
(1925) 03 BOM CK 0003
In the Bombay High Court
Case No : Second Appeal No. 368 of 1923

Martand Trimbak Gadre

APPELLANT

Vs

Amritrao Raghojirao Damale

RESPONDENT

Date of Decision : 25-03-1925

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 10A
Evidence Act, 1872 — Section 92

Citation : AIR 1925 Bom 501 : (1925) 27 BOMLR 951

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The original plaintiff Raghoji Yeshvantrao tiled this suit in the year 1913 to redeem the land described in Schedule A to the plaint and to take possession thereof after taking accounts under the Dekkhan Agriculturists' Relief Act, He alleged that the lands were mortgaged on June 9,1885, to the defendants' father for Rs. 2,000 to 2,500 but that the defendants' father taking advantage of the weakness of the plaintiff's intellect took a sale-deed from the plaintiff with regard to all his lands and Inami Haks agreeing to reconvene them when the amount due to him would be paid off. The defendant denied that the plaintiff was an agriculturist; and an issue was raised whether the plaintiff was an agriculturist. That issue was found in the affirmative. Before the suit came on for hearing the plaintiff died and his son Amritrao was placed on the record as his legal representative, An issue was then raised whether Amritrao was an agriculturist in 1916"-17 when he was put on the record A as a party, and it was found that he was an agriculturist in 1913 but was not one in 1916-17. The Subordinate Judge then said :-"This finding does not affect the suit except in one fact, namely, it only excludes some oral evidence that could not have been led except u/s 10A of the Dekkhan Agriculturists' Relief Act. The finding arrived at by me does not prevent the plaintiff from proving a mortgage under the provisions of Section 92 of the Indian Evidence Act."

Thereafter there was further delay owing to an allegation that there had been a compromise. The suit finally came on for hearing before Mr. Taskar, who held that the transaction dated January 9, was in the nature of a mortgage, that the consideration for the same was Rs. 1,300, principal and Rs. 200, interest on old debt; and that on taking accounts nothing was due to the mortgagee. So he passed a decree in favour of the plaintiff that the defendant should hand over possession of the lands in suit to the plaintiff free from the mortgage.

2. In appeal to the District Judge this finding was confirmed.

3. The first question is whether the present plaintiff who is not an agriculturist can take advantage of the fact that his father Raghoji who had filed the suit was an agriculturist, We are not aware of any direct authority on this question. But it seems clear that the privileges conferred upon an agriculturist by the Dekkhan Agriculturists' Relief Act are personal; they are not such as can pass from one person to another either by assignment or by devolution. They are limited to him in that special character. " When his right as mortgagor passes into non-agriculturist hands, the special privilege previously annexed to the right perishes." (Amichand v. Kanhu (1884) P.J. 203).

4. Section 10 A of the Dekkhan Agriculturists' Relief Act is as follows:-"Whenever it is alleged at any stage of any suitor proceeding to which an agriculturist is a party that any transaction in issue entered into by such agriculturist or the person, if any, through whom he claims was a transaction of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under this chapter, the Court shall, notwithstanding anything contained in Section 92 of the Indian Evidence Act, 1872, or in any other law for the time being in force, have power to inquire into and determine the real nature of such transaction and decide such suit or proceeding in accordance with such determination and shall be at liberty, , notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or statement with a view to such determination and decision; provided that such agriculturist or the person, if any, through whom he claims was an agriculturist at the time of such transaction," Therefore this condition must be fulfilled if Section 10 A of the Dekkhan Agriculturists' Relief Act is to be made applicable to a suit, viz., that an agriculturist must be a party to it. When Raghoji died there was no longer an agriculturist party to the suit, Amritrao was not an agriculturist. He was brought on the record in Raghoji's place, and Section 10 A could not be applied in his favour.

