
(1955) 10 AP CK 0033

In the Andhra Pradesh High Court

Case No : Second Appeal No. 716/4 of 1358F

Parasuram

APPELLANT

Vs

Pandu and Others

RESPONDENT

Date of Decision : 04-10-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Dekkhani Agriculturists Relief Act, 1879 — Section 10A, 21
Evidence Act, 1872 — Section 76, 92
Land Alienation Restraint Act — Section 6

Citation : (1955) 10 AP CK 0033

Hon'ble Judges : Srinivasachari, J; Siadat Ali Khan, J

Bench : Division Bench

Advocate : Vinayakrao Vaidya, for the Appellant; Kurthadikar, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—This second appeal arises in a suit brought for possession of 1/4 survey No. 30 situated in Pedgaon, Kalamoori Taluq. The Plaintiff alleged 1/4 of the suit land on the Eastern and Northern side was conveyed to him by Defendants 1 and 3 as managers of the joint family and the consideration for this sale was repayment of a debt payable to the Co-operative Society and for personal expenses. This sale was effected on 1st Khurdad 1345F by means of a registered sale deed.

It is stated that Defendants 2 and 10 as managers of the joint family conveyed another 1/4 of the survey No. 30 on 18th Shehrewar 1346F by means of a registered sale deed; that the Plaintiff was in possession of the portions that had been conveyed from the date of the sale and in enjoyment of the profits right through from the date of the sale.

Later on the Plaintiff obtained two decrees as against Defendants 1 and 3 and Defendants 2 and 10 for a declaration of his right of shikmidari in these portions of the land on the basis of the admission of the Defendants. The first decree was

obtained on 26th Khurdad 1345F and the second on 29th Khurdad 1346F. While he was in possession right through from the date of the sale the Defendants dispossessed him in 1353F and hence this suit brought for the recovery of possession.

Defendants 1, 2, 3 and 10 the executants of the sale deed pleaded that the transaction was a mortgage and not a sale. Both the Courts on the evidence led by the parties came to the conclusion that the transaction amounted to a mortgage and not a sale. They no doubt held, on a plea raised by the Defendants that it was not for legal necessity, that there was enough evidence to prove legal necessity and therefore was binding upon the Defendants.

2. The learned Advocate for the Appellant confined his argument to the question that the two decrees obtained by the Plaintiff and referred to above, on the basis of which the Plaintiff was declared entitled to shikmidari rights in survey No. 30 operated as res judicata. He argued that it was a compromise decree passed upon the admission of the Defendants and in any event that admission raised an estoppel as against those Defendants and that they were not competent to plead that the transaction, was a mortgage and not a sale and he elaborated His argument by saying that it was on the basis of their having declared before the Court that it was a sale transaction that the Court granted a decree for shikmidari in favour of the Plaintiff.

3. We do not think it necessary to go into the evidence of the case as to whether having regard to the conduct of the parties the document could be regarded as a mortgage and not a sale, for if our finding was on the question of law that it was open to the Defendants to plead that the transaction was a mortgage despite the fact that they admitted that it was a sale in the previous suit, it would not be necessary for us to disturb the findings of the Courts below on the point as to whether the transaction was a mortgage.

4. It has to be observed that in this case the Defendants-Respondents are agriculturists and they invoked the provisions of Section 6, Land Alienation Restraint Act, which is to the following effect:

if a suit based on a document executed by a member of an agricultural class before the commencement of this Act permanently alienating his land, is instituted in any civil Court or is pending therein at the time of the commencement of the Act and the member of the agricultural class asserts that at the time of the execution of the document it was not the intention of he parties that permanent alienation should take effect and it has not been enforced by change of de facto possession or by mutation of names in the revenue papers, the Court shall, have power, notwithstanding anything contained in Section 76, Evidence Act, 11 of 1313F or in any other law for the time being in force, to inquire into and determine the real nature of the transaction or series of transactions resulting in the execution of such document; for such enquiry and determination the Court shall admit evidence of any oral agreement or statement.

