

Sri Narasimha Murthy vs Sri Murthy

Sri Narasimha Murthy vs Sri Murthy

SooperKanoon Citation : sooperkanoon.com/1905464

Court : Karnataka

Decided On : Nov-06-2024

Judge : S.G.Pandit,Ramachandra D. Huddar

Appeal No. : RFA/804/2012

Appellant : Sri Narasimha Murthy

Respondent : Sri Murthy

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2024 PRESENT THE HON'BLE MR JUSTICE S.G.PANDIT AND THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR REGULAR FIRST APPEAL NO. 804 OF 2012 (RES) BETWEEN: SRI. NARASIMHA MURTHY S/O G. SRINIVASA AGED ABOUT 43 YEARS R/AT NO. 48/1, BAZAAR STREET AUDUGODI, HOSUR ROAD BANGALORE-560 030 APPELLANT (BY SRI. K. SRINIVASA, ADVOCATE) AND:

1. SRI. MURTHY S/O LATE AKKALAPPA Digitally signed by SHAKAMBARI MAJOR Location: HIGH R/AT NO.269, 2ND MAIN ROAD COURT OF KARNATAKA NANJAPPA LAYOUT, AUDUGODI BANGALORE-30

2. SRI. KRISHNACHARI S/O LATE SHAMACHARI MAJOR R/AT NO.41/4, 3RD MAIN ROAD SOCIETY COLONY, NEW MICO ROAD AUDUGODI, BANGALORE-30

3. K.R. HONNAIAH SINCE DECEASED BY HIS LRs -2-

(A) SRI. RANGAPPA S/O LATE K.R. HONNAIAH AGED ABOUT 61 YEARS R/AT BEGUR ROAD HONGASANDRA, BANGALORE (B). SMT. VARALAKSHMI D/O LATE K.R. HONNAIAH AGED ABOUT 64 YEARS R/AT NO.62, DEVEGOWDA LANE 1ST MAIN ROAD, AUDUGODI BANGALORE-30 (C). SMT. PADMA D/O K.R. HONNAIAH AGED ABOUT 58 YEARS R/AT 1ST CROSS, MUNIKRISHNA LAYOUT AUDUGODI, BANGALORE-30 (D). SRI. KITTI S/O K.R. HONNAIAH AGED ABOUT 56 YEARS R/AT NO.62, DEVEGOWDA LANE 1ST MAIN ROAD, AUDUGODI BANGALORE-30 (E). SMT. SAVITHRAMMA D/O LATE K.R. HONNAIAH AGED ABOUT 54 YEARS R/AT NO.62, DEVEGOWDA LANE 1ST MAIN ROAD, AUDUGODI BANGALORE-30 (F). SRI. SATHYA S/O LATE K.R. HONNAIAH AGED ABOUT 52 YEARS R/AT NO.86, 5TH BLOCK DEVEGOWDA LANE, AUDUGODI BANGALORE-30 R/AT NO.62, DEVEGOWDA LANE -3- 1ST MAIN ROAD, AUDUGODI BANGALORE-30 (G). SMT. BABI D/O K.R.HONNIAH AGED ABOUT 50 YEARS R/AT NO.86, 5TH BLOCK DEVEGOWDA LANE, AUDUGODI BANGALORE-30 R/AT NO.62, DEVEGOWDA LANE 1ST MAIN ROAD, AUDUGODI BANGALORE-30

4. SRI. VENKATESH S/O LATE JAYARAM MAJOR R/AT NO. 729, 8TH MAIN ROAD 8TH CROSS, MICO LAYOUT BANGALORE

5. SRI. THIMMEGOWDA S/O SRIKANTEGWDA MAJOR R/AT 246, KHB COLONY KORAMANGALA, 5TH BLOCK NEAR GANESH TEMPLE BANGALORE

6. SRI. D. RAMAIAH S/O LATE DEVAIAH AGED ABOUT 70 YEARS R/AT NO.5, BAZAAR STREET DEVEGOWDA LANE, AUDUGODI BANGALORE-560 030 6(A). SRI. R.N. MURTHY S/O LATE D. RAMAIAH AGED ABOUT 55 YEARS R/AT NO.65, DEVEGOWDA BLOCK -4- AUDUGODI BENGALURU-560 030

