(2009) 07 AP CK 0036

In the Andhra Pradesh High Court

Case No : S.A. No. 224 of 2003

C. Raghunandan APPELLANT

Vs

K. Nageswar Rao and Others RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 5, Order 34 Rule 7, Order 6 Rule 8, Order 8 Rule 2
Specific Relief Act, 1963 — Section 38
Transfer of Property Act, 1882 — Section 58

Citation : AIR 2009 AP 205 : (2009) 6 ALD 257 : (2009) 5 ALT 584 : (2010) 8 RCR(Civil) 2263

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Suresh Shiv Sagar, for the Appellant; K.V. Satyanarayana, for K. Someswar Kumar, for the Respondent

Judgement

L. Narasimha Reddy, J.—The defendant in O.S. No. 1417 of 1993 on the file of the VIII Assistant Judge, City Civil Court, Hyderabad, is the appellant in the Second Appeal. Respondents 1 to 3 filed the suit for the relief of redemption of mortgage, against the appellant. They prayed for a preliminary decree, through which, the appellant be directed to receive a sum of Rs. 16,000/-, as provided for under a document, dated 29.04.1977, and to execute deed of reconveyance in respect of the suit schedule premises, comprised in House Nos. 14-9-30 to 34 and 14-9-1168 to 1170 situated at Jinsi Chau Rahi, Begum Bazar, Hyderabad. Direction was also sought against the appellant preventing him from executing the order, dated 17.11.1992, passed by the IV Additional Rent Controller, Hyderabad in R.C. No. 732 of 1987. A prayer for redelivery of possession of the property was also made.

2. It was pleaded that the appellant is a professional money lender and in April 1977, the respondents approached him to lend some amount for the purpose of performing the marriage of their sister, by name, Kumari Prasanna. The appellant

is said to have insisted on the suit schedule property being offered as security, and that in view of the impending necessity, they have agreed for the same. It was alleged that on 29.04.1977, three documents were executed, viz., (a) sale deed in favour of the appellant, (b) an agreement of sale by the appellant, and (c) a rent deed, enabling the respondents to remain in possession of the property, on payment of monthly rent.

3. According to the plaint averments, the arrangement between the parties, was, one, of mortgage by conditional sale. Respondents 2 and 3 urged that though the rents were being paid regularly, the appellant was not in the habit of issuing receipts, and accordingly, obtained an order of eviction by filing R.C. No. 732 of 1987, by pleading default. It was pleaded that they were ready and willing to repay the amount borrowed by them, and in spite of their request to execute necessary documents in their favour, the appellant is dodging the matter, on one pretext, or the other.

4. The appellant filed written statement, denying the material allegations. He admitted the averments, as to the execution of various deeds. It was his case that he was put in possession of the property, on the basis of sale and thereafter, a rental deed was executed and since the respondents were irregular in payment of rents, R.C. No. 732 of 1987 was filed. He urged that, without availing the remedy of appeal and revision, against the order of eviction passed in R.C. No. 732 of 1987, the respondents filed the suit.

5. Through its judgment, dated 30.06.1997, the trial Court decreed the suit. The appellant filed A.S. No. 274 of 1997, in the Court of III Additional Chief Judge, City Civil Court, Hyderabad. The appeal was dismissed on 07.03.2002. Hence, this Second Appeal.

6. During the pendency of the Second Appeal, respondents 2 and 3 died and their legal representatives, respondents 4, 6 and 7, are brought on record.

7. Sri Suresh Shiv Sagar, learned Counsel for the appellant, submits that the suit filed by the respondents is not maintainable in law. He contends that the sale deed, dated 29.04.1977, which was marked as Ex.A-2, was unconditional, and there was no clause, in it; to suggest that the transaction has any elements of mortgage. According to him, the agreement of sale executed on the same day, which was marked as Ex.A-3, is independent of the sale and that the rental deed, Ex.A-1 would clearly prove that the appellant has acquired absolute right over the property. Placing reliance upon Section 58(c) of the Transfer of Property Act, 1882, learned Counsel submits that, unless the obligation to reconvey the property is contained in the sale deed itself, it cannot be treated as a transaction of mortgage.

