

Ramu and Others Vs. Papaiah and Others

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Court : Karnataka

Decided On : Jul-31-1995

Reported in : AIR1996Kant51; 1995(4)KarLJ421

Judge : Hari Nath Tilhari, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 8, 54 and 58C; Karnataka Rent Control Act; Code of Civil Procedure (CPC) - Sections 100

Appeal No. : Regular Second Appeal No. 394/1985

Appellant : Ramu and Others

Respondent : Papaiah and Others

Advocate for Def. : Sri N. Kumar, Adv.

Advocate for Pet/Ap. : Sri. B.C. Udayashankar, Adv.

Judgement :

1. This is defendants second appeal arising out of judgment and decree dated 12-2-1985, delivered by First Additional Civil Judge, Mysore (Sri . Shankara-narayana Bhat) in Regular Appeal No. 71/80 (Singamma y. Ramu and another), arising out of judgment and decree dated 31-3-1980, passed by First Additional Munsiff, Mysore, dismissing the plaintiffs claim in Original Suit No. 937/75, allowing the plaintiffs appeal and setting aside the judgment and decree passed by the trial

Court as well as decreeing the plaintiffs claim in the suit for declaration, but not for possession.

2. The plaintiffs case in the nut shell has been that the plaintiff i.e., the present respondent had purchased the suit schedule house from the first defendant as well as from his father Chinnakotaiah for a sale consideration of Rs. 1,000/- by registered sale deed dated August 5, 1963. The plaintiffs case is that she was put in possession of the said house and that katha, during mutation were made in her name and she had been paying kadayam (tax) since the date of purchase. According to the plaintiff-respondents case, plaintiff-respondent let out the suit premises on lease to defendant No. 1 on a rental of Rs. 15/- per month. According to the plaintiffs case, the defendants appellants had fallen in arrears of rent from 1-3-1971 to 1-3-1974. The plaintiff filed the House Rent Case in No. 135/74, in the Court of Munsiff, Mysore, but the learned Munsiff rejected the plaintiffs H.R.C., case, taking the view that there is a bona fide dispute of title between the plaintiff-respondents and the present defendants-appellants before me and that the defendants had denied the relationship of landlord and tenant, and that the plaintiff was claiming title, which title was also being denied by the defendants. So in such a case, according to the Munsiff, the munsiff had no jurisdiction to decide the question of title. The Munsiff observed that the plaintiff should file suit for decree for declaration and dismissed the H.R.C. petition. In those circumstances the plaintiff alleged that the cause of action accrued to him for filing the suit for declaration as well as for relief for possession. The plaintiff claimed herself to be the absolute owner of the suit property and entitled to the possession thereof from the defendants.

3. The defendants contested the plaint allegations and according to the defendants-appellants, the sale deed dated 5-8-1963 was executed in favour of the plaintiff under the pretext that it was a mortgage deed and it was executed as security for the amount of loan advanced. Defendants-appellants denied the relationship of landlord and tenant. It was also averred in the written statement that no causes of action did accrued in favour of the plaintiff-respondents. The plea of limitation was raised to the effect that the suit had been time barred and that the Court fee paid was insufficient. The defendants denied their liability to pay

anything to the plaintiff-respondent as rental and damages and prayed that the suit be dismissed in toto.

4. The trial Court framed 4 issues which read as follows:--

1. Whether the plaintiff has purchased the plaintiff schedule property?

2. Whether the plaintiff took the sale deed under the pretext that it was a mortgage deed?

3 Whether the suit is barred by time?

4. Whether the plaintiff is entitled to the reliefs prayed for?

5. The trial Court dismissed the plaintiffs suit after having held that the plaintiff failed to prove that she purchased the suit property and then in every probability that plaintiff took the sale deed under the pretext of taking a mortgage deed. The trial Court held that the suit was in time, but on account of the finding to the effect that plaintiff has failed to prove that she had purchased the property in dispute, the plaintiff has not been entitled to the reliefs claimed in the suit.