[AMENDED VIDE COURT ORDER

DATE 23.09.2021] SRI. G. SRINIVASA S/O GOPALEGOWDA SINCE DECEASED (HIS LRS ARE ALREADY BROUGHT ON RECORD IN THE SUIT THEY ARE AS APPELLANT NO.1 AND RESPONDENTS NO.8 TO 13)

7. SMT. PARVATHAMMA W/O LATE G. SRINIVASA AGED ABOUT 65 YEARS R/AT NO.48/4, BAZAAR STREET AUDUGODI, BANGALORE-30

8. SRI. DHANANJAYA S/O LATE G. SRINIVASA AGED ABOUT 41 YEARS

9. SMT. LAKSHMI D/O LATE G. SRINIVASA AGED ABOUT 46 YEARS

10. SMT. SUNANDA D/O LATE G. SRINIVASA AGED ABOUT 40 YEARS

11. SMT. GEETHA D/O LATE G. SRINIVASA AGED ABOUT 36 YEARS

12. SMT. SUJATHA D/O LATE G. SRINIVASA AGED ABOUT 32 YEARS -5- RESPONDENTS NO.8 TO 12 ARE R/AT NO.48/4, BAZAAR STREET HOSUR ROAD, AUDUGODI BANGALORE-560 030 RESPONDENTS (BY SRI. Y.K. NARAYANA SHARMA, ADVOCATE FOR R6(A);

R3(A), R4, R5, R7, R8, R9, R10, R11, R12 ARE SERVED; VIDE ORDER DT.23.07.2014 APPEAL AGAINST TO R1 IS DISMISSED AS ABATED; VIDE ORDER DT 02.02.2018 NOTICE TO R3(C), R3(F), & R3(G) ARE HELD SUFFICIENT; VIDE ORDER DT.02.12.2019 NOTICE TO R2, R3(B,D & E) ARE DISPENSED WITH) THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W

SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 18.7.2011 PASSED IN O.S.NO.62/2001 ON THE FILE OF THE 17 ADDL. CITY CIVIL & SESSIONS JUDGE, BANGALORE, (CCH 16), DISMISSING THE SUIT FOR DECLARATION, POSSESSION AND PERMANENT INJUNCTION. THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE S.G.PANDIT and HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR -6-

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR) The appellant is the plaintiff in OS No.62/2001 on the file of 17th Addl.City Civil and Sessions Judge (CCH-16), Bengaluru City, which was filed for relief of declaration to declare, that the sale deeds dated 2.7.1971, 26.7.1971, 26.7.1971 and 15.12.1971 executed by Akkalappa, the father of defendant no.1 in favour of defendant nos. 2, 4 to 6 and sale deed dated 15.9.1971 executed by defendant no.6 in favour of defendant no.3 as null and void and invalid in law; - and also to direct the defendants nos. 1 to 6 to hand over the possession of the suit schedule property and consequentially to grant permanent injunction restraining defendant nos. 1 to 5 from interfering with his peaceful possession and enjoyment of suit schedule property with some other reliefs for which, the plaintiff is found entitled to.

