

(2002) 03 MAD CK 0186
In the Madras High Court

P. Arumugham and Another

APPELLANT

Vs

Murugesan and Others

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Citation : (2002) 3 LW 532 : (2002) 2 MLJ 26

Hon'ble Judges : K. Govindarajan, J

Bench : Division Bench

Judgement

K. Govindarajan, J.—The suit property in both the appeals is one and the same and it is a vacant site of 28-1/2 ft. east - west and 40-1/2 ft. north-south. The said property was purchased by one Rathnammal under Ex.B-11, dated 20.8.1956. The said Rathnammal sold the property to the 1 st defendant in O.S. No. 42 of 1988, who is none other than her daughter-in-law, under Ex.B-1 dated 14.11.1968. Thereafter the said Maragatham (1st defendant in O.S. No. 42 of" 1988) agreed to sell the property to the plaintiffs in the said suit, the respondents 1 and 2 herein under the agreement dated 22.11.1974 marked as Ex. A-3.

2. Treating the sale deed Ex.B-1 dated 14.11.1968 as a mortgage by conditional sale, the appellants who are the sons of the said Rathnammal and brothers of 1st defendant, filed the suit in O.S. No. 225 of 1988 for redemption of mortgage created under Ex.B-1. To enforce Ex.A-3 agreement, respondents 1 and 2 filed the another suit in O.S. No. 42 of 1988. They have been impleaded as defendants 3 and 4 in O.S. No. 225 of 1988.

3. According to the appellants, Ex.B-1 document could not be construed as an absolute sale with a right to repurchase, but is only a mortgage by conditional sale and the said Maragatham, the sister had no right to deal with the property by executing an agreement as if she is the absolute owner of the same. On the other hand the said suit was contested by the respondents 1 and 2 herein stating that it is an absolute sale and so the said Maragatham was impleaded as 2nd respondent in O.S. No. 225 of 1988. She adopted the written statement of

respondents Land 2 herein.

4. Even in the suit filed by the respondents 1 and 2 herein in O.S. No. 42 of 1999 for specific performance of the agreement Ex.A-3, the appellants has taken the same stand stating that the said agreement cannot be enforced as the vendor has no right in the property to alienate.

5. The trial Court decreed the suit filed by the appellants in O.S. No. 225 of 1988 and dismissed the suit in O.S. No. 42 of 1988 filed by respondents 1 and 2 for specific performance of the agreement marked as Ex.A-3. So respondents 1 and 2 filed appeals in A.S. Nos. 45 and 46 of 1989. The learned Sub Judge allowed both the appeals thereby dismissed the suit in O.S. No. 225 of 1988 filed by the appellants and also the suit in O.S. No. 42 of 1988 filed by the respondents 1 and 2. Hence these second appeals.

6. The common substantial question of law that was formulated in these second appeals is:

Whether the lower appellate Court was right in the view it took that Ex.B-1 was a sale with condition for repurchase and not a mortgage by conditional sale?

7. The relationship of the parties are not in dispute. As mentioned already the mother of the appellants, Rathnammal was the owner of the suit property by purchase under Ex.B-11, dated 20.8.1956. The execution of the sale deed under Ex.B-1, dated 14.11.1968 in favour of the 4th respondent is not in dispute. The agreement executed by 4th respondent in favour of the respondents 1 and 2 under Ex.A-3, dated 22.11.1974 is also not in dispute.

8. But, according to the appellants, the 4th respondent did not derive any title under Ex.B-1 sale deed executed by her mother-in-law as the said documents is only a mortgage by conditional sale. On the other hand, it is the case of the defendants 1,2 and 4 that the said document is an absolute sale with a right to repurchase the property. If it is an absolute sale, there cannot be any difficulty to come to the conclusion that the 4th respondent herein has a right to enter into an agreement to sell the property. If Ex.B-1 is a mortgage deed by conditional sale, respondents 1 and 2 cannot claim any right on the basis of Ex.A-3 agreement.

9. So, we have to consider whether Ex.B-1 sale deed executed by Rathnammal in favour of the 4th respondent is a mortgage by Conditional sale or an absolute sale deed with a right to repurchase.

