



C.R.P(MD)No.2051 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2051 of 2019
and
C.M.P(MD)No.10533 of 2019

Sowra Begum

... Petitioner/Petitioner
Defendant

Vs.

A.Sheik Abdullah

... Respondent/Respondent
Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order, dated 12.07.2019 made in I.A.No.71 of 2019 in O.S.No.7 of 2018 on the file of the Sub Court, Periyakulam, set aside the same and allow the Civil Revision Petition.

For Petitioner : Mr.V.Janakiramulu

For Respondent : Mr.R.Mariappan



WEB COPY



C.R.P(MD)No.2051 of 2019

ORDER

The defendant in O.S.No.7 of 2018 on the file of the Sub Court, Periyakulam is the revision petitioner herein. The respondent herein as plaintiff has filed a suit for recovery of possession from the defendant, on deposit of the mortgage amount of Rs.1,50,000/- on a usufructuary mortgage, dated 18.04.2013.

2. The defendant had filed a written statement admitting the payment of Rs.1,50,000/- to the plaintiff and also admitting the fact that the un-divided share of the plaintiff was given to the defendant in *lieu* of interest. However, the defendant has contended that the plaintiff is not entitled to possession of the same, in view of the fact that she is in possession not as a mortgagee but as a co-sharer of the property.

3. Pending suit, the defendant had filed I.A.No.71 of 2019 under Order VII, Rule 11 of CPC., to reject the plaint on the ground that a suit for recovery of possession based upon an un-registered usufructory



C.R.P(MD)No.2051 of 2019

mortgage is not maintainable. The said application has been rejected by the Trial Court on the ground that trial has already begun and P.W.1 has already been examined and it was posted for cross-examination of P.W.1. Challenging the same, the present revision petition has been filed by the defendant.

4. According to the learned Counsel appearing for the revision petitioner, admittedly, the claim of the plaintiff is based upon an un-registered usufructory mortgage deed and therefore, the present suit for recovery of possession is not maintainable, since the said document is not admissible in evidence.

5. Per contra, the learned Counsel appearing for the respondent / plaintiff had contended that the possession of the defendant is only traceable to the mortgage and therefore, on deposit of the said amount, the defendant is liable to vacate and hand over possession to the plaintiff. Even assuming that the document is an un-registered document, the same can be relied upon for collateral purposes.



C.R.P(MD)No.2051 of 2019

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. The suit for recovery of possession is based upon an un-registered usufructuary mortgage. The plaintiff has deposited the entire mortgage money. A perusal of the written statement clearly shows that the defendant admits that her husband has given a loan to the plaintiff of a sum of Rs.1,50,000/- and in *lieu* of interest for the said loan, the plaintiff has given his interest in the un-divided share. However, the defendant has contended that his possession cannot be disturbed by mere re-payment of this Rs.1,50,000/-. But on the other hand, she is in possession as a co-sharer of the property. The contents of the plaint and the written statement would clearly establish that there is some kind of oral arrangement between the plaintiff and the defendant. Therefore, the said issue has to be decided only during trial. That apart, the defendant has already filed O.S.No.24 of 2018 before the same Court for the relief of partition, which is trailed separately. Whether the relationship between the parties is that of co-sharers or that of a mortgagor and mortgagee has



C.R.P(MD)No.2051 of 2019

to be decided by the Trial Court during trial. Therefore the Trial Court was right in dismissing the said application. However, the Court below is directed to dispose of the suit within a period of six (6) months from the date of receipt of a copy of this order.

8. With the above said observation, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.04.2024

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

To

- 1.The Sub Court,
Periyakulam.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

5/6



WEB COPY



C.R.P(MD)No.2051 of 2019

R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.2051 of 2019

18.04.2024