

(1994) 12 PAT CK 0001

In the Patna High Court

Case No : Appeal From Appellate Decree No. 20 of 1993

Janardan Choudhary and Another

APPELLANT

Vs

Hridya Narain Choudhary and Others

RESPONDENT

Date of Decision : 14-12-1994

Acts Referred:

Citation : (1994) 12 PAT CK 0001

Final Decision : Allowed

Judgement

B.L. Yadav, J.—This is a Defendants' second appeal preferred u/s 100 of the Code of Civil Procedure, 1908 (for short the Code) in a suit filed by the Plaintiffs-Respondents 1 and 2 for declaration that the Plaintiffs are in peaceful cultivatory possession of the suit land till mortgage amount is paid to the Plaintiffs by the Defendants-Appellants under the Government Notification No. S.O. 207 dated 13.2.1981, u/s 12 of the Bihar Money Lenders Act, 1974 (for short the Act). Further claim was to restrain the Defendants-Appellants from disturbing either directly or indirectly the peaceful possession of the Plaintiffs over the land in suit. The Plaintiffs-Respondents 1 and 2 brought the suit with the averments that they executed three mortgage deeds in favour of Defendants-Appellants on 4th November, 1974. In the first and second mortgage deeds the amount was Rs. 2500/- each in respect of an area measuring 421/2 decimals of land under Khata No. 5/kh, Khesra No. 711 situate in Village Gokula Jhapra-Kitta, District-Bhagalpur and in the other deed the land was under Khata No. 5/ka Khesra No. 711 and other mortgage deed was for a sum of Rs. 2,000/- in respect of 28 decimals of land in Mouza-Gokula Jhapra-Kitta, District-Bhagalpur under Khata No. 5/Kh, Khesra No. 710. On 25.7.1974 two mortgage deeds were executed by the Defendants 1st party for a sum of Rs. 9,500/- and Rs. 3,000/-. The Plaintiffs came in possession of land mortgaged and continued in peaceful possession. But in view of the provisions of Section 12 of the Act the Plaintiffs-Respondents are not entitled to the possession of the land mortgaged in respect of usufructuary mortgage as the mortgage was executed more than 7 years ago. The mortgage shall be deemed to have been fully satisfied and redeemed after expiry of 7

years from the date of execution of the decree and the mortgagor, the Defendants-Appellants were entitled to come in possession. The present suit was filed with the aforesaid reliefs. Subsequently by Notification dated 13.2.1981 (Bihar Gazette Extra No. 201 of 13.2.1981) it was provided that Section 12 of the Act would not apply to mortgagors holding land up to 5 acres. It was averred in the plaint that by virtue of a partition deed (Ext. 3) dated 18.10.1964 there was a partition effected in the family and the share of the Plaintiffs came to less than 5 acres, as such in view of the Notification dated 13.2.1981 Section 12 of the Act would not apply to the Plaintiffs. Hence the reliefs claimed for, be granted.

2. The Defendants-Appellants contested the suit alleging that the suit was filed with a view to frustrate the provisions of Section 12 of the Act and for that purpose the partition deed was created which was also a fictitious document. In any case the partition deed created a right and title in favour of the Plaintiffs and the valuation of the property was more than Rs. 100/- and without being registered the deed of partition is inadmissible in evidence and the share of the Plaintiffs was more than 5 acres of land. Section 12 of the Act shall be operative and further there cannot be any estoppel against Statute. The Plaintiffs being the money lenders did not maintain the accounts u/s 7 of the Act, consequently they were not entitled to receive the money from the mortgagee and the suit was liable to be dismissed.

3. These issues were framed by the learned Subordinate Judge-II, Banka: Whether the suit as framed was maintainable and whether the Plaintiffs have cause of action and whether the right of the mortgagees subsists and whether the Plaintiffs have maintained "accounts as required u/s 7 of the Act and whether the Plaintiffs are entitled to be protected under the Government Notification No. S.O. 207 dated 13.2.1981? Learned Subordinate Judge dismissed the suit by his decree dated 30.8.1992.

4. Plaintiffs-Respondents 1 and 2 preferred first appeal which was allowed by 1st Additional District Judge, Bhagalpur and the suit was decreed. The relief for declaration was granted to the effect that the Plaintiffs-Appellants were entitled to hold the suit property in their possession until the mortgage money was paid back to them. Against the decree of the 1st Additional District Judge, Bhagalpur the present second appeal has been filed.