10. Learned Counsel for the appellants relying on Section 58(c) of the Transfer of Property Act, hereinafter called "the Act" submitted that the said document has to be construed as a mortgage by conditional sale in view of the condition made under the said document to the effect that on payment of the sale consideration of Rs. 3,000 the buyer shall transfer the property to the seller and such a condition is embodied in the document itself. In support of his submission, he relied on the decisions in The Management of Chandramalai Estate, Ernakulam

Vs. Its Workmen and Another, , Natesa Pathar (died) and others Vs. Pakkirisamy Pathar and others, and in Santakumari and Others Vs. Lakshmi Amma Janaki Amma (D) By Lrs. and Others, . He also submitted that the said mortgage deed is described as sale, which means "doubtful sale".

11. On the other hand, learned Counsel for respondents submitted that the case of the plaintiffs was that the sale deed Ex.B-11 itself was a nominal one as it was purchased by the appellants' father in the name of Rathnammal, their mother. He further submitted that no debtor-creditor relationship is mentioned in the document, and the intention of the parties was not to treat the document as a mortgage by conditional sale but to treat the same as an absolute sale with a right to repurchase. He also pointed out that no evidence was adduced on the side of the appellants to show that though consideration of Rs. 3,000 was mentioned in the said sale deed, the market value of the said property would fetch more than that amount. Referring to the recitals in the document and certain evidence, learned Counsel submitted that it is only an absolute sale with a right to purchase the property and the said right was not exercised within the time stipulated and so the case of the appellants has to be rejected. He cited certain decisions in support of his submission.

12. To appreciate the said document, it is beneficial to reproduce the recitals in the document itself, which run as follows:

13. From the above said recitals it is clear that-

- (1) the consideration was Rs. 3,000;
- (2) possession was handed over to the purchaser, 4th respondent;
- (3) declared that there was no encumbrance in the property;
- (4) if any such encumbrance was in existence, she undertook to discharge the same by herself;
- (5) On payment of Rs. 3,000 within five years, the purchaser should reconvey the said property to the vendor;
- (6) If the amount was not paid within the said period, the 4th respondent can continue to enjoy the property as an absolute owner of the same;
- (7) if the amount is not paid within the time stipulated the vendor could not claim any right in the property at any point of time.

14. Now we have to decide the nature of the document on the basis of Section 58(c) of the Act, which reads as follows:

58(c) Mortgage by conditional sale: Where the mortgagor ostensibly sells the mortgaged property-

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee, a mortgagee by conditional sale;

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

15. Learned Counsel for the appellants relied on only the third clause in the said provision namely, "on condition that on such payment being made the buyer shall transfer the property to the seller", in support of his submission that the said document Ex.B-1 is a mortgage by conditional sale. He also referred to the fact that the said condition was embodied in the said clause itself.

16. Before dealing with the rival contentions of the parties, and merits of the case on the basis of the facts available, I am inclined to deal with the decided cases on the issue.

17. The Apex Court in the decision in Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, , while dealing with the suit for redemption on the ground that the document was a mortgage by conditional sale, has held as follows:

(5) The question whether a given transaction is a mortgage by conditional sale or a sale outright with a condition of repurchase is vexed one which invariably gives rise to trouble and litigation. There are numerous decisions on this point and much industry has been expended in some of the High Courts in collating and analysing them. We think that is a fruitless task; because two documents "are seldom expressed in identical terms and when it is necessary to consider the attendant circumstances the imponderable variables which that brings in its train make it impossible to compare one case with another. Each must be decided on its own facts. But certain broad principles remain.

(6) The first is that the intention of the parties is the determining factor; see: Balkishen Das v. Legge L.R. 22 IndAp 58 (P.C). But there is nothing special about that in this class of case and here, as in every other case, where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect to the words which they used. If however, it is permissible to look to the surrounding circumstances to determine what was intended.

As Lord Cranworth said in Alderson v. White (1858) 44 E.R. 924 (B). The rule of law on this subject is one dictated by commonsense that "prima facie" "an absolute conveyance, containing nothing to show that the relation of debtor

and creditor is to exist between the parties, does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase....In every such case the question is, what, upon a fair construction, is the meaning of the instruments?" Their Lordships of the Privy Council applied this rule to India in *Bhagwan Sahai v. Bhagwan Din* L.R. 17 LA. 98 (P.C.) and in *Jhanda Singh v. Wahid-ud-din* AIR 1916 P.C. 49.

