THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

CRP [NPD] No.2173 of 2025 & CMP.No.12723 of 2025

Rajendran . . . Petitioner

Versus

Mannusamy Udaiyar [died]
1. Panjalai
2. Ramakrishnan
3. Uma Maheswari . . . Respondents

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order dated 31.01.2025 in returning the Final Decree Application in unnumbered I.A. No. of 2024 in O.S.No.302 of 2008 on the file of the Principal District Munsif Court, Gingee and consequently, direct the learned Principal District Munsif, Gingee to number the Final Decree Application.

For petitioner : Mr.P.Dinesh Kumar

ORDER

Challenging the Order of the Execution Court rejecting the application filed to enforce the preliminary decree passed in a mortgage suit, the present Civil Revision Petition has been filed.

2. Since the Execution Court has returned the Execution Petition without numbering, no notice is required to be sent to the respondents. The respondents may agitate with regard to the limitation in the Execution Petition.

3. According to the petitioner, he had filed a suit in O.S.No.302 of 2008 for recovery of money along with interest on the basis of the mortgage deed executed by the defendant. In the said suit, a preliminary decree has been passed on 27.09.2012 with a direction to pay the mortgage money within a period of six months. That six months expires on 27.03.2013. Thereafter, it appears that an application has been filed on 27.08.2024 for passing of the final decree. The trial Court has returned the application on the ground that the final decree application has been filed beyond the period of limitation.

4. It is relevant to note that in a judgment of the Division Bench of this

Court in **A Partnership Firm and others Vs. State Bank of India reported in 2018 [5] CTC 353**, this Court has held as follows :

> "28. It is pertinent to note that whether it is a suit for partition or a suit for dissolution of partnership and accounts or a suit on a mortgage, the suit does not terminate on the passing of the preliminary decree, but terminates only on the passing of the final decree.
>
> 29. In a suit on a mortgage, after the passing of the preliminary decree, if the decree holder-plaintiff does not apply for the passing of final decree within the period prescribed by Article 181 of the old Limitation Act or Article 137 of the new Limitation Act and on that ground the said application was dismissed as barred by limitation, what happens to the pending suit itself does not appear to have been considered so far. If the analogy of the partition suit is taken, once a preliminary decree declaring the shares of the parties has been passed, that suit is said to be pending till a final decree is passed. There being no period of limitation prescribed for filing an application for final decree in a suit, the suit will be pending till the final decree is actually passed and there is no compulsion on any of the parties to the preliminary decree to apply for a final decree within a particular time. Therefore, with regard to a suit for partition, once a preliminary decree has been passed, it has to be adjourned sine

die with liberty to any of the parties to whom shares have been allotted to apply for the passing of a final decree. If the parties to whom shares have been allotted under the preliminary decree do not apply for the passing of a final decree within a reasonable time, the Code does not confer a power on the Court to dismiss that suit on the ground that nobody has applied for the passing of the final decree, either suo motu or on the application of any one of the parties to the suit.

30. Order XXXIV of the Code of Civil Procedure elaborately deals with the manner of disposal of a suit on a mortgage, but, it does not contain any provision for dismissing a suit on a mortgage in which a preliminary decree has been passed already, on the ground that the plaintiff had not applied for the passing of a final decree within the time prescribed by law, either suo motu or on the application of the judgment-debtor.

31. As a matter of fact, once the application made by a plaintiff for passing a final decree is dismissed on the ground that it is barred by limitation, we are left with a peculiar and nebulous position of the suit being still pending and the preliminary decree already passed not having been cancelled, but at the same time, the plaintiff in the suit not being able to realise the fruits of the decree which they obtained under the preliminary decree.

32. Order XXXIV, Rule 2(1) read with Rule 4(1), Civil

Procedure Code contemplates a Court fixing a date within 6 months before which the amount determined by the Court or declared by the Court should be paid by the mortgagor, at every stage, there is provision in that Order itself for extending the time so fixed.

33. As a matter of fact, even in a case where a sale has already been ordered and sale has been held, there is a provision for payment of the amount due by the mortgagor before the confirmation of the sale. All these may indicate that the judgment-debtor has an opportunity of paying the amount not merely within the time prescribed under Order XXXIV, Rule 2(1) read with Rule 4(1), Civil Procedure Code or within the extended time, but also even before the confirmation of the sale itself. The whole scheme of Order XXXIV Civil Procedure Code, is to give the mortgagor an opportunity of getting the time fixed in the preliminary decree for payment of the amount extended.

34. In the present case, as clearly stated about the executability, if the defendants failed to pay the amount in question within the prescribed period, it cannot be said that the decree issued in favour of the respondent-bank, was not executable.

35. No doubt, law of limitation is based on a sound public

policy, but, at the same time, the court would not be willing to apply the rigours of the Limitation Act to defeat a just and valid claim of the Bank which has now crystalised on adjudication by a competent court of law.

36. Applying the principle of limitation in the facts of this case would amount to, depriving the respondent-bank of the fruits of the judgment. It would amount to giving undue benefit to the borrowers and the guarantors."

5. Further, it is relevant to note that, the final decree has been passed only to enforce payment already secured by way of preliminary decree. The preliminary decree has been passed on 27.09.2012 with a specific direction to pay the amount within a period of six months. Therefore, any application to enforce the payment that had already been secured, particularly, the mortgage amount already secured, the period of limitation is 12 years as per Article 62 of the Limitation Act. That apart, a final decree will be filed only to enforce the right accrued in the preliminary decree. In other words, the very filing of the final decree application is just to enforce the rights already accrued in the preliminary decree. In that case, to enforce preliminary decree or any decree of the Court, a period of 12 years is provided under Article 136 of Limitation

Act. Therefore, the trial Court returning the application at the initial stage cannot be sustained and the Order impugned is liable to be set aside.

6. Accordingly, this Civil Revision Petition is allowed. The trial Court is directed to number the application filed by the petitioner to enforce the preliminary decree and decide the same on its own merits. Consequently, connected miscellaneous petition is closed.

09.06.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order
vrc

To,

The Principal District Munsif,
Gingee.

CRP.No.2173 of 2025

N.SATHISH KUMAR, J.

This Civil Revision Petition has been posted today under the caption 'for being mentioned' at the instance of the learned counsel appearing for the petitioner.

2. The learned counsel appearing for the petitioner submitted that the Order of this Court in Civil Revision Petition in CRP.No.2173 of 2025 dated 09.06.2025 did not contain Order to return the original application filed by the petitioner before the trial Court.

3. Considering the submission of the learned counsel appearing for the petitioner, the registry is directed to return the original unnumbered final decree application filed by the petitioner before the trial Court.

18.06.2025

vrc

N. SATHISH KUMAR, J.

vrc

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