

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24TH DAY OF AUGUST 1998

B E F O R E

THE HON'BLE MR.JUSTICE T.N. VALLINAYAGAM

R.S.A.NO.1280/1995

Between :

Sri. Adrasayya Dundayya Palaskar
aged about 68 years
Occupation: Agriculture
Resident of Ankali
Taluk : Chikkodi
District : Belgaum

.. Appellant.

(By Sri.Praveen Kumar Raikote, Adv.)

And :

Smt. Tanibai
W/o.Dattu Kale
since deceased by her LRs.

1a. Babu Laxman Kate
aged about 55 years
Occupation : Business
and Agriculture
Resident of Saundatti
Taluk : Raibag
District : Belgaum

b. Dadu Laxman Kate
Aged about 51 years
Rest : -do-

c. Bandu Laxman Kate
Aged about 46 years
rest : -do-

d. Kallappa Ramu Kate
aged about 46 years
rest : -do-

.. Respondents.

(By Sri.Mohan Shanthanagoudar for R1a to d)

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..1a..

..1a..

R.S.A. filed U/s.100 of CPC., against the Judgment and Decree dated 8.3.1994 passed in R.A.No.95/1986 on the file of the Prl. Civil Judge at Chikkodi, dismissing the appeal and confirming the Judgment and Decree passed by the Prl. Munsiff and J.M.F.C., Chikkodi, in C.S.No.133/1983, dated 28.7.1986.

This R.S.A. coming on for Orders
this day, the Court delivered the following :

JUDGMENT

..2..

TNVJ:

24-8-1998.

JUDGMENT

The plaintiff has preferred this second appeal against the dismissal of the suit for redemption and for possession by the courts below.

2. Two acres 28 guntas of land in R.S. 349/3 is the suit property and the plaintiff is the owner. On 7-4-1962^{he} executed an ostensible sale deed in favour of the husband of the defendant for Rs. 4000/-. The condition of resale was ~~on~~ repayment of Rs. 4000/- within the date of sale. A deed of reconveyance was also executed by the husband of the defendant. Alleging that the cause of action arose on 7-4-1967, the suit came to be filed on 13-7-1983.

3. Denying that the sale deed was a conditional one and also denying execution of any reconveyance deed by her husband, the plaintiff claimed absolute ownership. An application filed under the Karnataka Debt Relief Act by the plaintiff was rejected for want of relationship of debtor and creditor, and thus the suit was resisted.

4. The trial court held that the transaction is not a mortgage and therefore the question of

of redemption does not arise. Holding further that the plaintiff ought to have got the property re-conveyed within the five years from the date of execution of Ex.P.1, but has chosen to file the same after lapse of 21 years, without making any payment within the said five years, consequently holding that the plaintiff has suffered the eflux of time and lost his right by passage of time, the suit was dismissed by the trial court.

5. The appellate court confirmed the dismissal also further holding that the real L.Rs of the original defendant were not brought on record.

6. The second appeal was not admitted and only notice on admission was ordered.

7. The two questions of law that are sought to be raised are that when Ex.P.1 is proved by both the courts, then there shall not be any impediment for redemption and another point was no evidence let in by the defendant to deny the claim of the plaintiff and consequently the suit filed within 20 years after the expiry of five years should have been held in time, and the findings contra are not sustainable.

8. The respondents were served by S.S. and service held as sufficient.

9. So long as Ex.D.1 is held to be proved, the plaintiff must be held to be entitled to 1/4th share by way of redemption as the entire transaction, namely, the sale deed and reconveyance deed though executed independently amounts to a mortgage by conditional sale. If it is so construed, there shall be no difficulty in granting the decree to the plaintiff.

10. In any event, the defendant has not chosen to enter the box for reasons known to them, nor have they filed any documents to substantiate their plea. Mere filing of the written statement is no defence and ~~it~~ in the absence of any evidence to substantiate the same the plaintiff must succeed, on the basis of this pleading and evidence adduced by him.

11. In this view, setting aside the judgment and decree of the courts below, the second appeal is allowed. The suit is decreed with cost as prayed for, granting all the reliefs.

Sd/- JUDGE