2. The plaintiff has described the suit schedule

property in the schedule appended to the plaint -7- (hereinafter referred to as 'suit schedule property' for brevity). The brief facts of the case of the plaintiff leading upto this appeal are as under:

3. The appellant and respondent nos. 8 to 13 are

the children of late G.Srinivasa, who was defendant no.7 in the Civil Suit so filed. They are the grand children of late Gopala Gowda. Late Srinivasa was the son of late Gopala Gowda. The appellant and respondent nos. 8 to 13, late Srinivasa and Smt.Parvathamma are the lineal descendants and legal heirs of late Gopala Gowda and they constitute Hindu Joint Family. It is the specific case of the plaintiff that,

the said Gopala Gowda and his brother Devegowda jointly acquired certain immovable properties in Adu Godi village, Bengaluru District. One of such portion of the land measuring 42 x 80 ft. formed in Sy.No.1/1 of Adu Godi village was purchased under registered sale deed dated 10.9.1944 by the said Gopala Gowda from Krishna Reddy

and others. On the demise of Gopala Gowda and Devegowda, the remaining legal heirs succeeded to their -8- properties jointly. They entered into a partition deed as per the partition deed dated 10.7.1970. Said partition was

effected amongst children of Devegowda and Gopalagowda. As per the said partition, the vacant space measuring 42 ft. east to west and 78.9 ft. north to south towards east 80 ft. bearing Corporation No.58, 67th Division, Adu Godi, Bengaluru with RCC/Tiled Roof house measuring East to West 8 ft. and north to south 20 ft. fell to the share of the appellant i.e. G.Srinivasa. Thus, the father of the plaintiff with his family members came in possession and enjoyment of said property even as on the date of filing the suit also. Thus, appellant and respondent nos. 8 to 13 have got joint interest and equal right in the said property which is the suit schedule property involved in this suit.

4. It is specifically alleged by the plaintiff that, his

father G.Srinivasa during the year 1971 approached one Akkalappa i.e. father of first respondent for financial assistance to the tune of Rs.2,000/- by mortgaging the -9-

schedule property by deposit of title deeds in his favour. In this regard, a nominal sale deed was executed in favour of Akkalappa on 8.2.1971. There was an essential condition under the said mortgage in between Akkalappa and Srinivasa that the father of the appellant shall get redemption of the mortgage on payment of the mortgage amount and Akkalappa shall execute redemption deed on receipt of the loan amount. Accordingly, a deed of

mortgage was executed by Akkalappa by receiving Rs.2,000/- with interest of Rs.1,000/- on 13.9.1971. It is alleged that, the plaintiff has got misplaced the said

mortgage deed and till date, he has not traced it. However, he has produced the photocopy of the said deed. As the mortgage was discharged by virtue of the said document, now the plaintiff and other defendants stated supra are the joint holders of the schedule property. It is alleged that, though the said Akkalappa had no semblance of right title or interest and possession but, he executed the sale deed in respect of the schedule property of its different portions to different persons under the sale deeds

- 10 - dated 2.7.1971, 26.7.1971, 26.7.1971 and 15.12.1971 in favour of respondent nos. 2 to 5. In addition to that, Smt.Parvathamma the respondent no.7 executed Sale deed in respect of the property measuring 42 x 20 ft. in favour of R.L.Honnaiah on 15.9.1971 by receiving

Rs.1,000/-. All these sale transactions according to appellant are false and sham transactions. The said sale deeds have no legal sanctity as Akkalappa had no capacity to transfer the schedule property in favour of anybody. The said mortgage has already been redeemed. It is further alleged that, the appellant is not having any knowledge about the said transactions. On coming to know the said fact, he filed the suit seeking the aforesaid reliefs. Hence, it is prayed to decree the suit as prayed for.

5. Despite service of suit summons defendant nos.

1,2,4 and 5 remained absent, therefore, placed ex-parte. Defendant no.7 died and suit against defendant no.7 stood abated. 8th defendant though appeared has not filed any written statement whereas, defendant nos. 3 and 6 - 11 -

appeared and resisted the suit by filing detailed written statement denying the entire assertions made in the plaint. It is contended that, suit of the plaintiff is barred by limitation and defendant no.3 is a bona fide purchaser of the schedule property. It is contended that, the said G.Srinivasa father of the plaintiff sold the schedule property in favour of Akkalappa and in turn, Akkalappa sold the portion of the property in favour of defendant no.3 and 6. The said sale transactions still holds the validity and plaintiff cannot question the same. It is contended that, the allegations with regard to creation of the mortgage by G.Srinivasa in favour of

Akkalappa is utterly false. Amongst other grounds, it is prayed by the defendant nos. 3 and 6 to dismiss the suit.