(7) The converse also holds good and if, on the face of it, an instrument clearly purports to be a mortgage it cannot be turned into, a sale by reference to a host of extraneous and irrelevant constructions. Difficulty only arises in the border line cases where there is ambiguity. Unfortunately, they, form the bulk of this kind of transaction.

(8) Because of the welter of confusion caused in a multitude of conflicting decisions the legislature stepped in and amended Section 58(c) of the Transfer of Property Act. Unfortunately that brought in its train a further conflict of authority. But this much is now clear. If the sale and agreement to repurchase are embodied in separate documents then the transaction cannot be a mortgage whether the documents are contemporaneously executed or not. But the converse does not hold good, that is to say the mere fact that there is only one document does not necessarily mean that it must be a mortgage and cannot be a sale. If that condition of repurchase is embodied in the document that effects or purports to effect the sale, then it is a matter for construction which was meant. The legislature has made a clear cut classification and excluded transaction embodied in more than one document from the category of mortgages, therefore it is reasonable to suppose that persons who, after the amendment, choose not to use two documents, do not intend the transaction to be a sale, unless they displace that presumption by clear and express words and if the conditions of Section 58(c) are fulfilled, then we are of opinion that the deed should be construed as a mortgage.

18. The Apex Court in the decision in *Bhaskar Waman Joshi (deceased) and Others Vs. Shrinarayan Rambilas Agarwal (deceased) and Others*, following the decision in *Narasineriji Gyanerji v. P. Parthasarathy* 46M.L.J. 809 : AIR 1924 P.C. 226 : L.R. 51 LA. 305, has held as follows:

The circumstance that the condition is incorporated in the sale deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and the mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified. What distinguishes the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The definition of a

mortgage by conditional sale itself contemplates an ostensible sale of the property. As pointed out by the Judicial Committee of the Privy Council in *Narasineriji Gyanerji v. P. Parthasarathy* 46 M.L.J. 809 : AIR 1924 P.C. 226 : L.R. 51 IndAp 305, the circumstance that the transaction as phrased in the document is ostensibly a sale with a right of repurchase in the vendor, the appearance being laboriously maintained by the words of conveyance needlessly reiterating the description of an absolute interest or right of repurchase bearing the appearance of a right in relation to the exercise of which time was of the essence is not decisive. The question in such case is one of determination of real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. If there is unambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as by law be permitted to be adduced to show in what matter the language of the deed was related to existing facts. Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance; but evidence as to subsequent conduct of the parties is inadmissible.

19. The four Judges Bench of the Apex Court, while overruling the decision of this Court in *N. Pattay Gounder Vs. P.L. Bapuswami*, , has held in the decision in *The Management of Chandramalai Estate, Ernakulam Vs. Its Workmen and Another*, as follows:

The proviso to this clause was added by Act 20 of 1929. Prior to the amendment there was a conflict of decisions on the question whether the condition contained in a separate deed could be taken into account in ascertaining whether a mortgage was intended by the principal deed. The Legislature resolved this conflict by enacting that a transaction shall not be deemed to be a mortgage unless the condition referred to in the clause is embodied in the document which effects or purports to effect the sale. But it does not follow that if the condition is incorporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have been intended, The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the document viewed in the light of surrounding

circumstances. If the language is plain and unambiguous it must in the light of the evidence of surrounding circumstances be given its true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may be law be permitted to be adduced to show in what manner the language of the deed was related to existing facts.

20. In the decision in *Tamboli Ramanlal Motilal (dead) by L.Rs. Vs. Ghanchi Chimanlal Keshavlal (dead) by L.Rs. and another*, , the Hon"ble Judges of the Apex Court has given guidelines as to how to analyse a document so as to find out whether it is a mortgage by conditional sale, or sale with an option to repurchase, and it is held as follows:

16. Having regard to the nice distinction between a mortgage by conditional sale and a sale with an option to repurchase, one should be guided by the terms of the documents alone without much help from the case law. Of course, cases could be referred for the purposes of interpreting a particular clause to gather the intention. Then again, it is also settled law that nomenclature of the document is hardly conclusive and much importance requires to be gathered, it is from this angle we propose to analyse the document. No doubt the document is styled as a deed of conditional sale, but as we have just now observed, that is not conclusive of the matter.

