

Puttamadamma Vs. Puttappa

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Court : Karnataka

Decided On : Mar-29-1967

Reported in : AIR1969Kant20; AIR1969Mys20

Judge : Somnath Iyer, J.

Acts : Transfer of Property Act - Sections 67-A and 68(1); Indian Limitation Act, 1908 - Article 132

Appeal No. : R.S.A. No. 200 of 1964

Appellant : Puttamadamma

Respondent : Puttappa

Advocate for Pet/Ap. : Mr. Swami Rao

Judgement :

1. On March 20, 1944 the defendant who is the appellant in this court executed a registered usufructuary mortgage deed for a sum of Rs. 200 in favour of the plaintiff. It was provided by the mortgage deed that the mortgagee who is the plaintiff should be in possession of the mortgaged property for a period of fifteen years, and that there could be a redemption after the expiry of that period. On June 30, 1959 the plaintiff brought the suit out of which this appeal arises, and the decree which he sought, after he was permitted to amend his plaint, was a decree for sale of the mortgaged property. The plaintiff made an allegation that the

defendant never delivered possession of the mortgaged property to him, and that she was herself in wrongful possession. The defendant repudiated the truth of that allegation, but in her written statement the defendant contended that the suit was barred by limitation and that it was not maintainable. It is not necessary to refer to the other contentions which the written statement incorporates. The Munsiff accepted both these contentions and dismissed the suit, but the Civil Judge in the appeal preferred by the plaintiff, reversed the decree of the Munsiff and gave the plaintiff the decree he wanted. So the defendant appeals.

2. Mr. Vedavyasacharya appearing for the defendant made three submissions. The first was that the plaintiff could not ask for decree for sale of the mortgaged property. The second was that the suit was not maintainable, and the third was that in any event the suit was barred by limitations.

3. There is no substance in the first submission that the plaintiff could not ask for a decree for sale since, on the allegation in the plaint that the defendant did not deliver possession of the property which was usufructuarily mortgaged which was not denied, the plaintiff became clearly entitled to a decree for sale under section 68(1)(d) of the Transfer of Property Act.

4. There is no substance in the second submission either. That submission was that there were two mortgages by the defendant in favour of the plaintiff, the first of which was a usufructuary mortgage which is the subject matter of this appeal and the second a simple mortgage. It was submitted by Mr. Acharya that the plaintiff had brought an earlier suit for the recovery of the amount due under the simple mortgage, and that it was his duty as provided by S. 67-A of the Transfer of Property Act to consolidate the mortgages and bring one suit for all the reliefs emanating from those two mortgages. The answer to this submission is that section 67-A which provides for consolidation, incorporates no prohibition against the institution of a suit on one of the mortgages in a case where no objection to the form of the suit is taken on the earlier occasion.

5. So, what remains to be considered is the validity of the third submission that the suit is barred by limitation. Mr. Acharya's submission was that on the allegation in the plaint, the plaintiff became entitled to sue for the recovery of the mortgage debt

when the defendant failed to deliver possession of the mortgaged property on the date of the execution of the mortgage deed. The plaintiff's case, it was pointed out, was that notwithstanding the recital in the mortgage deed that the defendant had delivered possession of the property to the plaintiff, there was no such delivery of possession of the property. So it was submitted that the money due under the mortgage deed became due immediately there was failure to deliver possession and that it therefore became due on the date of execution of the mortgage deed and that the suit should have therefore been brought within twelve years from that date.

6. To this submission made by Mr. Acharya there can be no answer. Under section 68(1)(d) of the Transfer of Property Act, the mortgagee has a right to sue for the mortgage-money in a case where the mortgagor fails to deliver possession of the mortgaged property, although the mortgagee is entitled to such possession. The relevant part of that sub-section reads:

'68. Right to sue for mortgage-money

(1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others namely:

x x x xxx x x (d) Where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor.'

7. The clear meaning of this part of the sub-section is that in all cases where a mortgagor fails to deliver possession of the property mortgaged although the mortgagee is entitled to such possession, the mortgagee acquires the right to sue for the mortgage-money. That right is acquired in a case where, under a usufructuary mortgage the mortgagor does not deliver possession of the property to the mortgagee on the date on which the mortgage comes into being and there is neglect on the part of the mortgagor to deliver possession.

8. Article 132 of the Limitation Act, 1998, which governs suit of that description reads:--

Description of suit:--Art.132. To enforce payment of money charged upon immovable property.

Period of limitation:--Twelve years.

Time from which period begins to run--When the money sued for becomes due.

9. Mr. Swami Rao appearing for the plaintiff is not right in contending that the money sued for by the plaintiff did not become due on the date of execution of the mortgage deed and that the acquisition of that right was postponed until the period of fifteen years specified in the mortgage deed expired. That period of fifteen years to which the mortgage deed Ex. P-1 refers is the period during which the plaintiff was entitled to remain in possession of the mortgaged property without the defendant having a right of redemption. That covenant in the mortgage deed can have no relevance to a case in which the usufructuary mortgagee claims to have acquired the right to sue for the mortgage-money under the provisions of Section 68(1)(d) of the Transfer of Property Act. That right accrues when the mortgagor neglects to deliver possession, and in such a case the covenant for possession during which the mortgagor shall have no right of redemption can have no meaning.

10. It is clear when Art. 132 of the Indian Limitation Act is read with section 68(1)(d) of the Transfer of Property Act that the money becomes due to a mortgagee who is not able to obtain possession of the mortgaged property from the mortgagor on the date on which the mortgagor was bound to deliver possession but did not. The provision which clothes the mortgagee with the right to sue for the mortgage-money when the mortgage is a usufructuary mortgage is the failure on the part of the mortgagor to deliver possession. It is that event which entitles the mortgagee to sue for the mortgage-money, and that right cannot come into being if the money sued for does not become due within the meaning of the third column of Art. 132 of the Indian Limitation Act, 1908, Limitation commences to run under that column in a suit like the one with which I am concerned, on the

date on which the mortgagor who was under a duty to deliver possession does not deliver possession.

11. It was recited in Ex. P-1 that the mortgagor had delivered possession of the property to the plaintiff on the date of the mortgage deed. But the plaintiff's case was that such possession was not delivered, and, so, there was a failure on the part of the defendant to deliver possession of the mortgaged property on the day on which the mortgage deed was executed. It is at least from that date that limitation commenced to run under Art. 132 of the Indian Limitation Act, 1908. So the plaintiff's suit which was brought more than twelve years after that date was clearly barred by limitation and was rightly dismissed by the Munsiff.

12. I therefore allow this appeal and reverse the decree made by the Civil Judge and restore that of the Munsif.

13. But, in the circumstances I direct that each party will bear his or her own costs in all the three courts.

14. Appeal allowed.