6. Based upon the rival pleadings of both the parties, the learned trial Court framed six issues and four additional issues. They read as under: zAU

(1) 1 wAi vAzAiiz CP AP: 02/07/1971, -12- Aoy ? 2) 6 3 : ?

(3) -/ 3 BUFO .) ?

(4) ?

(5) ?

(6) BE? (: 05/05/2006 1 6 ?

(2) ?

(3) 6 _ FLO 15() ?

(4) ?

7. Before the trial Court, to prove the case of the plaintiff, he himself entered the witness box as PW.1 and also examined one witness by name Nagegowda as PW.2 and got marked Ex.P1 to P33 and closed plaintiffs - 13 -

evidence. To rebut the evidence of plaintiff, defendant no.6, during his lifetime entered the witness box as DW.1 and got marked Ex.D1 to D11 and closed defendants' evidence.

8. The learned trial Court on hearing the

arguments and on assessment of evidence placed on record of both the side, has come to the conclusion that, the claim of the plaintiff is barred by law of limitation. It was the outright sale deed executed by the father of plaintiff in favour of Akkalappa and in turn, he has sold portions of the schedule properties in favour of contesting defendants and ultimately it is held that, plaintiff has no right in the schedule property and thus dismissed the suit of the plaintiff. This is how now the

plaintiff is before this Court challenging the impugned judgment passed by the trial Court.

9. The learned counsel for the appellant with all vehemence submits that, the facts of this case do reveal about acquisition of the property by his father G.Srinivasa - 14 - under partition deed dated 10.7.1970. As he had financial

difficulties, he approached father of first defendant Akkalappa and there was a condition that, he is creating a mortgage deed in respect of the schedule property by deposit of title deed and mortgage amount was fixed at Rs.2,000/- but, however, he executed the sale deed on 8.2.1971 which was the nominal sale deed. Even a redemption of mortgage deed was executed by Akkalappa

as agreed by receiving Rs.2,000/- on 13.9.1971. The learned counsel for the appellant would further submit that, as already Akkalappa has executed redemption mortgage deed and had no right, title or interest in the schedule property much less, possession but, to deprive the rights of the plaintiff, he executed the sale deeds

which are impugned in this suit. According to his submission, it was the nominal transaction. By the said nominal transaction Akkalappa had not acquired any absolute title over the schedule property even, defendant no.7 has sold the property in favour of R.L.Honnaiah on 15.9.1971 measuring 42 x 20 ft. by receiving sale

- 15 -

consideration from Parvathamma defendant no.7. The said sale deed has also has no validity in the eyes of law. In support of his submission, the learned counsel for the appellant took us through various oral and documentary evidence adduced by both the side and also findings of the trial Court. He would submit that, the learned trial Court has committed a grave error in dismissing the suit of the plaintiff. He prays to allow the appeal and decree the suit as prayed for.

10. As against this submission, the learned counsel

for the contesting respondents would submit that the sale deed executed by the father of the plaintiff is an outright sale deed and it can never be termed as a nominal sale deed. By virtue of the sale deed, father of respondent no.1 became the absolute owner of the schedule property and accordingly, his name entered in the revenue records. In that capacity he executed various sale deeds which are impugned in the suit. The said Akkalappa never executed

any deed of redemption of mortgage in favour of - 16 - G.Srinivasa at any point of time. The assertion that there was a deed of redemption of mortgage dated 13.9.1971 executed by Akkalappa in favour of G.Srinivasa is utterly

false. The photocopy so produced is a concocted document. According to the submission of the contesting respondents, rightly the learned trial Court has dismissed the suit on the ground of limitation as well as on merits which do not require any interference by this Court. He would further submit that, there was no occasion for creation of any mortgage deed or redemption of mortgage deed. He would submit that such a story is created by the plaintiff now. According to him, the learned trial Court rightly did not accept the case of the plaintiff and dismissed the suit which does not require any interference by this Court. He too relies upon various oral and documentary evidence adduced by both the side.