21. While considering the document which has recitals similar to Ex.B-1, marked in this case, the Apex Court in the abovesaid decision has further held as follows:

17. What does the executant do under the document? He takes a sum of Rs. 5,000 in cash. The particulars are: (a) Rs. 2,400 i.e., Rs. 899 by mortgage of his house on 27.1.1944 and (b) Rs. 1,600 by a further mortgage on 31.5.1947 totalling to Rs. 2,499. Thereafter an amount of Rs. 2,501 in cash was taken from the transferee. The purpose was to repay miscellaneous debts and domestic expenses and business, it has to be carefully noted that this amount of Rs. 5,000 was not taken as a loan at all. As rightly observed by the High Court, by executing this document the executant discharges all the prior debts and outstandings. Where, therefore, for consideration of a sum of Rs. 5,000 with the conditional sale is executed, we are unable to see how the relationship of the debtor and the creditor can be forged in. In other words, by reading the documents as a whole, we are unable to conclude that there is a debt and the relationship between the parties is that of a debtor. This is a vital point to determine the nature of the transaction.

18. The property is sold conditionally for a period of five years and possession is handed over. At the same time, the document proceeds to state "therefore you and your heirs and legal representatives are hereafter entitled to use, enjoy and lease the said houses under the ownership right.

[Italics supplied]

It is this distinguishing point which has to be borne in mind because an arrangement was levelled that in Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, also there was a clause transferring possession. But in this case the enjoyment by the transferee has to be under the ownership right, that makes all the difference.

19. The further clause in the document is to the effect that the executant, shall repay the amount within a period of five years and in case if he fails to repay neither he nor his heirs or legal representative will have any right to take back the said properties here only the right of the transferor is emphasised, while the right of the transferee to foreclose the mortgage is not spoken to. That would be so, if the document were to be a mortgage by conditional sale. Only in such a case the first condition spoken u/s 58(c) will come into play. It is well settled in law that the right of redemption and foreclosure are co-extensive the absence of such a right of the mortgage could only mean that it is a conditional sale.

20. The last important clause is after the period of five years the transferee will have a right to get the municipal records mutated in his name and pay tax. Thereafter, the transferee will have an absolute right to mortgage, sell or gift the suit property. Neither executant nor any one else could dispute the title. All the above clauses are clearly consistent with the express intention of making the transaction a conditional sale with an option to repurchase. Ex.39 was pressed into service. But we do not think much assistance can be derived by the applicant. That only shows there were dealings between the parties. Further, it also contains account relating to betel leaves. That has nothing to do with the suit transaction.

22. Following the principles set out in the abovesaid decision of the Apex Court S.S.Subramni, J. as His Lordship then was, in the decision in Venkatammal and Others Vs. Kadirappa Naidu and Others, , the learned Judge, has held that the document in that case was only a sale deed and not a mortgage by conditional sale. The said conclusion was arrived at on the basis that the recitals in the document relied on there does not refer to any of the clauses either to repurchase or a deed of conditional sale. The learned Judge has held as follows:

16. Before the lower appellate Court, an argument was taken that the mortgaged by conditional sale can only be under a single document and if two documents are exercised as in this case, it can be only be treated as a sale with condition to repurchase. In the decision of the Supreme Court (cited supra), the very document contained all the these clauses and even in the nomenclature was a deed of conditional sale and a period of five years was provided to exercise the option. In spite of all these clauses contained in a single document, the Supreme Court said that we are governed only by the terms of the document, and the nomenclature is of no use. In this case. Ex.A-1 does not refer to any of the clauses either to repurchase or a deed of conditional sale. It stands independent of all documents. If that be so, even without considering any of the other decisions cited before the lower appellate Court, Ex.A-1 can be treated only a

sale deed simplicitor. The absolute title over the property was conveyed to Gopamma.

23. As held in the decision in Tamboli Ramanlal Motilal (dead) by L.Rs. Vs. Ghanchi Chimanlal Keshavlal (dead) by L.Rs. and another, , the document therein was a conditional sale as there was a clause in the document to the effect that the executant shall repay the amount with the period of five years and in case he fails to repay neither he nor his heirs or legal representatives would have any right to take back the said properties. In addition thereto, in the absence of any clause enabling the transferee therein to foreclose the mortgage, it is only characterised as a conditional sale. So, in the absence of a clause regarding the right of transferee to foreclose the mortgage, the deed could be treated only as a document with liberty to repurchase.

