

SUPREME COURT OF INDIA

M. Chellappan

Vs.

A. Meeran Pillai (Dead) Thr.L.Rs.

C.A.No.443 of 1999

(B.N. Agrawal and G.S. Singhvi JJ.)

14.07.2009

ORDER

1. Heard learned counsel for the parties.

2. In the second appeal filed by the respondent, at the time of its admission, the High Court was of the view that two substantial questions of law arise therein and, accordingly, framed the same, which reads thus:

“[1] Whether the plaintiff can be termed as the purchaser of equity of redemption from Sankaran Velayudhan to enable him to redeem the property? and

[2] Whether the Courts below erred in holding that the plaintiff is in the position of sub-mortgagor having regard to the fact that the first defendant having already obtained the main mortgage rights extinguished the sub-mortgages, Exs. A-1 and A-3 by obtaining Ex. A-6 assignment and thereafter the first defendant had mortgage right besides equity of redemption and there is no relation of sub-mortgagor and sub-mortgagee between the plaintiff and the first defendant in the suit?”

3. After hearing counsel for the parties, the High Court allowed the second appeal and dismissed the suit as barred by limitation.

4. Undisputedly, at the time of admission, no substantial question of law was framed on the issue of limitation. Even at the stage of hearing, no such question of law was framed. This being the position, the High Court was not justified in holding that the suit was barred by limitation.

5. Accordingly, the appeal is allowed, impugned order is set aside and the second appeal is remanded to the High Court for its disposal on merits in accordance with law after framing further substantial question of law in relation to the plea of limitation.

6. Needless to say that second appeal will be considered without being prejudiced by any observation made in this order.

No costs.