11. We have given our thoughtful consideration to the arguments of both the side. Perused the trial Court - 17 - records. In view of the rival submissions of both the side, the points that would arise for our consideration are:

"i) Whether the learned trial Court has committed any illegality or perversity in accepting the sale deed in favour of Akalappa as an outright sale deed and thereby, not accepting the case of the plaintiff? ii) If so, whether the judgment and decree of the trial Court requires interference by this Court?"

12. PW.1 being the plaintiff no.1 and power of

attorney of plaintiff nos. 2 to 6 has reiterated the plaint averments in his evidence on oath. He speaks with regard to possession of the suit schedule property during the lifetime of his father G.Srinivasa and after his demise, who is in possession of

the property. According to him, the so called sale deed stated to have been executed by Srinivasa in favour of Akkalappa is a nominal sale deed and it has not created any absolute title in favour of Akalappa or now the defendant nos. 1 to 6. Even beyond - 18 - the pleadings, so many facts have been stated by this PW.1.

13. So far as purchase of the property by Gopala

Gowda in the year 1944, it is not in dispute. Ex.P1 is the certified copy of the sale deed dated 10.9.1944 to that effect. Even it is not in dispute that there was a partition in between Goapala Gowda and his brother i.e. G.Srinivasa 10.9.1970. To prove the said fact, Ex.P2 the certified copy of the partition deed is produced. Even the family tree is produced at Ex.P3. Likewise, the plaintiff

has produced various sale deeds which are under challenge in the suit at Ex.P4 to P8. Now the plaintiff is seeking to set aside these sale deeds as null and void. Ex.P12 is the sale deed dated 2.9.1974, Ex.P13 is the certified copy of sale deed dated 25.2.1974 and Ex.P14 is the sale deed dated 25.2.1974. Copy of the encumbrance certificate is also produced. The most important document according to the plaintiff is a copy of the redemption deed dated 13.9.1971 marked at Ex.P29 and based upon this

- 19 - document, plaintiff still claims his title over the schedule property.

14. This PW.1 has been directed with severe cross- examination. He has volunteered to depose that, the

plaintiffs were dispossessed from the suit schedule property. According to him, as per the information given by his father, on 8.2.1971 he came to know that the schedule property has been mortgaged. But, according to him, he is born in the year 1966 and he became major in the year 1984. That means when the so called sale deed took place, he was still a minor and immediately after attaining majority i.e. in the year 1984, no legal steps were taken by him regarding such document stated to have been executed by his father. The evidence of PW.1 would not help the case of the plaintiff in any manner so as to disprove the contents of the sale deed in favour of Akalappa i.e. father of respondent no.1 and in turn the other sale

deeds marked executed by Akalappa stated supra.

- 20 -

15. PW.2 Nagegowda though examined by the

plaintiff as his witness but, for the first time, he speaks that, on 5.5.2006, defendant no.6 dispossessed the plaintiff from the suit schedule property. But, PW.1 never says so. This PW.2 is quite ignorant about so many factual events that have taken place in the family of plaintiff. Thus, as rightly appreciated by the trial Court, the evidence of PWs. 1 and 2 is not helpful to the case of the plaintiffs so as to prove their case.

16. Defendant no.6 entered the witness box as

DW.1 and he is specific in his evidence that, he purchased the schedule property from different four persons under registered sale deeds stated supra which are marked in evidence. Execution of these sale deeds is not disputed by the plaintiffs. It has come in the evidence of DW.1 that, father of plaintiff and father of DW.1 are the brothers inter se. He also admits that, there was a partition amongst those brothers. So also, plaintiff's brothers as well as his brothers. He admits that, the father of the plaintiff was

- 21 -

allotted the suit schedule property in the partition. But, he sold the property in favour of Akkalappa i.e. his father in the year 1971. Though lengthy cross-examination is directed to this DW.1 but, he justified purchase of the schedule property by his father from the father of the plaintiff. No doubt he has deposed so many ignorance with regard to factual events that have taken place in the family but, he is consistent throughout his evidence that, by virtue said sale deeds, he has become the owner of the schedule property.