It may be stated that this legislation has been enacted in order to prevent agriculturists from losing their interests in land and the Act has been enacted on grounds of public policy. The object of Section 6 is to admit oral evidence which otherwise would be excluded by Section 92, Indian Evidence Act; therefore " notwithstanding the provisions contained in Section 92, Indian Evidence Act it would be open to an agriculturist to prove that what appears on the face of it to be a sale is really a mortgage.

While conceding that Section 6 allows the agriculturist to prove that a particular document which appears to be a sale is actually a mortgage, the learned Advocate for the Appellant argues that the Defendants in this case cannot plead the same because they had admitted in the former suit that it was a sale. The decree that was passed in that case operated as *res judicata*. Section 3 of the Hyderabad Act corresponds to Section 10A, Deccan Agriculturists' Relief Act, Act 70 of 1879 of Bombay. The words in Section 10A are to this effect:

Whenever it is alleged at any stage of any suit or proceeding to which an agriculturist is a party that any transaction in issue entered by such agriculturist 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, Indian Evidence Act, 1872, or in any other law for the time being in force; have power to enquire 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 afore said, to admit evidence of oral agreement or statement with a view to such determination and decision.

This would, therefore, indicate that notwithstanding the provisions contained in Section 92, Indian Evidence Act the Court can enter into an investigation as regards the nature of the transaction. Do the consent decrees passed in favour of the Plaintiff on 26th Khurdad 1345F and 29th Khurdad 1346F. operate as *res judicata* or do they raise any estoppel against the Defendants?

5. Section 11, CPC which deals with *res judicata*, envisages a matter having been heard and finally decided by a Court and therefore that section cannot be said to apply to a consent decree. No doubt it may raise an estoppel between the parties. The words "notwithstanding anything contained in Section 92, Indian Evidence Act, or in any other law for the time being in force", in our opinion, override the provisions of Section 11 of the CPC also. The fact that the agriculturist agreed to a decree being passed on admission would not deprive him of a right which has been conferred on him by a Statute.

It is clear that a rule of evidence cannot be allowed to override a statutory provision of law. In our opinion to deprive the agriculturist of the right given to him under this Statute on account of a previous agreement would clearly be against the public policy embodied in the Hyderabad Land Alienation Restraint Act. In a case decided by the Bombay High Court it was held that no Court can

neglect or omit the performance of the imperative duty cast on it under an Act on the ground that the party for whose benefit it was created waived it.

Section 21, Deccan Agriculturists Relief Act stated that no agriculturist shall be arrested or imprisoned in execution of the decree for money whether before or after this Act came into force and although the decree was passed against the

Agriculturist it was open to him to plead exemption from arrest, invoking the provisions of Section 21 or the aforesaid Act, although under the CPC he was liable to be arrested in execution of the decree.

That showed that notwithstanding the provisions in the CPC for the arrest of a judgment-debtor in execution of a decree, the special law relating to the protection of agriculturists declaring them immune from arrest prevailed. Vide *Patlu v. Naru* 7 Bom LR 688 (A).

6. We may also point out that in order to raise an estoppel it is necessary that it should appear on record that the question was put in issue. In this connection we may refer to *Goucher v. Clayton* (1865) 13 WR 336 (B) where the learned Vice-Chancellor, Wood, held that a judgment given by consent when there are no pleadings in the action, does not operate as *res judicata*. There is a distinction between a case where the Defendant consented to a judgment after pleading as defence the matter which he seeks to set up in the later pleading and a case where he consents to a judgment before setting up of any pleading. The Defendant in the latter case is not estopped as against the Plaintiff from subsequently setting up matters which might have constituted the defence because there has never been an issue.

For these reasons we are of opinion that there is no estoppel as against Defendants in so far as they raised the defense allowed to them u/s 6, Land Alienation Restraint Act. The provision contained in Section 6 in our opinion is mandatory and cannot be whittled away. The policy of the Act being to create an exception to the general rule in Section 92, Evidence Act, any decree passed on admission of the Defendant who is an agriculturist cannot come in the way of his raising a plea in any subsequent proceeding. For these reasons we are of opinion that this appeal should fail and is therefore dismissed with costs.