6. Having felt aggrieved from the judgment and decree of the trial Court dismissing the plaintiffs claim in the suit, the plaintiff preferred Regular Civil Appeal No. 71/80. The lower Appellate Court after having heard the Counsel for the parties and having gone through the record, held that Exh. P1 namely the deed dated 5-8-1963 was out and out sale and that defendants had failed to establish that it was a mortgage deed or its nature was like that. It held that Ex. P1 is the sale deed executed by defendant No. 1 and his father Chinnakototiah. The lower appellate Court affirmed the finding of the trial Court that the suit giving rise to the first appeal having been filed on 11-12-1975 was within 12 years and was not time barred, instead it was within time. The lower appellate Court as such held plaintiff-respondent to be entitled to decree for declaration, declaring the plaintiff to be the owner of the property in dispute or property involved in the suit. So far as the decree for possession was concerned, the lower appellate Court opined that as the Karnataka Rent Control Act did apply to the property in question, as it is situated within the Mysore City Corporation Limits and as the Karnataka Rent Control Act

did apply and special powers had been conferred on the Munsiffs to grant relief for possession and defendants-appellants being in possession as tenants, even according to the plaintiffs own case, they can be evicted only after following due process of law under the Rent Control Act and not otherwise. The lower appellate court as such partly allowed the plaintiff's appeal and set aside the trial Court's decree, so far it affected adversely to the relief claimed in the plaintiff regarding declaration and decreed the suit for declaratory relief holding the plaintiff to be the owner of the property in dispute. It further directed that if plaintiff has got any case under the provisions of the Rent Control Act, it would be open to her to take proceedings for possession by eviction in accordance with the law.

7. Having felt aggrieved from the judgment and decree of the first appellate Court, the defendants-appellants have come up before this Court by way of second appeal under Section 100 of the C.P.C. The learned Counsel for the appellants Sri B.C. Udaya Shankar urged before me that Exh. P1 i.e., the deed dated 5-8-1963 has wrongly been held to be a deed of sale. He said it is a deed of mortgage and the finding which has been recorded by the lower Appellate Court suffers from error of law. The learned Counsel for the appellants tried to invite my attention to certain depositions or statements made by the witnesses. Learned Counsel for the respondents Sri N. Kumar assisted by Smt. Geetha N. Kumar, an Advocate of this Court, submitted that it is well settled principle of law that the nature of transaction, which is recorded in writing, is primarily to be determined on the basis of the terms and conditions enshrined in the document. He submitted that for the purpose of determining the nature of transaction, unless there is any ambiguity in the deed, no external circumstance or evidence has to be taken into consideration. The construction and nature of the deed is to be determined on the basis of the terms and conditions mentioned in the document. The learned Counsel submitted that a reading of the document per se will show that the transaction entered into therein is an out and out sale and it is not of such a nature which may amount to be a deed of security or a deed of mortgage. Learned counsel submitted that there is nothing in this deed per se to show that there was any agreement between the parties that property in dispute was being conveyed as security for loan or that it was to be reconveyed at a later time when the money is paid back or the amount of loan is reconveyed or returned, as alleged by the defendants. The learned

Counsel for the plaintiff-respondent urged that the terms of the deed per se show that the deed is registered sale deed and the title whatsoever the defendants-appellants had in the property in dispute did pass on the transferee from the transferor namely it passed on to the plaintiff vendee. He submitted that therefore the learned Court below did not commit any error of law in deciding the first appeal. He further submitted with utmost fairness that in the plaint it has wrongly been mentioned that in HRC., case the Munsiff had recorded a finding to the effect that contract of tenancy has not been established. Really the case has been dismissed on the ground that as the case involves a bona fide dispute of title of the plaintiff as to whether the title did pass on to the plaintiff under the deed of 1963 and that jurisdiction of the Court or authority in HRC., case was limited while Civil Court had jurisdiction to decide the question of title and it had dismissed the HRC., case, with the direction to the plaintiff to file a suit for declaration. He submitted therefore the lower appellate Court was justified in granting the relief for declaratory decree only and not for possession.