17. On going through the entire pleadings and

evidence, though the plaintiff asserts with regard to the creation of redemption of a mortgage deed produced at Ex.P29 but, it is a photocopy. To prove the contents of

the same, except self-serving testimony of PW.1 there is no acceptable evidence. It is stated that the original document is misplaced. Mere marking a document that too a photocopy of the alleged redemption of mortgage deed would not prove the said document in any manner. - 22 -

18. From the facts mentioned above, it is clear that

plaintiff's father executed the sale deed in favour of Akalappa on 8.2.1971 so marked in this case. It is the case of the plaintiff as discussed above that, the said

Akkalappa by receiving the mortgage amount

photocopy is produced. Unless the said document is produced and proved in evidence, the very version of the plaintiffs cannot be accepted. As stated supra, with regard to such transactions i.e. sale deed and re-conveyance deed or redemption of mortgage deed, the Hon'ble Supreme Court in Chunchun Jha v. Sk. Ebadat Ali, reported in (1954) 1 SCC 699 considered the question whether in a given case, the transaction is a mortgage by conditional sale or a sale outright. In Ex.P1, there is no recital that, it was a conditional sale. Their Lordship in the said judgment felt that,

"5. The question whether a given transaction is a mortgage by conditional sale or a sale outright - 23 - with a condition of repurchase is a vexed one which invariably gives rise to trouble and litigation. There are numerous decisions on the point and much industry has been expended in some of the High Courts in collating and analyzing them.

8. Because of the welter of confusion caused

by a multitude of conflicting decisions the legislature stepped in and amended Section 58(c) of the Transfer of Property Act. Unfortunately that brought in its train a further conflict of authority. But this much is now clear. If the sale and agreement to repurchase are embodied in separate documents, then the transaction cannot be a mortgage whether the documents are contemporaneously executed or not. But the converse

does not hold good, that is to say, the mere fact that there is only one document does not necessarily mean that it must be a mortgage and cannot be a sale. If the condition of repurchase is embodied in the document that effects or purports to effect the sale, then it is a matter for construction which was meant. The legislature has made a clear-cut classification and excluded transactions embodied in more than one document from the category of mortgages, therefore it is reasonable to suppose that persons who, after the amendment, choose not to use two documents, do not intend the transaction to be a sale, unless they displace that presumption by clear and express words; and if the conditions of Section 58(c) are fulfilled, then we are of opinion that the deed should be construed as a mortgage".

19. The aforesaid principle was followed by the Apex Court in K. Simrathmull v. Nanjalingiah Gowder, reported in 1962 Supp (3) SCR 476, it is observed as under:
- 24 -

"2. On 18-2-1948, S. Nanjalingiah Gowder - hereinafter referred to as the plaintiff - borrowed Rs 1500 from K. Simrathmull - hereinafter called the defendant. On 19-2-1948 the plaintiff executed a sale deed conveying to the defendant certain land at Ootacamund together with a house standing thereon and belonging to him for Rs 700. Two other documents were executed on the same day : (1) a deed of reconveyance (Ex. A-1) counterpart of the sale deed in favour of the plaintiff which contained the following covenant: If you pay the sum of Rs 1500 within a period of two years I shall at your cost and your responsibility execute a sale in respect of the under-mentioned land and house. You shall pay the assessment for the house and the municipal tax, you shall if there is any arrears of rent pay the same prior to the sale, as per the rental deed executed by you and your father. If there is arrears of rent for six months, the aforesaid counterpart deed shall become cancelled. and (2) a rent note by the plaintiff and his father Bora Gowder in favour of the defendant agreeing to pay rent at Rs 26-4-0 per mensem for occupation of the house and the land.

