
(2008) 04 MAD CK 0008

In the Madras High Court

Case No : C.R.F.P.D. No. 3229 of 2007 and M.P. No. 1 of 2007

Renganayaki

APPELLANT

Vs

Jagadambal Ammal

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Transfer of Property Act, 1882 — Section 67A

Citation : (2008) 04 MAD CK 0008

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : S. Sounthar, for the Appellant; A. Muthukumar, for the Respondent

Judgement

K.K. Sasidharan, J.—This civil revision petition is directed against the order dated 25.6.2007 passed in O.S. No.59 of 2006 on the file of

the Principal Sub Court, Mayiladuthurai. The respondent in the present revision had instituted a suit against the petitioner on the basis of a

mortgage Deed. The suit was resisted by the petitioner, by filing written statement.

2. The petitioner has taken a stand that the present suit is clearly not maintainable. In the earlier suit, the respondent has sought relief on the basis of first mortgage in respect of the same property and obtained a preliminary decree and again filed the present suit on the basis of second mortgage

and hence the suit is clearly barred by Section 67A of the Transfer of Property Act. The question with regard to the maintainability of the suit was

taken by the learned Trial Judge as a preliminary issue and the said issue was decided against the petitioner herein. Aggrieved by the said order,

the petitioner has preferred the present revision.

3. Heard Mr. S. Sounthar, learned counsel appearing for the petitioner and Mr. A. Muthukumar, learned counsel appearing for the respondent.

4. It is seen from the materials available on record that the present suit in O.S. No. 59 of 2006 has been preferred on the basis of a mortgage deed

dated 15.2.2004 pertaining to the suit property. However there was another mortgage executed by the petitioner on 4.5.1994 for a sum of

Rs.50,000/-. It is the contention of the petitioner that the respondent preferred a suit earlier in respect of the first mortgage and obtained a

preliminary decree. Therefore the present suit on the basis of the second mortgage is not maintainable and as such the said objection was taken as

a preliminary objection by the petitioner relying on Section 67A of the Transfer of Property Act. The question of maintainability of the suit as a

preliminary issue was considered by the court and ultimately the court found that the suit is clearly maintainable.

5. It is also seen from the plaint in O.S. No. 59 of 2006 that the proceedings in respect of the earlier mortgage was clearly mentioned in the suit

and as such it cannot be said that the petitioner has not been informed of the proceedings in respect of the other mortgage.

6. Learned counsel for the revision petitioner contended that the mortgagee having failed to sue on all the mortgages executed by the same

mortgagor is debarred from bringing a fresh suit in respect of other mortgages not included in the earlier suit. I am unable to subscribe to the views

of the revision petitioner. It is clearly mentioned in the proceedings with respect to other mortgage and when the revision petitioner was in the know

of things, it cannot be said that the respondent is debarred from bringing the suit with respect to other mortgage which was not included in the

earlier suit.

7. It is trite that the mortgagee may sue on one or other of the mortgages thereby affording the defendant some period of grace in regard to the

other mortgages, so long as the mortgagee mentions in his plaint the existence of the other mortgages as well as the details pertaining to the said

mortgage. In such circumstances, it cannot be said that the suit is not maintainable in view of Section 67A of the Transfer of Property Act.

8. Therefore I do not find any reason to interfere in the order of the learned trial Judge. The revision is an exercise in futility and as such the same is

liable to be dismissed. In the result, the civil revision petition is dismissed. Consequently, the connected MP is closed. No costs.