

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.4985/2010**

**VENUGOPAL PADAYACHI (DEAD) THROUGH LRs.**

**Appellant(s)**

**VERSUS**

**V. PICHAIKARAN (DEAD) THROUGH LRs.**

**Respondent(s)**

**J U D G M E N T**

**Uday Umesh Lalit, J.**

1. On the basis of a document dated 20<sup>th</sup> March 1959, which was styled as 'simple mortgage', Original Suit No.2249 of 1981 was filed by the respondent/original plaintiff praying for redemption of mortgage and for recovery of possession.

2. The appellant/original defendant in his written statement pleaded that under the aforesaid simple mortgage, the defendant was not put in possession; that subsequently a document dated 12.11.1960 was entered into between the parties under which the original plaintiff purported to convey title in favour of the defendant; and, that it was in pursuance of this subsequent document that the defendant was put in possession.

3. It must be noted here that the document dated 12.11.1960 being an unregistered document was not allowed to be exhibited and could not be relied upon as a document of title.

4. We need not advert to first round of the litigation whereafter the matter stood remanded. The trial Court after remand accepted the plea set-up by the defendant that with effect from the document dated 12.11.1960, the possession of the defendant over the land in question became adverse to the original plaintiff. It was further found that since the suit was filed more than 12 years after the aforesaid document dated 12.11.1960, the defendant had perfected his title by adverse possession. The suit thus came to be dismissed.

5. The findings rendered by the trial Court were affirmed by the lower Appellate Court and the appeal preferred by the original plaintiff was dismissed.

6. The plaintiff, being aggrieved, carried the matter further by filing Second Appeal No.209 of 1989 in the High Court at Madras.

The High Court framed the following substantial question of law:

"Whether the Courts below are right in law in finding adverse possession when the execution of the mortgage deed is not disputed by the Defendant?"

and, found as under:

"4. Admittedly, the plaintiff executed a mortgage on 20.03.1959 in respect of the suit mentioned immovable property for a consideration of Rs.300/-, which he borrowed from the Defendant. What was all contended by the plaintiff before both the Courts below was that the Defendant was put in possession in lieu of interest on the mortgage but a reading of Ex.A1 mortgage would

indicate that it was a simple mortgage simplicitor and hence the said contention of the plaintiff/appellant that the Defendant was put in possession in lieu of interest was rightly rejected. The case of the Defendant is that he purchased the property from the Defendant on 12.11.1960 for a consideration of Rs.750/- in which the mortgage amount was adjusted. Both the Courts have not looked into the document since it was necessarily a registrable one but remains unregistered and hence the contention of the Defendant that he got the sale of the property cannot be countenanced. But it is an admitted position that the Defendant has been in possession of the property. Before both the Courts below, it was contended by the Defendant that he has also acquired title by prescription. Both the Courts have also accepted the contention though the sale deed filed by the Defendant was not marked and relied on by the parties. Under the stated circumstances, the Defendant could have got into possession on some understanding between the parties. However, from the available evidence, it would be quite clear that what was executed by the plaintiff in favour of the Defendant was a simple mortgage and the plaintiff has also filed a suit for redemption."

7. The High Court thus arrived at a finding that the defendant could have got into possession on "some understanding", which was not the case set up by any of the parties. Holding the arrangement under the mortgage to be continuing, it accepted the appeal and passed a decree of redemption holding that the plaintiff was entitled to deposit the mortgage amount with simple interest within a time frame.

8. The original defendant is presently in appeal by special leave challenging the view so taken by the High Court. It must be mentioned here that during the pendency of this appeal, both the plaintiff and the defendant have expired. The heirs of original plaintiff were brought on record and were served in the matter but they have chosen not to appear in this Court.

9. We have heard Mr. V. Prabhakar, learned counsel for the appellant/defendant.

10. It was submitted by Mr. Prabhakar that document dated 12.11.1960, being an unregistered one, could certainly not be relied upon to advance the proposition that under the said document the title came to be vested in favour of the defendant but said document could be relied upon for collateral purpose, in that to support that on and with effect from that date, the defendant was put in possession. With the assistance of the learned counsel, we have gone through the document in question and find that the defendant was put in possession pursuant to said document.

11. The question then arises is whether such possession of the defendant under a document which otherwise is inoperative in law could be held to be adverse to the original plaintiff. The issue is no longer *res integra* as the matter has been decided by this Court on few occasions.

12. Mr. Prabhakar invited our attention to the decision of this Court in ***Padma Vithoba Chakkayya v. Mohd. Multani***, (1963) 3 SCR 229; and, ***Rukmani Ammal & Another v. Jagdesa Gounder***, (2006) 1 SCC 65.

13. In ***Rukmani Ammal*** (*supra*), this Court succinctly extracted the law on the subject and observed as follows:

**"18.** In *K. Gopalan Thanthri v. Ittira Kelan*, {AIR 1970 Ker 305 : 1970 KLT 462 (FB)}, it was held by the Full Bench of the High Court of Kerala that after the sale of the mortgage property in favour of the mortgagee, possession of the mortgagee becomes adverse to *tarwad* and if a suit for redemption is not filed within the stipulated period of twelve years, it would become barred by limitation.

**19.** In the case in hand, Annamalai was the owner of the property. He mortgaged it to Defendant 1 in 1962 and since then Defendant 1 was in possession of the property as mortgagee. Annamalai then sold part of the property to the plaintiff in 1964 and the sale deed recited the *factum* of mortgage by the owner to Defendant 1. In a suit for recovery of money by Defendant 1 against Annamalai, a decree was passed and in execution proceedings, the property was purchased by the mortgagee (Defendant 1) in 1966. The auction was confirmed and sale certificate was issued in favour of Defendant 1 on 5-9-1966. The submission of Defendant 1 is well founded that thereafter she did not continue to remain mortgagee but became absolute owner or claimed to be the absolute owner of the property. As held by this Court in the cases referred to hereinabove, once the mortgagee is claiming to be an absolute owner of the property, his/her status as mortgagee comes to an end and his/her possession becomes adverse to the original owner. Even if such sale is voidable (and not void), it will not alter the legal position and adverse title of the original mortgagee continues and if the period of twelve years expires, he/she becomes owner of the property by adverse possession."

(Emphasis supplied by us)

14. In the circumstances, the trial Court and the lower Appellate Court were perfectly right and justified in accepting the submission advanced on behalf of the defendant and in dismissing the suit. The High Court while exercising the Second Appellate Court's jurisdiction ought not to have interfered in the matter.

15. We, therefore, allow this appeal, set-aside the judgment under appeal and dismiss Original Suit No.2249 of 1981, with no order as to costs.

.....J.  
(UDAY UMESH LALIT)

.....J.  
(SANJAY KISHAN KAUL)

New Delhi;  
September 18, 2018