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Court : Mumbai

Decided On : Jun-19-1925

Reported in : AIR1925Bom514; (1925)27BOMLR1103

Judge : Norman Macleod, Kt., C.J. and ;Coyajee, J.

Appeal No. : Second Appeal No. 220 of 1924

Appellant : Vishvanathbhat Annabhat Pujari

Respondent : Mallappa Ningappa

Disposition : Appeal dismissed

Judgement :

Norman Macleod, Kt., C.J.

1. This is an appeal from the decision of the Assistant Judge of Dharwar, who, reversing the decree of the trial Court, dismissed the plaintiff's suit with costs throughout. The suit was one to recover possession of the plaint land with costs and future mesne profits, on the ground that the plaint land belonged to the plaintiff. His mother during his minority purporting to act as his guardian had sold the land to one Ningappa, the deceased father of defendants, on August '2 1905. The sale was sought to be set aside on three grounds: (1) that the sale-deed was a fraud on registration; (3) that the sale was not for the benefit of the plaintiff; and (8) that the Mali was of the nature of a mortgage and the amount of contribution

had already been paid off from the profits of the land.

2. The fraud on registration set up by the plaintiff' is based on the fact that only a portion of the land in the sale-deed was within the jurisdiction of the Sub-Registrar of Navalgund who registered the Hale deed, and it is alleged that land was inserted in the deed merely for the purpose of giving jurisdiction to the Sub Registrar, the intention of the parties being that that land should be reconveyed to the vendor. The Judge in the trial Court said:

The circumstances in which the two sale-deeds seem to have been passed lend support to the allegation that the insertion of the plot of ground in the sale-deed now in suit was merely with a view to give jurisdiction to the Sub-Registrar of Navalgund to register the deed. Besides Chidambarbhat, who is examined by the defendants, swears that the object of the insertion of the plot in the deed- was merely to give jurisdiction to the Sub Registrar of Navalgund, and that the parties to the sale-deed in suit has no intention to alienate the said plot by the deed, and that the sale to him by Ningappa of the plot was benami for Bhagirthibai.

3. Exhibit 8-1 is the deed which transferred the plot to Chidambarbhat, the benamidar for plaintiff's mother.

4. The appellant relies for his argument that there was a fraud on registration on two cases: *Harendra Lal Roy Chowdhury v. Haridasi Debi* I.L.R.(1914) Cal. 972 in which it was held that one of the properties appearing in the document to be registered was within the jurisdiction of the Registrar, and, therefore, registration was invalid; and *Eiswanath Pfaahad v. Chandra Narayan Chowdhuri* in which it was proved that the transferor had no title to the property mentioned in the transfer-deed which would bring it within the jurisdiction of the Registrar. Neither of those cases is applicable to the facts in the present case But the appellant wishes us to extend those decisions to the facts before us We are concerned at present with the registration of the sale-deed. The Registrar had jurisdiction to register that document, because a portion of the property mentioned in the deed was within his jurisdiction. Clearly, if no property belonging to the transferor appearing in the document to be registered is within the jurisdiction of the Registrar, registration by such Registrar of that document would be invalid. But we

are not prepared to go further and say that evidence can be led with regard to the intention of the parties at the time the principal document was registered, to deal again with the portion of the property which was within the jurisdiction of the Registrar and which rendered its registration valid.

5. The next question is whether the sale was for the benefit of the plaintiff. It has been found that the plaintiff's mother sold the property in order to pay off a mortgage and, from the facts found, it was certainly desirable in the interests of the plaintiff that the mortgage should be paid off, as the profits of the land mortgaged were more than the interest on the mortgage, provided they could be realized.

6. The appellant, however, objects to the payment made by his mother as being excessive. There is no evidence that it was excessive, as the appellant took no steps to prove that on a proper mortgage account being taken, the amount paid by the plaintiff's mother was too much. Evidence was called to show that certain tenants had paid full rent to the mortgagee between 1902 and 1905. As the Judge remarks, they could not produce the receipts of such payment. However that may be, the onus would certainly lie on the appellant, if he seeks to dispute his mother's action, to prove that she had over-paid the mortgagee. But even then that would not affect the position of a bona fide purchaser for value. It would be sufficient for him to inquire whether there was as a matter of fact a mortgage to be paid off. He would not be bound to follow the purchase money, and ascertain that it was properly disposed of by the plaintiff's guardian.

7. The last point urged by the plaintiff was that the sale by his mother was of the nature of a mortgage. That question was ruled out by the trial Judge on the ground that the Dekkhan Agriculturists' Relief Act did not apply at the date of the sale deed, relying on the decision in *Chanbasayya v. Chennappavda* (1919) I.L.R. 44 Bom. 217 22 Bom. L.R. 44. Since the decision of the appellate Court in this case, the decision in *Chanbasayya v. Chennappavda* was overruled by a decision of the Full Bench. Therefore there was no objection to the plaintiff's contention that he should be allowed to prove that the sale was in reality a mortgage transaction between his mother and the purchaser if the suit was one in which the question could be raised. But this is not a suit for redemption. This is a suit to set aside a

sale-deed. Therefore this is not a suit falling within the class of suits specified in the Dekkhan Agriculturists' Relief Act, and the plaintiff is not entitled to take advantage of its provisions. As pointed out in *Mt Bachi v. Bickchand* (1910) 13 Bom. L.R. 56 P.C. the Dekkhan Agriculturists' Relief Act gives extraordinary in certain cases which are specified in the Act. These include a suit for redemption. As this is not a suit for redemption, any relief granted by the Act is not open to the plaintiff. The appeal, therefore, fails and must be dismissed with costs.

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