
(1955) 09 BOM CK 0066

In the Bombay High Court

Case No : Civil Revision Application No. 130 of 1953

Gopal Sakharam

APPELLANT

Vs

Mohanlal Nagarchand and Others

RESPONDENT

Date of Decision : 22-09-1955

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 24
Civil Procedure Code, 1908 (CPC) — Section 115, 9
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1956 Bom 607

Hon'ble Judges : Gajendragadkar, J

Bench : Single Bench

Advocate : B.M. Kalagate, for the Appellant; R.A. Jahagirdar and N.M. Shanbhag, for the Respondent

Judgement

Gajendragadkar, J.—This revisional application arises from proceedings under the B. A. D. R. Act and the main question which arises for decision is whether the Court administering the provisions of the B. A. D. R. Act is entitled to consider the question as to whether a given transaction is void having regard to the provisions of para 11 of Schedule III to the Code of Civil Procedure. The learned trial Judge answered this question in favour of the debtor, whereas the lower appellate Court has taken a contrary view. In my opinion, the view taken by the lower Appellate Court is obviously right.

2. The question about the infirmity in the transaction arises in this way. In 1925, Debtor No. 1 and the father of Debtor No. 2 mortgaged five lands for Rs. 3,000/-. The mortgagee sued in 1934 and obtained a decree for Rs. 5,000/- and odd. In 1939, the mortgagee sought to execute the decree and the execution proceedings were sent to the Collector under the provisions of Schedule III to the Code. On 5-6-1943 two of the five lands were sold for Rs. 8,600/-. On 20-8-1943, the darkhast was disposed of. The two lands sold were Survey No. 59973 and survey No. 60973.

In the present application for adjustment, the debtors alleged that the sale was void inasmuch as it had taken place at a time when the properties were under jurisdiction of the Collector under Schedule III to the Code. They also alleged in the alternative that the transaction was in the nature of a mortgage. The learned trial Judge upheld both these pleas. On appeal a different view has been taken.

The appellate Court has come to the conclusion that the adjustment Court cannot consider the question about the validity of the transaction and on the merits he has held that the transaction itself is a sale. That is how the principal point which has been raised before me by Mr. Kalagate on behalf of the petitioners is one of jurisdiction.

3. Mr. Kalagate contends that in the present case there should really be no difficulty in deciding in his favour the point that the sale-deed was invalid. Indeed, Mr. Kalagate "referred me to the observation made by the learned trial Judge that this position was conceded before him by the creditors. But the difficulty in Mr. Kalagate's way is not so much the merits of his argument as the jurisdiction of the learned Judge to entertain the plea at all.

It is well settled that a court dealing with applications for adjustment of debts is confined to the issues that legitimately arise in adjustment proceedings. Broadly stated, the court is called upon to consider the two preliminary issues in the first instance, and after the said issues are found in favour of the debtor the Court proceeds to examine the nature of the transaction under the provisions of Section 24 of the B. A. D. R. Act. A question like the present, which is concerned with the effect of the provisions of para 11 of Schedule III to the Code is, in my opinion clearly outside the Jurisdiction of the adjustment proceedings.

Therefore, I am unable to accede to the argument that the lower Appellate Court should have considered the merits of the plea.

4. That takes me to the next question which has been raised before me by Mr. Kalagate and that is about the nature of the transaction. Mr. Kalagate argues that the learned trial Judge has considered the evidence bearing on this point very carefully and his grievance is that the lower Appellate Court has not bestowed on the consideration on this question that care which it deserved. I do not see how this point can be legitimately raised in a revisional application.

The question which arose for decision before the lower Appellate Court, as before the trial Court, was whether the transaction -was a mortgage or a sale. It may be that the trial Court took one view of the facts and the appellate Court has taken another. But that would not involve a question of jurisdiction. Besides, on the merits much can be said in favour of the view taken by the appellate Judge. Five lands were the subject matter of the original mortgage. Three of these were released by the mortgagee in 1943 and he paid Rs. 1600/- in cash as additional consideration for the purchase of two lands.

The lower appellate Court has found that Rs. 800/- was about the price which

these lands would have fetched and he has observed that, unless the transfer of the two lands was really intended to be a sale out and out, there was no reason why the purchaser should have released three lands from the burden of mortgage already existing. In my opinion, this is a very valid argument, but apart from the validity of the argument it seems to me that the finding of the lower appellate Court that in the circumstances of this case and having regard to the evidence adduced by the parties the transaction must be regarded as a sale cannot be challenged effectively in a revisional application.

5. The result is, the application fails and the rule is discharged with costs.

6. Rule discharged.