(1989) 10 MAD CK 0032

In the Madras High Court

A. Srinivasulu Naidu (died) and Others APPELLANT

Vs

Gajaraj Mehta and sons RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Contract Act, 1872 — Section 176

Citation : (1990) 1 LW 86 : (1990) 1 MLJ 188

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The point that arises in this second appeal is: Whether the sale held by the pawner of the jewelleries pledged is not valid? The plaintiff is the appellant herein. He filed the suit for redemption of the jewels pledged with the defendant or in the alternative for a decree against the defendant for a sum of Rs. 91,200 being the value of the jewels with interest thereon. The suit was dismissed by the trial Court (V. Assistant Judge, City Civil Court, Madras) and the appeal filed by the plaintiff also was dismissed by the first appellate Court (VI Additional Judge, City Civil Court, Madras).

2. It is not in dispute that the plaintiff pledged with the defendant certain jewels. In this connection the plaintiff has pleaded certain facts regarding the actual amounts received, payments of discharge and execution of two mortgages etc. and the defendant has contended certain facts repudiating the allegations made by the plaintiff against him. We are now in this appeal not concerned with all the said facts and we are concerned only with the sale held by the defendant in which the pledged jewels were sold.

3. Thejewels were sold in a sale held on 18.8.1972 for recovery of a sum of Rs. 38,025,60 due under the pledges. (It is common case that different jewels were pledged under three pawn ticket Nos. 546 to 548). It appears the jewels were sold for Rs. 38,124 and the balance amount after deducting the amount due to the defendant was, according to the defendant, paid to the plaintiff. But the plaintiff disputes the same. However, the courts below have found that there is

no amount payable by the defendant to the plaintiff.

4. Now, Mr. M. Rosi Naidu, learned Counsel for the appellant-plaintiff contends that according to the plaintiff the pledged jewels had been sold u/s 176 of the Contract Act but the requirements in that Section for a valid sale have not been satisfied and therefore the alleged sale is invalid. The learned Counsel further argues that in fact there was no sale at all, but the Courts below have concurrently found that there was in fact a sale, and therefore this point cannot be argued now. The only thing that can be considered is whether there was no valid sale as per Section 176 of the Contract Act. As regards this point also I find no merit in the contention of the learned Counsel. Ex.A.24 is the sale notice. As per this the sale was to be held on 18.8.1972. It is not in dispute that this notice was served on the plaintiff long prior to the sale i.e., on 26.7.1972. The relevant portion in Section 176 of the Contract Act reads thus:

..., or he may sell the thing pledged, on giving the pawner reasonable notice of the sale.

The only requirement of Section 176 is that the pawner should be given reasonable notice of the sale. In this case certainly it cannot be argued that notice of reasonable time has not been given. In fact this is not a point argued here or in the courts below. The learned Counsel would however argue that the notice Ex.A.24 is not signed by the pawner or anybody else. But nowhere it is stated that a notice of sale must be signed by the pawner or anybody on his behalf. The fact that Ex.A.24 is a notice of sale sent by the defendant to the plaintiff is not disputed. In this notice the various jewels pledged by the plaintiff have been listed for sale. Therefore there is no merit in the point that the sale notice has not been signed.

5. It is next argued by the learned Counsel that first a separate notice ought to have been given intimating the plaintiff the amount due from him and that the defendant proposed to have the sale. But Section 176 is not to that effect at all. To repeat, what all the section says is that a reasonable notice of sale must be given to the pawner. In this connection the learned Counsel reads out three decisions viz., (1) Sri Rama Finance Corporation, Bobbili, Sri Kakulam District A Partnership Firm By Their Managing Partner Sri. C.V. Seetharamaswamy v. Chatla Yellaiah Reddi and two others (1976) 1 A.W.R.107; (2) Prabhat Bank Ltd. and Another Vs. Babu Ram, ; and (3) Sri Raja Kakral puni Venkata Sudarsana Sundara Narasayyamma Gam (Died By Lrs. v. The Andhra Bank Ltd. Vijayawada and Ors. (1960) 1 A.W.R.234. But I do not see any one of there decisions in support of the contention of the learned Counsel. In the first case, viz., Sri. Rama Finance Corporation Bobbeli v. Chajla Yellaiah Reddi (1976) 1 A.W.R.107, it is held that:

A pledgee is entitled to pray for sale of goods through Court, though he is entitled u/s 176 of the Contract Act to sell them himself without reference to the Court, but before he proposes to sell, the pledgee should give notice to the pledger about the intended sale.

