(1995) 07 AP CK 0077

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 398 of 1989

G. Venkata Narasaiah APPELLANT

Vs

G. Lakshmi Kantaiah (died) and Others RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:
Transfer of Property Act, 1882 — Section 58

Citation : (1996) 2 ALD 910 : (1995) 3 ALT 605

Hon'ble Judges : N.Y. Hanumanthappa, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : P.V.R. Sharma, for the Appellant; T. Dasaratha Ramaiah, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—This Letters Patent Appeal raises important point for determination by us. The question involved is as to whether interest is leviable on the usufructuary mortgage even if the possession is not delivered to the mortgagee.

2. Mortgagee is the appellant before us. He had laid O.S.No.8 of 1979 in the Court of the District Judge, Khammam for recovery of Rs. 11,000/- lent on mortgage together with interest of Rs. 15,840/- as on the date of the suit. The interest was calculated at the rate of 12% per annum and he even claimed future interest from the date of suit till payment. The suit was decreed against the mortgagor-defendant and a charge was created on the immovable property for the recovery of the amount. The defendants had appealed to this Court in A.S.No.375 of 1980 raising two-fold contention, namely, (1) that the debt of Rs. 11,000/- even though was true, was discharged; and (2) that inasmuch as there was no stipulation for payment of interest, the interest was not liable to be paid and that the lower Court had erred in granting interest even if the liability to pay the principal amount of Rs. 11,000/- is upheld. The learned single Judge while repelling the first contention that the debt of Rs. 11,000/- was discharged and

confirming the finding of lower Court in that regard, had reversed the finding of the lower Court with regard to the levy of interest. The respondents did not appeal against the judgment of the learned single Judge upholding the liability of the respondents to pay the principal sum of Rs. 11,000/-. But the appellant-plaintiff had appealed against the reversing finding of the learned Judge in so far as the levy of interest is concerned.

3. The mortgage in question is a usufructuary mortgage. As such, the question of stipulation of interest does not arise at all as usufructuary mortgagee is inducted into possession of property mortgaged and he will enjoy the property and at the time of redemption of mortgage, the accounts will be settled. That is a normal event in an usual usufructuary mortgage. But the instant case is unusual as even though it was usufructuary mortgage, admittedly, possession of the mortgaged property was not handed-over to the appellant-mortgagee. While it is true that there is no stipulation of interest, but the Courts cannot ignore the prejudice being caused to the mortgagee in such cases. Merely because there is no stipulation of interest, the Court should not restrict its hand in remedying the situation. Otherwise, it will lead to anomaly. There is reason for the Court to interfere in such cases, as, but for the transaction being usufructuary mortgage, interest would have been certainly stipulated on the mortgage debt. Even though there is a recital of handing-over possession of the mortgaged property, it is admitted by the defendant-mortgagor that possession has not been handed-over. If that be the case, the trial Court had correctly levied interest on the defendant-mortgagor to pay @ 12% per annum. The said amount levied, though may not be called ''interest'' in stricto sensu, but can be awarded by way of damages. Our view is fortified with two judgments of Madras High Court in S. Iyer v. P. Odayar AIR 1932 Mad. 175 which was followed in Srinivasa v. Govindasami AIR 1964 Mad. 210.

4. In the circumstances, we hold that even if the mortgage deed did not stipulate for payment of interest by the judgment-debtor, as the mortgage was usufructuary mortgage and as the appellant was not placed into possession of the mortgaged property, the respondents-judgment debtors are liable to pay the mortgage debt of Rs. 11,000/- together with damages computed at Rs. 15,840/- till suit and further damages? 12% per annum from the date of suit till payment. The judgment and decree of the learned single Judge of this Court in AS 375 /1980 is set aside restoring the judgment and decree of the Court of the District Judge, Khammam in O.S.No.8 of 1979.

5. The letters patent appeal is allowed. No costs.

