

(1988) 02 KAR CK 0007

In the Karnataka High Court

Case No : Regular Second Appeal No. 1166 of 1978

Cheepoorappanavara Munisami

APPELLANT

Vs

Gangamma

RESPONDENT

Date of Decision : 12-02-1988

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 89, 89 (c) (iii), 89 A, 89 C (1)

Citation : (1989) ILR (Kar) 762 : (1989) 1 KarLJ 289

Hon'ble Judges : Hiremath, J

Bench : Single Bench

Advocate : M. Balakrishna, for M.S. Gopal, for the Appellant; Vijayalakshmi, for M. Srirangaiah, for the Respondent

Final Decision : Allowed

Judgement

Hiremath, J.—Defendants-1, 2, 4 and 5 in O.S.No. 358/1969 in the trial Court are the appellants herein. As defendant No. 5 died, in the meanwhile, his legal representatives are brought on record. Plaintiffs are widow and sons of Narasimhaiah and the suit was for declaration of their title to the suit property measuring 18 acres and 18 guntas of Ottaragunta village in Bangarpet Taluk. The deceased Narasimhaiah and Munisami were full brothers. But, plaintiffs contended that Narasimhaiah was the absolute owner of this property and it was his self-acquired property. Narasimhaiah died about 7 years before the suit and Munisamappa his brother without any right, title or interest in the suit property had alienated the same and this came to knowledge of plaintiffs only from others and he had no right to sell the suit land. Because the defendants were interfering with their possession, the plaintiffs were compelled to file this suit for the aforesaid relief.

2. The present appellants filed a joint written-statement disputing these allegations and contending that the suit property was a joint family property of both Muniswamappa and Narasimhaiah. They had considerable ancestral property yielding sufficient Income and the suit property was acquired from the

income of joint family agricultural lands Munlsamappa the undivided younger brother of Narasimhaiah became the manager of the family possessing and enjoying the property as such and even they had jointly mortgaged the land after 26-12-1960 in favour of S.C.S. Limited, Hudkula. This was a Co-operative Society. For the family necessity, he had sold away 5 acres 12 guntas in favour of 1st defendant under a Registered Sale Deed dated 1-1-1964. On the same day, the same extent of land was also sold the 2nd defendant. They were all for consideration. Since then, they have been in their possession. Despite this sale, Munisamappa and the plaintiffs had not paid the debts due to the said Co-operative Society of Hudkula and therefore, the property was brought for sale by public auction and the 2nd defendant with a view to avoid the sale of the property of which he had become the owner to the extent of 5 acres and 5 guntas, with the tacit consent and approval of the 1st defendant, purchased the property on 3-5-1969. The same was confirmed on 16-9-1969 and the sale certificate was issued on 8-10-1969. The sale was held by the Assistant Registrar of the Co-operative Societies to the knowledge of the plaintiffs. Therefore, they are estopped from denying the fact of sale or validity thereof. There were leases created in favour of 4th defendant. Therefore, the plaintiffs have no interest or title in the suit property.

3. The trial Court dismissed the suit accepting the contentions of the defendants, whereas the first Appellate Court, on an appeal preferred by the plaintiffs, allowed the appeal and decreed the suit.

4. It is the grievance of the appellants that the first Appellate Court completely ignored the provisions of Section 89 of the Co-operative Societies Act, 1959 ("the Act" for short) under which this property was sold to realise the debts of the Society for which the property was hypothecated.

5. During admission, the following substantial questions of law were formulated:

"1. Whether the plaintiffs could ignore the sale held by the Recovery Officer under the Co-operative Societies Act in view of Section 89(c)(iii) of the said Act?

2. Has not the Judgment of the Appellate Court been vitiated by the non-consideration of the material evidence Ex.D-23 to Ex.D-26?"