8. Learned Counsel further submits that the relief claimed in the suit does not fit into Section 38 of the Specific Relief Act. He urges that the order in R.C. No. 732 of 1987 has become final, and that it operates as res judicata in the present suit, inasmuch as the Rent Controller did examine the contention of the respondents,

as to the character of transaction and expressed views upon the same. Another contention advanced by the learned Counsel is that a decree passed by the Court does not accord with Order 34 Rule 7 C.P.C. He placed reliance upon certain precedents. Learned Counsel submits that the appellant also filed O.S. No. 56 of 1987 in the Court of IX Assistant Judge, City Civil Court, Hyderabad, against the respondents, for the relief of injunction in respect of part of suit schedule properties, and the exparte decree passed therein has become final.

9. Sri K.V. Satyanarayana, learned Counsel for the respondents, on the other hand, submits that the very fact that the three documents, referred to above, viz., Exs.A-1 to A-3, were executed on one and the same day, discloses that the transaction is one of mortgage. He contends that important factors, such as, the consideration for the property being very less, the purchaser under a sale deed, agreeing to reconvey the property for the same consideration, after some years, and the possession of the property lying with the vendor under the sale deed, are clear indicators as to the nature of transaction.

10. Learned Counsel submits that the appellant did not take the plea referable to Section 58(c) of the Transfer of Property Act, in the written statement and he cannot be permitted to canvass any grounds, in relation thereto. He further submits that a general and wholesale denial in a statement does not have the effect of contradicting a specific plea raised in the plaint. He contends that the Rent Controller does not have the jurisdiction to decide the question of title and any observation made by him, cannot be taken as valid, much less the judgment rendered in that regard would operate as res judicata, in a subsequent suit.

11. Both the learned Counsel cited the decided cases, in support of their contentions.

12. Initially, the trial Court framed two issues, viz.,

(a) "Whether the plaintiff created a mortgage in respect of the suit schedule property to the defendant? and

(b) Whether the plaintiff is entitled for the suit claim?

The following two additional issues were framed thereafter, viz.,

(a) Whether the finding in R.C. No. 732 of 1987 and O.S. No. 56 of 1987 act as res judicata against the plaintiff? and

(b) Whether the suit is within limitation?

13. The 1st respondent deposed as P.W.1. He filed Exs.A-1 to A.7. Exs.A-1 to A-3 are the three documents, that were executed on 29.04.1977, to which reference has already been made; Ex.A-4 is the wedding card of the sister of P.W.1; Ex.A-5 is the solvency certificate; and Ex.A-6 is the copy of the order in R.C. No. 732 of 1987. The appellant deposed as D.W.1. The document through which the respondents purchased the property i.e., the sale deed, dated 15.07.1981, was filed as Ex.B-1; Ex.B-2 is the same as Ex.A-6; Ex.B-3 is the affidavit filed in

support of R.C; and Ex.B-4 is the certified copy of the judgment in O.S. No. 56 of 1987.

14. All the issues and additional issues were answered in favour of the respondents, and accordingly, the suit was decreed. The lower Appellate Court framed the following points for its consideration.

(a) "Whether the transaction in question is mortgage or sale?

(b) Whether the order and the decretal order passed in R.C. No. 732 of 1987 operate as res judicata?

(c) Whether the suit under appeal is barred by time? and

(d) Whether the judgment and decree dated 30.06.1997 are liable to be set aside?

15. Here again, all the points were answered in favour of the respondents.

16. This Court is of the view that, in the light of the arguments advanced by the learned Counsel for the appellant and learned Counsel for the respondents, the following questions arise for consideration in this Second Appeal:

(a) Whether the transaction between the appellant and respondents, in relation to the suit schedule property was one of mortgage or an outright sale?

(b) Whether the judgments in R.C. No. 732 of 1987 and O.S. No. 56 of 1987 operate as res judicata in the present set of proceedings?

(c) Whether the suit in the form in which it was presented was not maintainable? And

(d) Whether the suit was barred by limitation?

17. The first question may appear to be simple, in its purport. However, it has several facets, which, in turn, are important, in their own way. A series of transactions have taken place, on the same day, between the appellant and respondents, in respect of one and the same property. There is no dispute that the respondents are the absolute owners of the suit schedule premises, which are quite valuable and large in its extent. The premises, constructed over an area of 510 square yards, were sold for a consideration of Rs. 16,000/-.

18. The first document, which has come into existence, is a sale deed, marked as Ex.A.2. A perusal of the same discloses that it is like any other sale deed. The transaction, however, did not end with that. On the same day, a deed of reconveyance, being Ex.A.3, was executed. The appellant agreed to sell the same property for the same consideration if paid within a period of three years, or the extended period. Though there is a recital in the sale deed, that the possession of the property was delivered to him, the appellant executed a rental deed, Ex.A-1, on the same day. Under this, the respondents were permitted to continue in possession, subject to payment of rent.

