

(1991) 02 KAR CK 0043
In the Karnataka High Court
Case No : R.S.A. No. 115/1991

Guddekoppud Guddanaik

APPELLANT

Vs

Sogeda Thimma Naika and Others

RESPONDENT

Date of Decision : 18-02-1991

Acts Referred:

Transfer of Property Act, 1882 — Section 60

Citation : (1992) 1 KarLJ 177

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. No substantial question of law arises for consideration in this second appeal by the defendant who was the mortgagee of property in respect of which a suit for redemption was filled by the mortgagor in the Court of the Munsiff at Sagar in O.S. No. 363/1974 inter alia on the ground that he was ignorant that the land granted by the Government to him some where in the year 1961-02 was mortgaged in favour of the first defendant subject to the condition that after 10 years, the land should be returned to him and that the value of Rs. 4,000/- advanced under the mortgage deed should be realised out of the usufructs of the land during the period of mortgage. On that basis he claimed for a decree for redemption of the mortgage. Defendant pleaded that that was not the term of the mortgage; that there was no fraud played by him; that mortgage should be redeemed only on payment of Rs. 4000/-, the consideration as well as the improvement affected by the defendant in the sum of Rs. 12,000/-

2. When the suit was thus pending, even before the written statement was filed, the Karnataka Debt Relief Act, 1976 hereinafter referred to as the "Act" was passed. In the result, the plaintiff claimed that the debt had stood extinguished as he was a "debtor" within the meaning of that Act. Issue was framed in regard to that aspect. Whether he was a "debtor" under the 1976 Act? Before the suit could make further progress, 1976 Act was subsequently replaced by the Act of 1980. Therefore, another issue was framed, whether the plaintiff is not entitled to the benefits under K.D.R. Act, 1980?

3. In the result, notwithstanding the plea of the defendant by operation of law, the trial Court held that the mortgagor plaintiff was entitled to possession with effect from the date from which the Act came into force which was in October, 1975, retrospectively. As such he decreed the suit and directed rendering of account by the defendant to the plaintiff from the period from which the debt stood extinguished.

4. An appeal filed against that did not met with success. The lower appellate Court has concurred with the finding of the trial Court on all the issues and confirmed the decree. Once the finding of fact has been recorded that the plaintiff was a debtor, law has taken its course.

5. In this Court, Mr. B. Rudragowda learned counsel for mortgagee/appellant pleaded that the Courts below erred in casting the burden on the creditor to discharge the burden that he was not a "debtor". I do not think that there is any force in his contentions. Both under Section 4 of 1976 Act and Section 6 of the 1980 Act, burden of proof that the defendant was not a debtor was on the Creditor. Reliance was placed on two decisions of this Court. In the case of *The Tahsildar, Anekal & Another v. Chilakumma & Another*, 1983(2) Kar. L.J. 393 Division Bench decision in that case was that, when once the extinguishment of a debt took place by operation of law, it was implicit from the other provisions of the Act that the mortgagee in possession was to hand back to the mortgagor the possession and for that the debtor could approach the Magistrate to enforce the provision of the Act seeking possession. It does not lay down the law that he cannot get possession from the Civil Court particularly when the direction is for rendering account for mesne profits from the period the debt stood extinguished, the Civil Court is the only correct forum, and as such there is no error of law committed by the Courts below.

6. The other decision in the case of *Shivaramaiah A v. Chardappa Pai*, 1979(1), Kar. L.J. 112 deals with the burden cast under Section 7. It merely says that initial burden is on the debtor to prove that he is qualified for the relief under the Act and thereafter the burden shifts to the Creditor. It is of no assistance to the appellant.

7. As a finding of fact, both the Courts have held that the plaintiff was a "debtor" and whatever may be the income of his brother, from whom he lives separately, could not be the income of the plaintiff.

8. With that finding of fact, which is con-current by both the Courts below, this Court under Section 100 of C.P.C. cannot interfere.

9. In the result, there is no merit in the appeal. It is rejected.