

(1999) 09 KAR CK 0034

In the Karnataka High Court

Case No : Civil Revision Petition No. 2550 of 1997

Smt. A.S. Savithramma

APPELLANT

Vs

State Bank of Mysore, Agricultural Development Branch,
Hassan and Another

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11, Order 20 Rule 12 (a), Order 34 Rule 2B, 70

Citation : (2000) 1 CivCC 637 : (2000) 1 KarLJ 544

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

Bench : Single Bench

Advocate : Sri H.C. Shivakumar, for the Appellant; Sri P.R. Ramesh, for the Respondent

Judgement

1. The 1st defendant judgment-debtor in the final decree proceedings No. 15 of 1995 in the Court of Civil Judge, Hassan challenges in this Civil Revision Petition, an order passed by the executing Court passing a final decree in a suit for mortgage contending that the first defendant/petitioner herein should have been given time to pay the decree amount in annual instalments which was declined by the Court below. Hence, the present C.R.P. by the first defendant.

2. Heard the Counsel.

3. A preliminary decree was passed on 5-10-1994 and the defendants were directed to make payment on or before 5th April, 1995, which was not complied with. Having been failed to utilise the period of granted time to him by the executing Court, the defendant is not entitled to have annual instalments to pay the decreed amount. Order 20, Rule 11 is not applicable to a mortgage decree, the only provisions available under which time can be granted is Order 34, Rule 2 of the CPC. Order 2(c) clearly says that the amount due must be paid by the defendant on or before the time specified by the Court and (c)(ii) prescribes the consequences of failure. Such time can be extended under Order 34, Rule 2, but

beyond extending certain limited period and it cannot be made into a decree for instalments under Order 20, Rule 11, Order 34, Rule 2(b), (c)(i) and (c)(ii) reads as follows.--

(b) Declaring the amount so due at that date; and

(c) Directing--

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in Rule 10, together with subsequent interest on such sums respectively as provided in Rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all rights to redeem the property".

4. The various provisions under Order 20 speaks about as to how the decree has to be passed as to specify the payment. Order 20, Rule 11(i) contemplates that the decree itself should mention about the instalments to the payee. It is significant to note that the orders incorporated before amendment has been substituted by the amendment Act by Section 70 of the Act 104 of 1976. If the word "at the time of passing the decree, Order 20 Rule 12(ii) contemplates to order to pay instalments after the decree, Order 20, Rule 12(a) is inserted into the amended Act directing the Courts mention the time and mode of payment of decreed amount. Thus, it is seen that there a specific provisions made for payment of money either in instalments or within the time prescribed by the Court.

5. There is no provision made under Order 34 to pay the decree amount in instalments. In this view, I find no merits in this Civil Revision Petition, the C.R.P. is therefore dismissed. No costs.