Property Act, the right to recover possession (in case of usufructuary mortgages) accrues only when the mortgage money is repaid or is deposited in court. Article 61(a) of the Limitation Act 1963 provides for a limitation period of 30



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years to redeem or recover possession of immovable property mortgaged.

The Schedule makes it clear that this period of limitation begins to run when the right to redeem or to recover possession accrues.

11. In *Ram Kishan and others vs. Sheo Ram and others (AIR 2008 Punjab and Haryana 77)*, it has been clarified by the Punjab and Haryana High Court as follows:

“... the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof.”

Therefore, the position of law is that the right to redeem a mortgage is a valuable statutory right based on the principles of Equity, Justice and Good Conscience. Applying the facts to the present case, it is clear that the suit has been filed well within the limitation period. Just because the mortgage deed provided for a period of 3 years to redeem the mortgage money, the statutory right of the mortgagee to redeem the mortgage cannot be defeated.



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12. In ***Murari Lal vs. Dev Karan (AIR 1965 SC 225)***, the Hon'ble

Supreme Court was faced with a situation wherein a redemption suit was filed after the expiry of a 15-year period provided under the Mortgage agreement. The Supreme Court rejected the same as a clog on the equity of redemption and noted that redemption of mortgages was governed in Indian courts based on the principles of Justice, Equity and Good Conscience. Applying the same principles to this case, it is clear redemption of mortgage can be allowed even though the period provided under the deed might have expired.

13. Further, the Hon'ble Supreme Court in ***Seth Ganga Dhar vs. Shankar Lal & others (AIR 1958 Supreme Court 770)*** has held as follows:

“.... The right of redemption, therefore, cannot be taken away. The Courts will ignore any contract the effect of which is to deprive the mortgagor of his right to redeem the mortgage.”

14. In view of the above, this Court is of the view that the trial Court and the First Appellate Court have considered all the aspects and



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rightly decreed the suit in favour of the plaintiff. The substantial questions of law raised in this second appeal are answered as above.

15. Accordingly, the Second Appeal is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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LR/ogy

NCC : Yes / No.

Index : Yes / No.

Internet: Yes/No.

To

1. The Principal Sub Court,
Srivilliputtur at Virudhunagar District.
2. The Principal District Munsif Court,
Srivilliputhur at Virudhunagar District.



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B.PUGALENDHI, J.

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