19. Nearly 10 years after the execution of Exs.A-1 to A-3, the appellant filed R.C. No. 732 of 1987 for eviction of the respondents, on the ground that they committed default in payment of rent. That was allowed on 17.11.1992. However, it is stated that the order passed therein was not executed. He has also filed O.S. No. 56 of 1987, against the respondents, for the relief of perpetual injunction, in respect of the same property. The suit was decreed ex parte. These are the developments, that have taken place before the respondents filed O.S. No. 1417 of 1993 for redemption of mortgage and other ancillary reliefs.

20. In their plaint, the respondents pleaded that the transaction was one of mortgage, and despite their willingness to pay the amount borrowed by them, the appellant is not executing the necessary documents. The proceedings, that have ensued between the parties, were mentioned. As regards the nature of transaction, the respondents pleaded, inter alia, as under:

That in the month of April 1977, the plaintiffs approached the defendant, who is a habitual and professional money lender, requesting him to lend a sum of Rs. 16,000/- for the purpose of performing the marriage of their sister, Kum. Prasanna. The defendant agreed to advance the loan subject to the condition that the plaintiffs should offer the suit house as security. Having no other alternative to arrange the money required for performing the marriage of the plaintiff''s sister, the plaintiff have accepted to mortgage the suit schedule property but the defendant to avoid the provisions under the money lending Act demanded the defendant to execute a sale deed followed by a reconveyance deed and a rental deed for recover the interest thereof. Accordingly, on 29.04.1977, the plaintiffs went along with the defendant to the Registration Office and executed a mortgage deed (styled as sale deed). Simultaneously, the plaintiffs also executed a Rental Agreement agreeing to pay a sum of Rs. 450/- per month. As a matter of fact the said sum of Rs. 450/- represents the interest, but the nomenclature used as rent. On the same day, the defendant executed an agreement of re-conveyance, agreeing to reconvey the suit property in favour of the plaintiffs, if the amount of Rs. 16,000/- is paid within a period of three years.

When the plaintiff questioned about the execution of the above deeds, the defendant explained that the execution of the above said deeds amounts to mortgage with conditional sale. It was also agreed between the parties that the possession of the said schedule house would be with the plaintiff themselves. The value of the suit schedule property at the time of execution of the above documents was more than lakh of rupees (1,00,000/-) and that the value of the suit schedule property was shown as Rs. 16,000/- in the alleged sale deed. This itself would clearly goes to show that the above transaction was a mortgage with conditional sale.

21. As a matter of fact, in para 2 of the plaint, their consistent version was that the transaction is one of mortgage. In paragraphs 3 and 4, the facts were further elaborated. In para 4(a), the following plea was raised:

In addition to what has been submitted above the plaintiff further submits that it is settled law that mere expiry of time provided for payment is not by itself sufficient in law to render extinct the right of the plaintiff for redemption and it survives as long as the right is not force closed. As is evident from the provisions contained in act of Limitation Act R/W Section 58 of the Transfer of Property Act.

22. Specific reference was made to Section 58 of the Transfer of Property Act. Para 5 dealt with cause of action; para 6 with limitation and para 7 with the Court fee.

23. The appellant filed a very brief written statement. His reply, or defence, to the various paragraphs, in the plaint, runs as under:

4. Contents of the para-2 are also false, frivolous and concocted except the execution of reconveyance.

In regard to para-3, contents are false, frivolous and concocted.

Contents of the para-4, are also false, except the filing of R.C. No. 731 of 1987, which was allowed directing the plaintiff to vacate the premises.

In regard to para-5, there is no cause of action. The cause of action arose for the purpose of the suit.

Contents of para-6, are also false, since the sale deed was affected as per law and there is no question of mortgage.

Contents of the para-7 to 10 are formal, needs no reply.

24. The further submissions of the appellant are contained in four paragraphs. The first paragraph was devoted to the execution of three documents, Exs.A.1 to A.3; second one, to the filing of R.C. No. 732 of 1987; and third one, to the filing of O.S. No. 56 of 1987. He did not controvert the specific plea raised by the appellant, as to the nature of transaction.

