
(1981) 12 KAR CK 0014
In the Karnataka High Court
Case No : RFA 100/74

G. Marappa and Another

APPELLANT

Vs

State Bank of Mysore

RESPONDENT

Date of Decision : 10-12-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11

Citation : (1982) 1 KarLJ 320

Hon'ble Judges : P. A. Kulkarni, J;K. Jagannatha Shetty, J

Judgement

Kulkarni, J.-The suit out of which the present appeal arises, was instituted by the respondent for recovery of money by sale of the hypothecated properties. The suit was decreed by the Court below. The defendants' appeal is restricted to the question of instalments.

2. The question is whether instalments could be given to the defendants in a mortgage suit.

3. Instalments can be claimed under Order XX Rule 11 of the Code of Civil Procedure; only in the case of money decrees. This provision has no application to a suit on mortgage. The decree to be prepared in a mortgage suit is regulated by Order XXXIV of the Code of Civil Procedure. Order XXXIV is a self-contained special provision. Order IX Rule 11 is a general provision. The special provision excludes the general provision. Therefore, the defendants are not entitled to instalments in this case as it is a pure case of mortgage. Our view finds support from the decision of the Patna High Court in *Basanta Kumar Mitra v. Chota Nagpur Banking Association Ltd.*, AIR 1948 Pat. 18.

4. The appeal, therefore, fails and is dismissed with costs.