5. Mr. S.S. Dwivedi, learned Senior Advocate for the Appellants contended that the deed dated 18.10.1964 (Ext. 3) was in respect of the properties for more than Rs. 100/- and it purports to operate in future and creates a right, hence in view of Section 17 of Indian Registration Act read with Section 49, its registration was must, and such unregistered document was inadmissible in evidence. A correct interpretation of the deed (Ext. 3) would indicate that it was not a memorandum of partition rather it was an unregistered deed of partition, hence inadmissible in evidence. Section 12 of the Act has a positive mandate and there was no estoppel against Statute. These are the substantial questions of law which require consideration. u/s 100 of the Code. He leaned heavily on Sheo

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6. Shri Mritunjay Prasad Singh and Shri Shyam Bahadur Prasad appeared for the Plaintiffs-Respondents and refuted the submissions of the learned Counsel for the Appellants and urged that the deed (Ext. 3) was a memorandum of partition and need not be registered as it is less than value of Rs. 100/- and share of the Plaintiffs-Respondents came to less than 5 acres, as such Section 12 of the Act would not apply and there was no question of applicability of the principle "no estoppel against the Statute".

7. Having scrutinised the submissions of the learned Counsel for the parties the points for determination are as to whether Ext. 3 is the deed of partition or memorandum of partition and in case it is deed of partition, can it be admissible in evidence without being registered and whether the provision of Section 12 of the Act would apply to the facts of the present case and whether the applicants were entitled to the benefit of the Government Notification No. S.O. 207 dated 13.2.1981 and whether the principle of "no estoppel against Statute" was also attracted?

8. As regards the first point, at the very outset the deed (Ext. 3) dated 18.10.1964 has to be interpreted with a view to ascertain whether it was the deed of partition or just memorandum of partition. It goes without saying that in case it created, declared or limited or extinguished the right or title or created an interest in present or in future in such a form as required by a deed of partition, it shall be covered by Section 17(1)(b) of the Registration Act and would be compulsorily registrable, in case it was in respect of property worth more than Rs 100/-. In such matters Section 17 of the Registration Act may be read alongwith Section 49. The latter provision provides consequences of non-registration that it shall not affect any immovable property comprised therein nor it shall be admissible in evidence. Before actually interpreting the deed it is pertinent to refer to the relevant principles pertaining to the interpretation of deed.

9. In A. Sreenivasa Pai and Another Vs. Saraswathi Ammal alias G. Kamala Bai, their Lordships of the Apex Court pointed out the principles for interpretation of a document as follows:

In construing a document, whether in English or in any Indian language, the fundamental rule to be adopted is to ascertain the intention from the words employed in it. The surrounding circumstances may be considered for the purpose of ascertaining the intended meaning of those words, specially when there is some ambiguity in the words used in the document.

In Smt. Daoka Bai v. Uttam (judgment Today 1993 (4) S.C. 374) at page 377 it was held as follows:

It is well settled that the terms of a document like the present one, have to be read as a whole. Taking out a term in isolation and giving it the meaning torn from the context may tend to lead a wrong interpretation causing injustice.

10. It appears relevant to refer to a maxim *A verbis legis non est recedendum* which connotes that from the words of a deed or the provision of law there must be no departure in order to ascertain the intention of the author of the deed or the legislature, the entire deed has to be read together. No part of it has to be read in Isolation. In my opinion, Ext. 3 has to be construed in the light of the salutary principles by ascertaining the intention of the executant from the words employed in the said deed and by reading it as a whole and in case there is any ambiguity in the words the meaning of that word has to be ascertained. Every clause of the deed has to be read together and not in isolation otherwise that would lead to injustice.

11. In the present case the very first paragraph of the deed (Ext. 3) indicates that Hridya Narain Choudhary and Arjun Prasad Choudhary sons of Chandi Pd. Choudhary, residents of Village Gokul, assembled and decided to have their movable and immovable properties partitioned by appointing 5 Panches. whose decision would be binding on them. Names of those 5 Panches have been given and thereafter there, is signature of Hridya Narain Choudhary and Arjun Prasad Choudhary. Next paragraph of the deed (Ext. 3) states that on 18.10.1964 after keeping a small share of the properties for the livelihood of their parents, the entire properties were being partitioned and details of the same were given below. Thereafter there is Anr. clause indicating that the property kept apart for their parents would also be partitioned after their death. The details of movable properties, including immovable property i.e. the house have been given. In respect of mortgage also there was a mention that keeping aside the share for their parents the land was to be partitioned in the period from Paus to Baishakh i.e. January to April (next year). In this way the house was specifically partitioned and the landed property including the agricultural land and the land covered by the mortgage was also to be partitioned between the period January to April after keeping a share for their parents.