24. D. Raju, J., as His Lordship then was in the decision in Natesa Pathar (died) and others Vs. Pakkirisamy Pathar and others, . while dealing with similar issue has found that the declaration of law in Tamboli Ramanlal Motilal (dead) by L.Rs. Vs. Ghanchi Chimanlal Keshavlal (dead) by L.Rs. and another, , in the light of the decision in Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, does not appear to fall in line to some extent with the earlier declaration of law made by larger Benches of the Apex Court. On that basis the learned Judge rejected the contention made by the learned Counsel for the appellant, relying on the said decision Tamboli Ramanlal Motilal (dead) by L.Rs. Vs. Ghanchi Chimanlal Keshavlal (dead) by L.Rs. and another, , The learned Judge ultimately held that the document referred to in the said case was a mortgage by conditional sale, and the learned Judge has come to such conclusion only on the ground that the purchaser should not encumber property in any manner within the stipulated period and he was permitted only to use, enjoy and lease the property under the ownership right.

25. Even the learned Judge of this Court in the decision S.R. Kulathu Iyer Vs. S. Manickavasagam Pillai and Another, , while dealing with the term "Vayida Crayam" as mentioned in the ded, has held as follows:

First of all, these sale deeds came into existence in discharge of debts owed for a large sum of money being settled for smaller amounts. In other words, if the documents are mortgages, why should the have been the settlement at lower rates and liquidation of these debts by the sale of the properties? Secondly, these documents bear the hybrid name of "vayida crayam". I take it that this phrase is used in contradiction to the usual phrase "suddha crayam". The phrase "vayida. crayam" in the context appears to me nothing more than the fact that the documents are sales with a condition to repurchase within a fixed period and not sales without any such condition whatsoever. Thirdly the sale price which is given in round figures is also the price which has to be given by the vendor after a stipulated period in order to repurchase the properties. If these documents were mortgages, there would be indication by way of interest and there would also be some indication of how the amount has to be recovered. On the other hand, the

same figures for both purchase and repurchase show that this way a concession made by the vendee to the vendor who happened to be his old debtor that he was given a period during which if he happened to be fortunate and was able to make up the funds, he would be willing to sell back the property and he did not want to keep his properties and make him lose the same. Fourthly, the period fixed is 9 years and it is contended that this period, indicates more a mortgage than a sale, I am unable to subscribe to this proposition in the context in which that period was given. Ordinarily a long, period would indicate a mortgage and a shorter period would indicate a sale. But it must be remembered that these transactions came into effect in 1932 when all the ryots were in the doldrums and they had no prospect of being able to make up sufficient amounts to repurchase the properties. Therefore, obviously a longer period has been fixed by the vendee in order to enable the vendor to repurchase the property if possible after making up the funds. Fifthly, it is contended that the condition that there would be transfer of patta after a period of ten years is indicative of the fact that there was no sale but only a mortgage and in support of that a decision in Srinivasaraghavan alias Srinivasa Chakravarthi and Others Vs. Kalianna Goundan and Others, was relied on. But the fact that application for transfer of patta was intended to be given after the expiry of the period of ten years is not very material as regards the passing of interest in the property. In the decision which is referred to above, the non-transfer of patta was considered to be an important point in the context and the circumstances of that case. There the transaction which began as a deed of conditional sale dated 25th June, 1934, was preceded by an agreement of 18th June, 1934, which was for the purpose of executing an othi within a certain time and in default of payment of the amount within a certain period the transaction was to result in an out and out sale. In deciding whether the transaction between the parties constituted an absolute sale with an option for repurchase or a mortgage by conditional sale, the learned Judges had regard to the two documents read in the light of the surrounding circumstances, and they came to the conclusion that as the instrument of 25th June, 1934, was entirely in accordance with the agreement of a week, before, and it was only in such circumstances the facts that the stamp papers for that transaction were purchased by the mortgagors defendants herein, and the patta was not transferred to the name of the plaintiffs therein were construed as indicating an intention to create only a security for the debt which was held to be subsisting and not a sale under which the debt was wiped out. The facts in the present case are entirely different, and on account of the fact that the transferor has been given the right to repurchase after a period of ten years, they must have agreed amongst themselves that only after that period of grace was over the transfer of registry should be made. In other words, the consensus of circumstances in this case show that they were sales with a condition to repurchase and not mortgages with a conditional sale.

