Veerappa Gowda Vs. Hukrappa Gowda

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Court : Karnataka

Decided On : Nov-20-1990

Reported in : ILR1991KAR903; 1990(3)KarLJ399

Judge : Rama Jois and ;Mirdhe, JJ.

Acts : Karnataka Debt Relief Act, 1980 - Sections 13 and 13(5)

Appeal No. : W.A. No. 643 of 1988

Appellant : Veerappa Gowda

Respondent : Hukrappa Gowda

Advocate for Def. : U.L. Narayana Rao, Adv. for R-1 and ;D.R. Rajasekharappa, HCGP for R-2

Advocate for Pet/Ap. : A.G. Holla, Adv.

Disposition : Appeal dismissed

Judgement :

Mirdhe, J.

1. This Writ Appeal is preferred against the order of the learned Judge allowing the Writ Petition filed by the first respondent and quashing the order of the Tahsildar, Sullia Taluk, Sullia, dated 11-2-1982, produced at Annexure-B in the Writ Petition.

2. Certain lands belonging to the joint family of the appellant and first respondent Hukrappa Gowda and his brother Boja Gowda, had suffered a decree in Original Suit No. 155 of 1955, filed by Kukkanna Gowda, passed by the Sub-Court, Mangalore. For the purpose of clearing certain debts, including the decretal amount, the appellant herein with his brother and other family members, executed a sale deed on 7-5-1957 for a consideration of Rs. 8,000-00 in favour of Kukkanna Gowda. The sale deed, which is at Annexure-A, inter alia, provided that after a period of five years with effect from 12-4-1962, but within a period of ten years from the date of the said document, the vendors could pay a sum of Rs. 8,000-00 to Kukkanna Gowda and get a registered reconveyance deed of the property. After the coming into force of the Karnataka Debt Relief Act, 1976, the appellant filed an application under Section 4 of the Act seeking relief under the Act on the ground that he belonged to the weaker section of the society as his income was less than Rs. 3,000-00 and that he was entitled to get back the land in question on the ground that the debt had been wiped out under the provisions of the said Act. The Tahsildar, in the said proceedings, passed an order on 10-8-1979 granting relief to the appellant. The first respondent filed Writ Petition 7104 of 1977 challenging the said order. The Writ Petition came to be allowed and this Court set aside the order passed by the Taluka Executive Magistrate and directed the Competent Authority to hold a fresh enquiry in accordance with law. Subsequent to the order of remand, the second respondent has passed an order dated 11-2-1982 holding that the appellant's income is less than Rs. 4,800-00 and hence is a 'debtor' as defined under the Act and is entitled to the benefit of the Act and directed the property to be handed over back to the possession of the appellant. The respondent challenged the said order in Writ Petition 16413 of 1982 and the learned Judge allowed the Writ Petition on the ground that the transaction in question was an out-right sale and not a mortgage as contended by the appellant, and quashed the order of the Tahsildar. Against the said order of the learned Judge, this appeal is preferred.

3. The learned Counsel for the appellant and the learned Counsel for the respondents have addressed elaborate arguments on the nature of the document in question and the correctness of the view expressed by the learned Judge in his Judgment in the Writ Petition, The learned Counsel for the appellant contended

that the transaction in question is a mortgage. On the other hand, the learned Counsel for the respondent No. 1 contended that it is an absolute sale with a condition of re-conveyance within a particular period and the view taken by the learned Judge is correct.

4. In the course of the arguments, we noticed Section 13 of the Karnataka Debt Relief Act, 1980, which has been enacted to supplement the Act of 1976. Section 13 of the said Act reads as follows:

'13. POWER OF THE ASSISTANT COMMISSIONER TO DECLARE TRANSFER PURPORTING TO BE A SALE TO BE IN THE NATURE OF MORTGAGE -

(1) Any debtor may on or before 31st December 1981, make an application to the concerned Assistant Commissioner that any transfer of immovable property made by him or any other person through whom he inherited the immoveable property was a transfer in the nature of a mortgage, and the Assistant Commissioner may, after such enquiry as he deems fit, if satisfied that the circumstances connected with the transfer showed the transfer to be in the nature of a mortgage, then, notwithstanding anything to the contrary contained in any law, custom or contract declare such transfer to be a mortgage.

(2) When the Assistant Commissioner makes any such declaration, if the transfer was made prior to the date of the commencement of this Act, the debt covered under the transfer shall be deemed to be wholly discharged and the provisions of Sub-section (2) of Section 5, shall, mutatis mutandis apply for recording the redemption of the mortgage and delivering possession of the property.

(3) For the purpose of any enquiry under Sub-section (1), the Assistant Commissioner may exercise all or any of the powers conferred on him under the Karnataka Land Revenue Act, 1964, find shall follow such procedure as may be prescribed.

(4) The order of the Assistant Commissioner shall subject to any order in revision under Section 14 be final.

(5) Nothing in this Section shall apply to-

(i) a transfer which has been finally adjudged to be a transfer, other than a mortgage, by a competent Court;

(ii) any bona fide transferee for value without notice of the real nature of such transfer or his representative;

(iii) any transfer made prior to 1st March, 1974;

(iv) a transfer in respect of which a proceeding is pending under Section 23 of the Karnataka Agricultural Debtors Relief Act, 1966 (Karnataka Act 29 of 1966) to declare that it is in the nature of a mortgage.'

Section 13 confers a special jurisdiction on the Competent Authority to declare a transfer purporting to be a sale, to be in the nature of mortgage, if there is evidence to make such a declaration. But Sub-section 5(iii) of Section 13 lays down that the power can be exercised only in respect of transactions subsequent to 1-3-1974. In this case, it is not in dispute that the transaction in question is dated 7-5-1957. Since it is a transfer made prior to 1-3-1974, the second respondent had no jurisdiction to declare the transfer, which purports to be a sale as mortgage. This is the view taken by Doddakalegowda, J, in the case of NARASIMHA REDDY v. ASSISTANT COMMISSIONER, DODDABALLA-PUR SUB-DIVISION, ILR (Karnataka) 1982(2) 851. We respectfully agree with the views expressed by Doddakalegowda, J. As regards the position under the 1976 Act, a Full Bench of this Court in the case of THIMMAPPA v. H. RAMAIAH, : ILR 1989 KAR2112 has held that the authority under that Act had- no competence to go beyond or behind the tenor of the deed evidencing the transaction of sale and declare the transaction as one of mortgage. In view of Section 13(5)(iii) of the Karnataka Debt Relief Act, 1980, the order of the second respondent is liable to be quashed, though on a ground different from the one on which the learned Judge passed the order in the Writ Petition.

5. Before concluding, it is necessary to state that after the first order of the Competent Authority and before the first respondent got stay in the Writ Petition filed by him, the order was executed and the appellant secured possession of the land. That order was set aside in Writ Petition No. 7104 of 1977 and the matter

was remanded. The subsequent order in favour of the appellant has been set aside in the Writ Petition, which we are confirming in this appeal. Therefore, the respondent is entitled to apply for restitution, before the second respondent and when he does so the second respondent is bound to order restitution in accordance with law.

6. In the result, we make the following order:

The Writ Appeal is dismissed sustaining the order made in the Writ Petition on a ground different from the one on which the learned Judge had made the order.