6. Apart from a private sale by Munisamappa the brother of Narasimhaiah, defendants have set-up a plea of purchasing the property in the auction brought about by the Co-operative Society to realise the debts from Narasimhaiah. This debt is not disputed. During arguments, the appellants' Counsel, particularly, made a reference to Ex.D-23 and D-25. It is noteworthy that the sale was set-aside on the application filed by the plaintiffs by the Assistant Registrar of Co-operative Societies and it was the 2nd defendant who filed the appeal. Ex.D-24 is the order passed by the Deputy Registrar of Co-operatives Societies setting aside the order of Assistant Registrar and thereby holding that the sale was quite valid and could not in any-way be quashed or interfered with. Ex.D-24 shows that it was the 2nd defendant who had preferred the appeal before the Deputy Registrar

of Co-operative Societies and Ex.D-25 is the copy of the order of the Under Secretary to Government rejecting the revision preferred by the plaintiff - Gangamma wife of Narasimhaiah against the order of the Deputy Registrar of Co-operative Societies. Thus, it is apparently clear that the 1st plaintiff took up the matter in revision to the Government and the Government did not find any reason to interfere with the order of the Deputy Registrar - Ex.D-24. Thus, the order setting aside the sale passed by the Assistant Registrar was no longer in force having been set-aside and the competent forums found that there was nothing to interfere with in the auction sale-

7. Section 89C(iii) which is now invoked by the appellants reads as follows:

"When a property is sold in the exercise or propriety exercise of a power of sale u/s 89, the title of the purchaser shall, not be questioned on the ground that the circumstances required for authorising the sale had not arisen or due notice of the sale was not given, or power of sale was otherwise improperly or irregularly exercised;

Provided that any person, suffers damage on account of unauthorised, improper or irregular exercise of such power shall have a remedy in damages against the Land Development Bank."

8. u/s 89C(1) where a sale of mortgaged property has become absolute u/s 89A and the sale proceeds have been received in full by the Land Development Bank, the Bank shall grant a certificate to the purchaser in the prescribed form certifying the property sold, the sale price, etc. It is undisputed that the sale was confirmed as stated earl for, a sale certificate was issued and the plaintiffs agitated about the validity of the sale before the Competent Authorities under the Act.

9. It was urged during arguments that the trial Court had ignored the fact of repayment made by the plaintiffs evidenced by a receipt and also a certificate issued from the Society to that effect. Ex.P-9 purports to be a certificate given by the Secretary of the Service Co-operative Society of Hudkula stating that on 16-1-1970 the amount due from Narasimhaiah together with interest was completely paid. Ex.P-8 purports to be a receipt dated 16-1-1970. While the respondent's Counsel placed reliance on these two documents, it was pointed out for the appellants that the plaintiffs did not avail of this evidence if it was really helpful and genuine when the matter was taken before the Deputy Registrar and later before the Government in revision. The order of the Deputy Registrar under Ex.D-24 is dated 21-5-1970 and that of the Government in revision is dated 17-5-1973. Therefore, if really these documents were helpful to support the case of the plaintiffs, the same would have been produced before the Deputy Registrar for consideration. Plaintiffs-2 and 3 were minors at the material time and naturally, it was the plaintiff No. 1 who agitated against the same before the aforesaid forums. The trial Court did not attach importance to these documents, whereas the first Appellate Court completely ignored the subsequent

orders under Ex.D-24 and D-25. Very surprisingly, the first Appellate Court stopped after referring to the order of Assistant Registrar setting aside the sale produced at Ex.D-23. But, totally lost sight of Ex.D-24 and D-25 which have set-aside the order of Assistant Registrar. Therefore, the approach made by the first Appellate Court was wholly wrong, ignoring the material documents which superseded the order of the Assistant Registrar. The finding of the first Appellate Court that the sale is not binding on the plaintiffs cannot sustain. Section 89C(iii) of the Act is comprehensive enough to include even the ground and circumstances authorising the sale as the remedy of the aggrieved party is only by way of claiming damages from the Land Development Bank. So much so, the sale on any of such grounds cannot be objected to.

10. In this view of the matter, the first Appellate Court was wrong in up-setting the decree of the trial Court as it was not competent for appellants to question the sale which was duly held u/s 89A of the Act and subsequently, confirmed by the revisional authorities. The Judgment and decree of the first Appellate Court, therefore, cannot sustain. The appeal has to be allowed and the same is allowed. The Judgment and decree of the first Appellate Court are set-aside and that of the trial Court are restored dismissing the suit of the plaintiffs. Parties to bear their respective costs in this appeal.