5. The suit was then continued by Amritrao as Raghoji's legal representative, and he claimed to have the issue tried whether the transaction dated January 9, 1885, was "in the nature of a mortgage " The Judge held that owing to the various facts surrounding the execution not only of the document in question (Exhibit 40) but also of two other documents (Exhibits 224 and 300) which were executed by Raghoji on the same day, the intention of the parties must have been to create a mortgage and not to effect a sale Of the two documents,

Exhibits 224 and 300, one evidenced a mortgage and the other a sale in respect of properties other than those included in Exhibit 40. The Judge held that all these three transactions were mortgages passed partly for past debts and partly for future advances; that the consideration for the suit transaction was Rs. 1,300 principal and Rs. 200 interest on old debt, and that on taking an account, nothing was due under the mortgage. He does not say which provisions of the Indian Evidence Act he called in aid for this purpose But he thought there was abundant circumstantial evidence which conclusively proved that the transaction in suit was really a mortgage though ostensibly a sale, and as the result of his findings he passed a decree directing the defendants to "hand over possession of the lands in suit to plaintiff free from the mortgage."

6. On appeal, the District Judge affirmed the decree. He said " The document is in form a sale-deed; and the next question is whether Section 92 of the Indian Evidence Act would bar any inquiry into the nature of this transaction. In my opinion it would not. One of the allegations in this case is want of consideration. Under proviso 1 of Section 92 "any fact may be proved which would invalidate a document, such as fraud." Undoubtedly, fraud can be proved to invalidate a document. Under proviso 1 of Section 92 of the Indian Evidence Act, "Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law." Apart from the question whether a suit to invalidate a document twenty-eight years after its execution on the grounds such as are mentioned in proviso 1 would not be barred by the law of limitation, there is, it may be remarked, a great difference between a suit to invalidate a document on one of the grounds mentioned in that proviso, and a suit for a declaration that a document is not what it purports to be according to its plain grammatical meaning. But still the Judge proceeded to discuss the circumstantial evidence with regard to the transaction in order to satisfy himself that it was of the nature of a mortgage. Probably he had in mind proviso 3 to Section 92 also, which says: "any fact may be proved, which shows in what manner the language of a document is related to existing facts." The language of the proviso is rather vague. It is true that evidence of the circumstances surrounding a document is admissible; but it is admissible only for the purpose of throwing light on its meaning. It would, we think, be not permissible to consider the surrounding circumstances with a view to holding that a document which on the face of it is a sale-deed was intended to operate as a mortgage. There must be some limit to the suggestion that the surrounding circumstances can always be scrutinized so as to enable the Court to alter or change the nature of a document to something different from what it appears to be. Otherwise there could be no certainty as to the proper construction to be placed on a document which to all appearance is unambiguous. It is obvious that by calling in aid the provisos to Section 92 of the Indian Evidence Act this case has been treated in both the lower Courts exactly in the same way as if the present plaintiff had been

an agriculturist. Assuming that it might be possible, apart from any bar of limitation, for the party signing the sale-deed to be able to satisfy the Court on one ground or another that the document was a mortgage, still the Court having found that the document was a mortgage, would have to stand by the terms of the document, and could not be allowed to go behind the transaction and take accounts as if the case had come under the Dekkhan Agriculturists' Relief Act. That involves considerable confusion of thought; and, as is already pointed out, both the lower Courts have been led into treating the present plaintiff as if he actually was an agriculturist. We think, for these reasons, that it was not open to him to ask the Court to hold that the sale-deed of 1885 was a mortgage.

7. In our opinion, therefore, when the original plaintiff died the suit could only continue on the same basis, provided the legal representative was an agriculturist. But once it was proved that the present plaintiff was not an agriculturist the suit was bound to fail. The appeal is allowed and the plaintiff's suit dismissed.

8. The present appellant to have his costs in this Court, in the District Court, and the costs of the hearing before Mr. Taskar. All costs prior to that, subject to any order that may have been made with regard to particular costs, will be borne by each party.