26. The learned Judge of the Bombay High Court in the decision in Nana Tukaram Jaikar Vs. Sonabai and Others, , relying on the decision of the Apex Court in

Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, . and in Bhaskar Waman Joshi (deceased) and Others Vs. Shrinarayan Rambilas Agarwal (deceased) and Others, while dealing with the scope of Section 58(c) of the Transfer for Property Act, has held as follows:

11. In the instant case, the deed does not create, expressly, or by implication, the relationship of debtor and creditor, nor is the amount paid by the transferee to the transferor made a charge on the land. There is no provision in the deed in regard to interest. Possession of the land is handed over to the transferee. Municipal taxes are made payable by th transferee. A period is stipulated viz., five years, within which the transferor may purchase the land after making payment of the amount for which it was originally transferred. The statement in the deed that if, the amount was not paid within the stipulated period the deed was to be treated as a permanent sale deed and the transferee could thereafter enjoy the land forever without the transferor and his successors claiming any ownership emphasises that the condition of re-purchase was to operate only within the stipulated period and no further. These, as I see it, are indications of sale with a condition of repurchase.

27. On the basis of the principles laid down in the abovesaid decisions, now we have to deal with the document Ex.B-1 relied on by the parties. Though the document has been described as we cannot decide the dispute only on the basis of same. But it has to be decided on the basis of the substance of the document and other evidence available. There is no recital in the document restricting the rights of the purchaser, the 4th respondent to deal with the property. The vendor has given possession to the purchaser on execution of the said document, recital, namely,

would clearly establish that the vendor had an intention to part with the title on execution of the document and so it is stated that if the reconveyance was not obtained within the time stipulated, the purchaser can continue to enjoy the property as absolute owner. Though the appellants pleaded that the value mentioned in the document does not reflect the correct value, no evidence was let in to that effect. No creditor and debtor relationship was in existence between the vendor and the vendee. No evidence is also available to the effect that in spite of the said document, the vendor was paying the tax, etc., exercising right in the property. But unfortunately, the respondents 1 and 2/defendants have come forward with the specific case that the vendor had no title to the property, and the sale deed in favour of the vendor was only nominal as it was purchased by the father in the name of the mother. In view of the above, the case of the appellants that the document Ex.B-1 has to be construed as a mortgage by conditional sale cannot be accepted and the interpretation placed by the lower appellate Court on Ex.B-1, dated 14.11.1968 cannot be said to be perverse or without any basis. The lower appellate Court is correct in holding that the document has to be construed only as an absolute one with a right to repurchase, and the said period of 5 years had already elapsed and so the

appellants cannot insist the respondents 1 and 2 to enforce the agreement against the 4th respondent.

28. The learned Counsel appearing for the appellants submitted that the suit filed by the respondents 1 and 2 in O.S. No. 42 of 1988 is barred by limitation, as the suit was not filed within 3 years from the date of the agreement, as stipulated under Article 54 of the Indian Limitation Act. According to the respondents, the suit was not barred by limitation, as the respondents were prevented from effecting the sale during the period from 10.1.1975, when the appellants obtained an order of injunction restraining the respondents 1 and 2 to purchase the property, and the 4th respondent to sell the property by filing a suit in O.S. No. 32 of 1975 on the file of the Sub Court, Salem, and on 28.12.1979 when the suit was dismissed. Moreover the 4th respondent has not filed any second appeal against the judgment and decree of the lower appellate Court and she has accepted the said judgment and decree. The appellants cannot insist the respondents 1 and 2 to enforce the agreement, as the appellants have no title to the suit property. Hence I am not inclined to deal with the arguments raised by learned Counsel for the appellants on the issue regarding limitation in filing the suit in O.S. No. 42 of 1988.

29. In the light of the discussions made above, I do not find any reason to interfere with the judgment and decree of the lower appellate Court, and they are confirmed. Consequently, these second appeals are dismissed accordingly. No costs.