(1982) 03 KAR CK 0029

In the Karnataka High Court

Case No : Second Appeal No. 851 of 1975

Mohaddinsaheb Shikandar saheb Maniyar and Others — APPELLANT

Vs

Hasabsaheb Karim saheb Maniyar and Others — RESPONDENT

Date of Decision : 12-03-1982

Acts Referred:
Transfer of Property Act, 1882 — Section 100, 92, 95

Citation : AIR 1983 Kar 13 : (1982) 2 KarLJ 72

Hon'ble Judges : G.N. Sabhahit, J

Bench : Single Bench

Advocate : W.K. Joshi, for the Appellant; V.S. Gunjal, for the Respondent

Judgement

1. This appeal by defendent 1, 2, 3, 5, 6, 9 and 10 is directed against the judgment and decree dated 12-12-1974, passed by the Additional Civil Judge, Bijapur, in R. A. No. 106/ 1973, on his file, dismissing the appeal on confirming the judgment and decree, dated 30-5-1973, passed by the Principal Munsiff, Jamkhandhi, in O.S. No. 28/1969, on his file, decreeing the suit of the plaintiff as prayed for.

2. Plaintiffs instituted a suit for recovery of the contribution on the charge of the mortgage properties. the defendants contested mainly on the ground that the suit was barred by time.

3. The trail Court, appreciating the evidence on record, answered all the material issues in favour of the plaintiff and decreed the suit as prayed for. Aggrieved by the said judgment and decree, the defendants went up in appeal before the civil Judge Bijapur in R.A. No. 106/1973 , on his file. The learned Additional Civil Judge, Bijapur, who heard the appeal raised the following points, as arising for his considerations in the appeal.

(1) Whether the suit claim is in time ?

(2) Whether pro note debts comprised in Ex. P.1 were incurred mainly to save

the estate of decreased Usamansaheb or for family necessity?

(3) What order or decreee?

4. The learned Civil Judge, reassessing the evidence on record, answered point No. 1 in the affirmative; point No. 2 in the negative and in that view he dismissed the appeal, confirming the judgment and decree of the trail curt. Aggrieved by the said judgment and decree, the defendants have instituted the above second appeal before this court.

5. The learned counsel appearing for the view of Ss. 92 and 95 of the transfer of Property Act, the rights of the co-mortgagor redeeming the properly would not be than the rights of the original mortgagee and the suit for contribution should be instituted within the time limited to redeem the mortgage. Hence he submitted that the suit was barred by time.

6. As against that the learned counsel for respondent plaintiffs argued that in addition to the rights of the plaintiffs as subrogee they have additional rights under S. 92 of the T.P. Act having acquired a charge. In that view, he submitted that time starts from the date of payment and as such that the suit was in time.

7. The sole point, therefore, that arises my consideration in this appeal is:

Whether the courts below were justified in holding that te suit was in time ?

8. In Manik Sadashiv and Others Vs. Krishnabai and Others, it is laid down this (at p. 286):

" The right of contribution is quite independent of the right of subrogation conferred by S. 92, T.P. Act. While considering the question of limitation in such cases, the important point for consideration would be " what is the nature of the claim in the suit ?". That is to be decided on the allegations in the plaint. If the allegations in a plaint indicate that it is a suit to enforce rights similar to those of the mortgagee, in that case it is obvious that the plaintiff can not have higher rights than the mortgagee, even though the plaintiff may have a right of subrogation. If however the allegations in the plaint indicate that the plaintiff ias seeking to enforce his right to claim contribution, along with his right to enforce the charge arising in his favour under S. 100 of the Transfer of Property Act, the starting point of limitation would obliviously de different and that would be the date on which the plaintiff is such a suit made payment and redeemed the mortgage."

That is also view taken by this court in the case reported in AIR 1957 Mys 1 (FB). The frame of the suit in the present case is for recovery of the amount from the co-mortgagors by way of contribution on the charge of the mortgage properties. Hence the courts below were justified in holding that the limitation started on the date of payment of money and the suit was well within time. I have no reason to differ.

9. In the result, the appeal is devoid of merits and its liable to be dismissed and I

dismiss the same. No costs of this appeal.

