(2000) 01 KAR CK 0083

In the Karnataka High Court

Case No : Civil Revision Petition No. 4015 of 1996

K.N.K. Iyengar APPELLANT

Vs

Vijaya Bank and Another RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

General Clauses Act, 1897 — Section 3 (26), 4
Transfer of Property Act, 1882 — Section 2, 8

Citation : (2000) 2 KCCR 1247

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : M.S. Purushothama Rao, for the Appellant; I.P. Subbaiah, for Respondent 1 and S. Harish Kumar, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Vallinayagam, J.—The second Defendant who was the surety in S.C. No. 340 of 1995 on the file of the Small Causes Judge, Bangalore, the suit filed by the Plaintiff for the recovery of money due, granted under overdraft facility is the revision Petitioner.

2. Now the contention of the second Defendant-surety before this Court notwithstanding that he has not filed the written statement is that though he signed the surety form, he has not filed any other documents to make him liable under the decree. One of the contentions raised by the Petitioner was that the property though moveable has been attached to the earth, therefore they are immovable. Consequently, the suit for recovery of money based on hypothecation is not maintainable.

3. On the otherhand, learned Counsel for the Bank relies on the following decisions to prove that the machinery fixed to the earth is not immovable property but it is only movable property;

i) Special Deputy Collector, Land Acquisition, Defence Equipment Factory Vs.

Karuppayee Ammal and Others, , it has been held that;

Machinery was not immovable property and the mortgagee was entitled to a charge decree on machinery.

ii) In Jnan Chand Chugh Vs. Jugal Kishore Agarwal and Others, , it has been held as follows:

By virtue of Section 4 of the General Clauses Act the definition of immovable property in Section 3(26) of that Act will apply to the Transfer of Property Act, unless there is anything repugnant in the subject or context. The effect therefore is that by virtue of the combined operation of Section 2 of the Transfer of Property Act and Sections 3(26) and 4 of the General Clauses Act, the definition of immovable property for the purpose of the Transfer of Property Act becomes almost the same as that given in the Registration Act except that the incidents such as "hereditary allowances, rights to ways, lights, ferries, fisheries". expressly mentioned in the Registration Act are absent in the Transfer of Property Act. But these incidents are probably also brought in by virtue of Section 8 of the Transfer of Property Act.

iii) In S.P.K.N. Subramanian Firm Vs. M. Chidambaram Servai, , it has been held as follows:

If a thing is embedded in the earth or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself then it remains a chattel, even though fixed for the time being so that it may be enjoyed. The question must in each case be decided according to the circumstances. An engine installed in a factory may be immovable property or it may be a chattel. In deciding whether or not a transaction relating to an engine is a transaction relating to immovable property regard must be had not merely to the nature of the attachment by which the engine is fixed on the ground but also to the circumstances in which it came to be fixed, the title of the person fixing it in immovable property and the object of the transaction by which the engine is transferred or bound.

Therefore, where the tenants installed an oil engine as part of a cinema in the premises leased, not with the intention of making a permanent improvement to the premises, but with the object of utilizing the machinery for their own profit so long as they had the use of the premises and selling it if and when their lease terminated, a security bond pledging the oil engine cannot be deemed to be a transaction relating to immovable property so as to attract the provisions of Explanation 1 to Section 3.

4. Relying upon these decisions, it is contended that these machineries are not immovable property consequently the objection by the Petitioner must fail.

5. Heard the respective Counsel.

6. There is no merit in this revision petition. Firstly because no written statement has been filed by the Petitioner before the Trial Court. Secondly, the Petitioner did not participate in the trial nor he entered the witness box to speak about the objections against the decree. Thirdly, the contention that it is immovable property has to be negatived in the light of the decisions referred to above; and finally, it is admitted by the Petitioner himself that he had signed the surety form.

7. In the light of the admission, I do not think that the Petitioner can have any defence against the claim made by the Bank. Consequently, holding that there is no merit, this Civil Revision Petition is dismissed.

No costs.