25. The line that divides a mortgage by conditional sale, on the one hand, and an outright sale, followed by an agreement to reconvey the property, on the other hand, is rather thin. Section 58 of the Transfer of Property Act, defines various categories of mortgages. Clause (c) deals with mortgage by conditional sale. It reads:

Section 58(c)Mortgage by conditional sale:

Where, the mortgagor ostensibly sells the mortgaged property - on condition that on default of payment of the mortgage money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

26. The law, no doubt, is clear, but much would depend upon the facts of the case. The intention of the parties assumes significance. If both the parties have understood the transaction to be of particular character, the legal consequences provided therefor, would ensue. It hardly needs any emphasis that the pleadings in a suit assume significance.

27. It has already been mentioned that the respondents specifically pleaded that the transaction between themselves and the appellant is one of mortgage, so much so, that they have referred to the relevant provision of law, in the plaint. In his written statement, the appellant maintained a blissful silence, in relation thereto. The relevant portions of plaint and written statement are already extracted. He did not even mention that the understanding of the respondents, or the facts pleaded by them, as to what transpired between themselves and the appellant, are not true. The law in this regard, is very clear.

28. Order VI Rule 8 of CPC, squarely applies to the situation. It reads:

Denial of contract.:

Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law, of such contract.

29. Interpreting this provision, the Hon''ble Supreme Court in Kalyanpur Lime Workers Ltd. Vs. State of Bihar and Another, , held as under:

Rule 8 of Order VI of the CPC lays down that where a contract is alleged in any pleading a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract. Rule 2 of Order VIII requires that the all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as for instance, fraud, limitation, release, payment, performance, or facts showing illegality. These provisions leave no doubt that the party denying merely the factum of the contract and not alleging its unenforceability in law must be held bound by the pleadings and be precluded from raising the legality or validity of the contract.

30. This principle fits squarely to the facts of the present case.

31. Rule 2 of Order VIII C.P.C., connotes the law in this regard. It is quite possible that a defendant has his case distinct from the one pleaded by the plaintiff and mere denial or admission will not meet the purpose. That, however,

must be pleaded specifically. It reads as under:

New facts must be specially pleaded.:

The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

32. Admittedly, the appellant did not make any endeavour, in this direction. The cumulative effect is that the failure of the appellant to deny the averments made in and as to what transpired between the parties, and to plead any specific case to the contrary would preclude him from ascertaining that the transaction does not fit into Section 58(c) of the Transfer of Property Act.

33. Even otherwise, it is open to the Courts to verify the surrounding circumstances, to examine the character of transaction, though the conditions are contained in two separate documents. Reference in this context may be made to the judgment of the Supreme Court in Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, . The Hon''ble Supreme Court analyzed Section 58 (c) of the Transfer of Property Act, as under:

The legislature has made a clear cut classification and excluded transactions embodied in more than one document, from the category of mortgages, therefore it is reasonable to suppose that persons who, after the amendment, choose not to use two documents, do not intend the transaction to be a sale, unless they displace that presumption by clear and express words; and if the conditions of Section 58(c) are fulfilled, then we are of opinion that the deed should be construed as a mortgage."

(emphasis supplied)

34. From this, it is clear that even where the transaction is contained in two documents, what emerges is a presumption in favour of the transaction being one of sale, and the presumption is capable of being displaced by adducing evidence and taking necessary plea to the contrary. By referring to the facts of that case, their Lordships arrived at the conclusion that the transaction was, one of mortgage.

35. In Indira Kaur and Ors Vs. Sheo Lal Kapoor, , where the Supreme Court has this to observe in the facts of this case. In fact, the heading of a paragraph itself is indicative of the point under discussion:

Was it a transaction of mortgage or one of outright sale?

5. There is no manner of doubt that the transaction in question was one of mortgage in essence and substance though it was clothed in the garb of a transaction of ostensible sale. The factors adumbrated hereinunder leave no

room for doubt on this score:

(1) The sale deed was for a sum of Rs. 7000/-. So also the agreement which could be enforced at any time within 10 years was also for an identical sum of Rs. 7000/-. If the defendant wanted to purchase an immovable property for the sake of investment would he have agreed to convey the very same property, for the same amount even after ten years? In the first place he would have lost the advantage of appreciation in value of the property resulting in 10 years let alone erosion of his investment on account of inflation. In the second place he would not have been able to sell, mortgage, gift or will away the property for 10 years as the obligation to convey it to the plaintiff within ten years for the very same amount was annexed to the property and he could have dealt with his property in any of the aforesaid modes only subject to this obligation. Why should he have locked up his funds in such a manner?