In the second case viz. Prabhat Bank Ltd. and Another Vs. Babu Ram, , it is laid down that,

A notice of the character contemplated by Section 176 cannot be implied. Such notice must be clear and specific in its language and must indicate the intention of the pawner to dispose of the security.

In the third case viz., Sri. Raja Kakral Puni Venkatasudarsana Sundara Narasayyamma Gam v. The Andhra Ltd. (1960) 1 A.W.R. 234, it is ruled that,

On a plain reading of Section 176 of the Contract Act, it is clear that before exercising the power of sale the pawner should give to the pledger reasonable notice of the sale (of the pledged thing) Section 176 is mandatory and even if there is a term in the contract of pledge to waive notice, still, the pledge is not relieved of his obligation to give notice before the sale of pledged articles.

Now, there is no doubt that a notice of sale is mandatory, but in this case a notice in fact has been sent. The above decisions cited by the learned Counsel only emphasise that a reasonable notice must be given. That is the'' very language of the section to which we have referred above. As against these decisions Mr. T.R. Mani, learned Counsel, appearing for respondent-defendant relies on (1) Kesarimal Vs. Gundabathula Suryanarayanmurthy and Another, according to which,

The pawner of sale is conferred on the pawnee to be exercised for his benefit according to his discretion in order to realise the debt due to him for which the pledge is a standing security. In order to exercise the power of sale all that the pawnee need to is to give reasonable notice of the intended sale. If he does so he requires no further authorization of permission of the pawner to effect the actual sale and he is not thereafter bound to sell the pledged goods within a reasonable time after expiry of the period mentioned in the notice.

(2) AIR 1943 162 (Nagpur) wherein it is decided that:

An omission to state the specific amount due in the notice does not make the notice invalid if a fair inference can be drawn that the debtor had means to know what the amount due would be.

(3) Sankaranarayana Iyer Saraswathy Ammal v. The Kottayam Bank Ltd. AIR 1950 TC 66 which states that.

The expression ''he may sell the thing pledged on giving reasonable notice of the sale'' in Section 176 only means an intimation of the intention to sell and not that a sale should be arranged before hand and due notice of all details given to the pawner.

Where the notice contained an unequivocal indication of the pawner''s intention to sell the security (shares) if the debt was not paid within 7 days and the pawner had notice of it, the legal requirements of a valid notice are satisfied.

and (4) Hulas Kunwar Vs. Allahabad Bank Ltd., wherein it is held that,

The sale in Section 176 means the intended sale and not the sale that has been actually arranged by the pawnee. The law does not require that the pawner should arrange for the sale beforehand and then give the pawner a notice of the date, time and place of that sale. All that is necessary is that a notice should be given of the pawner''s intention to sell in default of payment by the pawner within a specified date. The reasonable notice of the sale u/s 176, therefore, does not require specification of the date, time and place of the sale.

These decisions cited by the learned Counsel for the respondent-defendant strongly supports the view expressed by me above to the effect that the sale notice contemplated u/s 176 is only an intimation of the proposed sale by the pawner and it is not necessary that such a notice must be preceded by another notice informing the pawner that if he does not pay the amount the pledged articles will be sold, and that the sale notice should have been signed by the pawnee and the amount due must be mentioned therein. As pointed out by the learned Counsel for the respondent-defendant in Ex.A.24 the date, time and place of sale have been correctly mentioned. From the above discussion it is manifest that there is no merit in the contention raised by the learned Counsel for the appellant-plaintiff. Accordingly I find no merit in the second appeal. The result is: The second appeal is dismissed with costs.

