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Sukdeb Padhan Vs. Nityananda Padhan

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Court : Orissa

Decided On : Aug-27-1963

Reported in : AIR1964Ori35

Judge : G.K. Misra, J.

Acts : Limitation Act, 1908 - Schedule - Articles 57, 66 and 80; Transfer of Property Act, 1882 - Sections 59

Appeal No. : Civil Revn. No. 225 of 1962

Appellant : Sukdeb Padhan

Respondent : Nityananda Padhan

Advocate for Def. : H.G. Panda, Adv.

Advocate for Pet/Ap. : R.N. Sinha, ;P.C. Chatterjee, ;A.K. Tripathy and ;A.R. Guru, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

G.K. Misra, J.

1. Plaintiff is the petitioner. His case is that the defendant borrowed a sum of Rs. 400/-on 6th February 1951 and usufructuarily mortgaged 'A' scheduled land on execution of an unregistered mortgage bond (Ex. 1). Delivery of possession was given on the same day and the plaintiff was in peaceful possession up to the last Baisakh Purnima corresponding to 20th April 1961 when the defendant forcibly trespassed and put the disputed land into his khas-possession. The defendant did not pay the loan despite repeated demands. The cause of action for the suit arose on 20-4-1961, the date of dispossession.

2. The defendant denied the factum of loan, usufructuary mortgage, possession by the plaintiff and dispossession by himself. He, however, admitted execution of the document (Ex. 1).

3. The learned S. C. C. judge found that the plaintiff advanced the loan of Rs. 400/- under Ex. 1 and was put into possession of the suit land, the usufruct of which was agreed to be appropriated towards the interest and that the plaintiff was forcibly dispossessed by the defendant on 20-4-1961. He, however, dismissed the suit on the finding that it was barred by limitation.

4. The correctness of the finding of fact is not challenged before me. The only contention, advanced by Mr. Sinha. is that the view of the learned S. C. Judge on the question of limitation is contrary to law. He contends that Article 68 or 80 and not Article 57 of the Limitation Act is applicable. The relevant Articles may be quoted:

57.For money payable for money lent.Three yearsWhen the loan is made.66.On a single bond, where a day is specified for payment.

Three yearsThe day so specified.68.On a bond subject to a condition.Three yearsThen the condi-tion is broken.80.Suit on a bill of exchange promissory note or bond not herein expressly provided for.Three yearsWhen the bill, note or bond becomes payable.

In order to appreciate the condition, it is necessary to mention the terms of the unregistered mortgage bond (Ex. 1) which are to the effect that the usufruct would

be appropriated towards payment of interest; if the defendant would pay back the principal of Rs. 400/- by Falgoon Purnima of any year, he would take back he land. Mr. Sinha contends that the bond is subject to a condition in terms of Article 68 and the condition was that the plaintiff would remain in possession until the principal is paid back by Falgoon Purnima of any year. Ex. 1 is compulsorily registrable. The mortgage is invalid and the document cannot be used as a source of the mortgagee's title. Ex. 1 is, therefore, to be treated as a simple money bond. The mortgage having failed, the mortgagee cannot claim in law that he is entitled to possession of the disputed land on the foot of the unregistered mortgage. A suit for recovery of possession of the disputed land on the basis that the mortgagor forcibly dispossessed the usufructuary mortgagee cannot lie as there was no mortgage in the eye of law even though the mortgagee was in actual possession.

5. Article 68 is applicable to a simple money bond, provided it is subject to a condition. If the mortgage is given no recognition in law, the only other condition is that the loan can be paid up by Falgoon Purnima of any year. This condition does not prevent the mortgagor from paying back the money on any day after the loan was advanced. At any rate, the money becomes payable by the first Falgoon Purnima subsequent to 1951, if not from the date of the loan. The condition leaves the discretion entirely to the mortgagor and does not also prohibit the mortgagee to bring the suit earlier at any time he chooses, or within three years from the First Falgoon Purnima subsequent to 6-2-1951. It would directly come either within Article 57 or within Article 66. In any case the suit is barred by limitation. Article 80, being residuary, has no application, when the case comes directly within Article 57 or Article 66.

6. Mr. Sinha cites Narain Das v. Mannoo Lal, AIR 1935 All 405. There the bond provided that if the monthly interest was not paid, or if the principal money lent was not paid at the end of the year, in either case the creditor may sue. His Lordship held that the suit was within time with the observation:

'A simple money bond is governed not only by Article 68 but also by Article 66 which provides for a suit on a simple bond where a day is specified for payment, that time runs from 'the day so specified'. In a bond like the present, if no default in

payment of interest is made, then Article 66 applies for limitation. If on the other hand, default is made in payment of interest, then Article 68 applies. The two Articles therefore must be read together in the case of the bond in suit and limitation therefore runs either from the date specified for the payment of the bond or from the date when, the condition as regards payment of interest is broken'.

The bond in that case was executed on 23-4-1928 and the suit was brought on 1-4-1932. Under the terms, if the interest is not paid, or if the principal money lent is not paid at the end of the year, in either case the creditor may sue. By the terms a prohibition was laid on the creditor not to sue until the specified event. The present case is just the converse, and if the term regarding possession is excluded out of consideration, no prohibition is laid on the creditor as to when he would sue. The result is that the money becomes payable from the date of the loan, or, at any rate, from the day specified. The case is clearly distinguishable.

7. In the result, the Civil Revision fails and is dismissed; but in the circumstances, parties to bear their own costs throughout.

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