(2) The stipulated period for conveying the property was a very long period of ten years. The very length of the period is, suggestive of a transaction of mortgage and, not a transaction of absolute sale with a stipulation to reconvey the property in such peculiar circumstances, bearing on the relationship between the parties or some other relevant consideration.

(3) If he wanted to purchase the property for his personal occupation, why should he have allowed the plaintiff to continue as a tenant on payment of Rs. 80/- p.m. which worked out to 131/2% interest on the sum of Rs. 7000/-.

(4) Admittedly the property was never mutated to the name of the plaintiff (sic). If he had become an absolute owner, why should he not have got the property mutated to his own name? It is not even his case that he had ever applied for mutation. The fact that he allowed the property to remain standing in the name of the vendor-plaintiff tells its own tale.

(5) The obvious reason for entering into such a transaction of ostensible sale coupled with a contemporaneous agreement to sell within ten years was that if it was not garbed with this paraphernalia and was given the nomenclature of a mortgage the period of redemption would have been 30 years. This period could not have been curtailed without attracting the doctrine of clog on equity of redemption. This was obvious reason for resorting to this device.

These factors clearly spell out the real intention of the parties that it was a transaction of mortgage to secure the sum of Rs. 7000/-at approximately 131/2% interest.

36. In the same paragraph, the Hon''ble Supreme Court observed:

[T]here is an increasing tendency in recent years to enter into such transactions in order to deprive the debtor of his right of redemption within the prescribed period of limitation. In fact very often the mortgagee in place of getting a mortgage deed executed in lieu of a loan obtains an agreement to sell in his favour from the mortgagor so as to bring pressure on the mortgagor by seeking to enforce specific performance to enable the mortgagee to obtain possession of the property for an amount smaller than the real value of the property. We need not however probe the matter any further for the purpose of disposing of the present appeal for the reasons stated earlier.

37. More emphatic is, the judgment in Mushir Mohammed Khan (Dead) By LRS. Vs. Smt. Sajeda Bano and Others, . The Supreme Court reiterated its observations made in Indira Kaur''s case, and referred to the observations made in U. Nilan Vs. Kannayyan (Dead) Through Lrs., . It reads:

40. Adversity of a person is not a boon for others. If a person in stringent financial conditions had taken the loan and placed his properties as security therefore, the situation cannot be exploited by the person who had advanced the loan. The court seeks to protect the person affected by adverse circumstances from being a victim of exploitation. It is this philosophy which is followed by the court in allowing that person to redeem his properties by making the deposit under Order 34 Rule 5 CPC.

38. Though the observations made by the Hon''ble Supreme Court in subsequent judgments, such as Manjabai Krishna Patil v. Raghunath Revaji Patil 2007 (6) SCJ 247 and Bishwanath Prasad Singh Vs. Rajendra Prasad and Another, , are in a slightly different tone, it does not appear that the judgments rendered earlier thereto were overruled. The conclusions arrived at by their Lordships in the said cases, appear to be more on the facts, specific to those cases.

39. In Sub-Registrar, Azampura, Hyderabad v. K. Veereswara Rao 2004 (6) ALT, this Court had to examine the very question, but in the light of the extent of stamp duty. The following observation was made:

14. It is well known that the Transfer of Property Act provides for five categories of transfers viz., sale, mortgage, lease, exchange and gift. Absolute transfer of right, title and interest takes place in cases of sale, exchange and gift. However, the nature of transfer of property in cases of lease and mortgage is limited. In such cases, the title continues to be with the transferor and the transferee is vested with certain rights. Section 58 of the Transfer of Property Act defines the term ''mortgage'' as well as the six categories of mortgages. Of these, the mortgage by conditional sale, referred to in Section 58(c), is contrasted with; or compared to, a sale with a condition of retransfer. Though these two are different kinds of transfers, there exists substantial similarity between them. By omitting the minute differences or similarities, it can broadly be stated that they resemble in their character, of being devices to secure repayment, but differ from the point of view of vestiture of title. On a close analysis, it would be found that both the transactions are intended to provide security for repayment of the amount constituting the consideration thereof. Depending on the emphasis or the extent of security intended, the transactions are chosen.

40. Ultimately, what becomes material, in the context of determining the character of a transaction, is the intention of the parties, which can be culled out

from the contents of the document, the nature of pleadings and the evidence on record.

41. Therefore, the first question completely stands answered in favour of the respondents, holding that the transaction is one, of mortgage.