3. Rent accruing due was not paid regularly

by the plaintiff and his father, and by April 1949 it was in arrears for seven months. The plaintiff sent Rs 52-8-0 by postal money order being rent for two months, on 20-4-1949, but it was not accepted by the defendant. The plaintiff then filed on 7-11-1949 a suit in the Court of the Subordinate Judge, Ootacamund, for specific performance of the agreement of reconveyance contained in the deed Ex. A-1. The suit was dismissed, for, in the view of the trial court, the conditions incorporated in Ex. A1, had not been strictly complied with, and the agreement stood cancelled. The decree of the trial court was affirmed in appeal. But in second appeal the High Court of Madras reversed the decree and ordered specific performance."

- 25 -

20. The said analogy can very well be applied to the present facts of the case.

21. The Hon'ble Apex Court have categorically held

in catena of judgments i.e. P.L. Bapuswami v. N. Pattay Gounder, reported in AIR 1966 SC 902 and Godhra Electricity Co. Ltd. v. State of Gujarat, reported in AIR 1975 SC 32 that, the question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the

deed interpreted in the light of the surrounding circumstances. In this case, on reading Ex.P1, it can be stated that, it is outright sale deed and document is to be interpreted as a outright sale deed only. That means, in the process of interpretation of the terms of a contract, the Court can frequently get great assistance from the interpreting statements made by the parties themselves or

from their conduct in rendering or in receiving performance under it. - 26 -

22. Here in this case, the father of the plaintiff sold

the schedule property in favour of Akkalappa. Though it is alleged that there was a redemption of mortgage deed executed by Akkalappa by receiving Rs.2,000/- towards mortgage amount and Rs.1,000/- as interest but, except producing

Ex.P29 no document is produced. Therefore, the process of practical interpretation is to be done to interpret Ex.P1. The contention of the plaintiff that there was redemption of mortgage deed executed by Akkalappa cannot be accepted for the simple reason that no original is produced and it was a separate document alleged to have been executed by Akkalappa. There is no condition in the sale deed executed by father of the plaintiff in favour of Akkalappa that Akkalappa shall have to recover the same. So, in view of the judgment of Hon'ble Apex Court stated supra, the version of the plaintiff cannot be accepted. Under the law, equity which governs the rights of the parties in a case of present nature, the conduct of the parties plays an important role. The very institution of the suit by the plaintiff after lapse of nearly 30 years of

- 27 - the said sale deeds go to establish that, wantonly plaintiff has filed the suit so as to deprive the rights of the purchasers who have purchased the property way back in

1971. Therefore, in favour of the plaintiff, the principle of equity should not be applied as there has been a sale and there was no document termed as redemption of mortgage deed.

23. We do not think that, the argument of the

counsel for the appellant is tenable. Whereas, submission of the contesting respondents do establish that, no such document styled as redemption of mortgage deed is executed and it was a outright sale deed executed by father of plaintiff no.1 in favour of respondent no.1 and by virtue of the sale deed Akkalappa became the absolute owner of the schedule property. In turn, he has sold the portions of the schedule property under various sale deeds which are challenged in this suit.

24. For all these reasons, we have no hesitation to hold that the learned trial Court has rightly not accepted - 28 -

the case of the plaintiff and disbelieved the pleadings and evidence of the plaintiff PW.1 and his witness and accepted the case of the defence of the defendants.

Event he plaintiffs are estopped from questioning the legality of sale transactions in favour of defendant no.1's father and subsequent sale deeds.

25. Having regard to the above discussion and

findings, we find no merits in this appeal. Accordingly, the points are answered in the negative. Consequentially, appeal is dismissed with cost of contesting respondents. Sd/- (S.G.PANDIT) JUDGE Sd/- (RAMACHANDRA D. HUDDAR) JUDGE Sk List No.: 1 SI No.: 30

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com