8. I have applied my mind to the contentions made by the learned counsels for the parties. The only question, for determination by this Court therefore at this stage is --Whether the lower Appellate Court acted according to law in holding Exh. P1 the sale deed dated 5-8-1963 and the transactions entered thereunder to be out and out sale? i.e., what is the nature of the transaction exhibited by Ex. P1.

9. In the Case of Chunchun Jha v. Ebadat Ali reported in : [1955]1SCR174 , it has been laid down by Their Lordships of the Supreme Court in para 6, after having made a reference to the case of Balkishen Das v. Legge, 22 Indian Appeals, Page 58, that 'where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended.'

10. Applying this principle of law regarding interpretation of the deed, when I examine Exh. P1 itself, it appears that the deed is clear in its terms. Exh. P1 has been read over and translated to me by the learned Counsel for the parties jointly. According to a reading of transaction the report reveals, the vendor agreed to execute the sale deed in favour of the Singamma mentioned in the deed. It is mentioned (herein that the vendor did require funds and money to discharge hand loans and therefore we hereby convey by way of absolute sale on the receipt of consideration of Rs. 1,000/- before the Registrar and that they were handing over the vacant possession of schedule property to the vendee henceforth by through that deed of conveyance and thereafter the usual terms it has been provided that if title, interest which had been enjoyed and exercised by the vendor shall be enjoyed and exercised by the vendee without any interference or objection.

11. The deed on a reading per se shows that the deed is an out and out sale of the property in dispute for the consideration mentioned therein. There is nothing in this deed to indicate that there has either been any agreement of reconveyance of the property in case vendor refunds or returns the loan amount nor is there any special agreement or condition or term in the deed whereunder it could be said to have been provided that the property will stand transferred or will be conveyed back to the present vendor by the vendee on the loan amount being returned by the vendor to him. If there would have been a term like that in the deed this question could have been of construction, whether that was a transaction of mortgage or sale. But if the agreement would have been to that effect, incorporated under a separate deed of agreement and would not have been incorporated in Exh. P1, even then the transaction exhibited by Exh. P1 could never be taken to be the transaction of mortgage, in view of provisions of Section 58C of the Transfer of Property Act and the law laid down in this connection by the Supreme Court in this very case of Chunchun Jha v. Ebadat Ali.

12. In the present case there is no such agreement or terms of agreement under the deed Exh. P1. The tenor of the entire deed per se shows that that the deed exhibits the transaction of out and out sale of the property in dispute. Apart from that the execution of this registered deed has been admitted. When the deed was executed a case has been taken I by the defendants that it was a security or

mortgage. No evidence is admissible to charge the tenor of the transaction entered into by written document. As such, in my opinion, the lower appellate Court did not commit any error of law in holding the deed to be the sale deed. When I am making these observations, I must clarify that in cases where a party claims cancellation of the sale deed on that ground that what was agreed upon and presented to him while obtaining the deed is entirely different, that it is indicating the transaction of different nature than that agreed upon and the deed was obtained by misrepresentation, those cases stand on different footing. But here it is not a case like that. Here the defendants themselves have not filed any suit for cancellation of the deed Exh. P1 dated 5-8-1963. Here it is only a question of construction of the deed as it is and it had to be seen what is its nature. In my opinion, the lower appellate Court had rightly held the deed to be the sale deed exhibiting the transaction of sale. So, thereunder the title of the suit property had been conveyed to the plaintiff-respondents and in that deed it has been submitted that possession had been delivered, and the title has been conveyed.

Having thus considered in my opinion there is no substance in the contention of the learned counsel for the appellants that the lower appellate Court committed substantial error of law. In fact the decision does not suffer from any error of law or of jurisdiction. The appeal as such is devoid of merits and as such it is liable to be dismissed.

Second appeal is therefore hereby dismissed. Costs are made easy.

13. Appeal dismissed.

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