42. The second question is in relation to the application of the principle of res judicata. It is no doubt true that the appellant and the respondents are parties to R.C. as well as O.S. So far as the proceedings in the R.C. are concerned, the jurisdiction of the Rent Controller confined to the one of deciding whether or not the grounds pleaded by the petitioner therein, are proved. If the tenant raises any dispute, as to title of the landlord, the Rent Controller has to examine whether the denial is bona fide or not. If he arrives at the conclusion that the denial is not bona fide, he can proceed with the matter. On the other hand, if he opines that there is a bona fide dispute as to title, he has to terminate the proceedings and leave it to the parties to work out their remedies in a Civil Court. Either way, he cannot delve into the question of title, much less, decide it.

43. In the instant case, the respondents pleaded all the facts in relation to the transactions that have ensued between them and the appellant. The Rent Controller has, however, assumed to himself, the jurisdiction to decide the question of title. For instance, the Rent Controller observed as under:

On a perusal of the entire case record Ex.P-1 and P-5 are admitted by the respondents so as Ex.R-2 is also admitted. The contention of Ex.R-2 disclosed that the petitioner has to recover the title of the said premises to the respondents herein within three years on the date of execution of Ex.P-1. The parties with consent may extend further three years under Ex.R-2 for reconveyance of title to the respondents herein by petitioner herein. But the same is not effected it means the petitioner has not reconveyed the title to the respondents herein in respect of the suit schedule property within the time fixed under Ex.R-2 so as, as per contents of the Ex.R-2 if the petitioner is not reconvey the title in respect of the suit schedule property in favour of the respondents within fixed time as discussed above, the petitioner shall become absolute owner of the suit schedule property. After perusal of contents of the Ex.R.2, I am of opinion the respondents are estopped to claim the title over the suit schedule property why because they are not taken steps to get it re-register the sale deed in their favour as per Ex.R-2, therefore, the petitioner herein has become absolute owner of the suit schedule property.

44. It was totally outside its purview, scope and jurisdiction of the Rent Controller to record the findings referred to above. A judgment rendered by a trial Court lacks jurisdiction, does not operate as res judicata, in subsequent proceedings.

45. Identical situation arose before this Court. In Jeeth Kaur and Others Vs. P. Kondalamma and Another, , a Division Bench of this Court held:

In respect of the reliefs that can be granted by the Tribunals under the Rent Act, their decisions are final. But in respect of a relief which cannot be granted under the provisions of the Rent Act and where questions are decided incidentally, they cannot be considered as final so as to oust the jurisdiction of the Civil Court nor do such findings operate as res judicata as the decisions are not final.

46. Therefore, the judgment in R.C. No. 732 of 1997, does not operate as res judicata.

47. So far as the judgment in O.S. No. 56 of 1987 is concerned, there is no controversy that it was ex parte decree. It hardly needs any mention that it is a judgment that is rendered on merits that would operate as res judicata and not an ex parte decree.

48. The third question covers the aspects of form of suit and of limitation. Taking the second aspect first, it needs to be mentioned that once it is found that the transaction is one of mortgage, the question of limitation virtually becomes insignificant. It is strongly urged by the learned Counsel for the appellant that under the deed of reconveyance, marked as Ex.A-2 (sic. A-3), three years time was stipulated, whereas the suit was filed more than a decade thereafter. It, however, needs to be observed that the document itself provided for extension of the time, for reconveyance. Though it may be possible to argue that even in such cases, the suit must be filed, within a reasonable time, suits filed for redemption of mortgage stand on a different footing.

49. The other limb of the argument is based upon Section 38 of the Specific Relief Act. The gist of the argument is that a relief of perpetual injunction cannot be granted to prevent the execution of decree passed by a Court. Learned Counsel for the appellant is correct in his submission. Once the decree or order passed by a Court of competent jurisdiction has become final, a decree of injunction cannot be granted, prescribing its execution. The aggrieved party has to seek annulment of the decree or can oppose the same, on the grounds available to it, in law. The relief granted to the appellant to that extent is untenable.

50. For the foregoing reasons, the Second Appeal is partly allowed, setting aside that part of the decree, through which, the appellant was restrained from enforcing the order in R.C. No. 732 of 1987. It is however, left open to the respondents to work out their remedies, against it, in accordance with law, as and when the situation arises. In all other respects, the decree passed by the trial Court, is upheld.

51. There shall be no order as to costs.