12. All the Sub-clauses of the deed (Ext. 3) being read together and keeping in view the intention of the two brothers (who executed it) only one inference is possible that it was a deed of partition as it purports to operate to create or declare the right and title in present and also in future. It could have been a memorandum of partition only if there was some indication in the deed that in the recent or remote past there has been a partition between the parties and only to keep the memory and happenings alive, or just to remind the incident of partition some document was being executed. But there is no such averment in the deed (Ext. 3). The deed (Ext. 3) in question, in my opinion, was; unmistakably a deed of partition and not a memorandum of partition. It was admittedly of the value of more than Rs. 100/-. As it purports or operates to create, declare the rights of the parties to it in present and also in future, it was compulsorily registrable in view of the provisions of Section 17 read with Section 49 of the Indian Registration Act. But this deed was not registered, hence it is inadmissible in evidence.

13. Learned 1st Additional District Judge, Bhagalpur who has decided the appeal of the Plaintiffs-Respondent 1 and 2 has just on assumption, surmises and conjectures recorded the findings that the deed was a memorandum of partition and it was admissible in evidence even though it was not registered. A close scrutiny of the judgment of the lower appellate court particularly Para-10, indicates that the learned Judge has recorded a contradictory finding. At one place he says that the document is not admissible. At next place he says that it was admissible. Any way, the construction of the deed (Ext. 3) indicates, as stated above, that it was a deed of partition in respect of movable and immovable properties admittedly more than worth Rs. 100/- and being unregistered was inadmissible in evidence.

14. The other evidence including oral evidence has been perused and as the Ext. 3 was a deed of partition no other evidence to contradict the terms could have been led. Consequently there was no other evidence to indicate that there has been a partition in the family in the past. In the absence of Ext. 3 (i.e. the deed of partition being inadmissible in evidence), there is nothing to indicate that the share of the Plaintiffs-Respondents was less than 5 acres as the total area of the land held by the Plaintiffs was more than 5 acres.

15. The Plaintiffs-Respondents having more than 5 acres of land would not be entitled to the benefit of the Govt. Notification No. S.O. 207 dated 13.2.1981. It is not inapt to state that Notification No. S.O. 207 dated 13.2.1981 makes out an exception to Section 12 of the Act and it was just like proviso. The proviso is added after a provision for qualifying or excepting certain provisions of the main enactment and in certain cases it may entirely change the very concept of intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable (see S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others,)

16. Before interpreting Section 12 of the Act it is better to recollect certain relevant principles of interpretations. In these matters the duty of judicature is to act upon the true intention of the legislature, "the mens or Sententia Legis" (see Salmond's Jurisprudence 11th Edition page 52. In other words the Anumus Impotentis" the intention of the law givers has to be ascertained. The object of the Bihar Money Lenders Act, 1974 is the regulations of money lending transactions and to grant relief to debtors in the State of Bihar. The provisions of the Act particularly Section 12 and other relevant provisions have been enacted to grant relief to debtors. A debtor has most humble standing at the lowest ladder of Indian society. The unfortunate plight of Indian society is that a section of the people are placed socially and economically at a disadvantage and land themselves in debt. The State Legislature by fulfilling its obligation brought the Act on the statute book with the object to grant relief to debtors. It is a benevolent and social beneficent legislation. Whereever there is such legislation, i.e. Section 12 of the Act. it has to be interpreted with the dominant purpose for which it was enacted.

17. In the backdrop of these salutary principles of interpretation of Section 12 of the Act may be interpreted. It indicated the transaction of mortgage is automatically satisfied and redeemed on expiry of 7 years from the date of execution of the mortgage. The later part of section gives a right to the mortgagor to recover the possession from the usufructuary mortgagee. There would be no necessity of making payment of mortgaged money and the possession with the usufructuary mortgagee would be given back to the mortgagor. In the present case also as the Plaintiffs-Respondents 1 and 2 were mortgagees in respect of all the mortgage deeds, consequently they have no right to retain the possession of the land mortgaged but they are bound to deliver the possession immediately after the enforcement of the Act to the mortgagor. It is needless to emphasize that there is no estoppel against statute. A similar view was taken in Shiv Kumar Singh v. Mahesh Prasad and Anr. (supra) relied upon by the learned Counsel for the Appellants.

18. The aforesaid questions are substantial questions of law and they were involved in the present Second Appeal and these questions were incorrectly decided by the lower appellate court. Consequently in view of Section 100 of the Code, the grounds for interference in the Second Appeal have been made out.

19. In view of the permises aforesaid; this Second Appeal succeeds and the same Is allowed, the decree of the lower appellate court is set aside as that of the trial court is restored with costs throughout.