

(1982) 03 BOM CK 0062
In the Bombay High Court
Case No : Second Appeal No. 305 of 1974

Sudam Bhau Kamble and Others	Vs	APPELLANT
Devade Shripati More		RESPONDENT

Date of Decision : 23-03-1982

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 40

Citation : (1984) 1 BomCR 242

Hon'ble Judges : D.M. Rege, J

Bench : Single Bench

Advocate : K.J. Abhyankar and N. D. Hombalkar, for the Appellant; H.D. Gole, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Rege, J.—This second appeal is by the original defendants against the judgment and order of the Extra Assistant Judge, Satara, dated 4th January, 1974, allowing the plaintiff's appeal being Appeal No. 339 of 1971 against the judgment and order of the Civil Judge (Junior Division), Vaduj, dated 5th September, 1971 and decreeing the plaintiff's suit. The learned Civil Judge (Junior Division), Vaduj, by his said judgment and order had dismissed the plaintiff's suit being Regular Civil Suit No. 41 of 1969.

2. Plaintiff's suit was for a declaration that he was the owner of a land bearing Survey No. 255 in Mouje Katarkhatav, Taluka Khatav, District Satara, under a sale deed dated 30th July, 1965 from the defendants for Rs. 5,000/- and for a permanent injunction restraining the defendants from causing obstruction to the possession of the plaintiff in the suit property. The plaintiff's case was that the defendants were the original owners of the suit land and by a sale-deed dated 30-7-1965 they had sold the said land to the plaintiff for Rs. 5,000/-. The sale-deed was initially executed by defendants Nos. 1, 2 and 3 and subsequently defendant No. 4 had confirmed it by a confirming document dated 16th September, 1965. As stated in the sale deed after the execution of the sale deed

the plaintiff was actually put in possession of the suit land. As according to the plaintiff on 9th April, 1969, the defendant obstructed the plaintiff's possession, the plaintiff filed the said suit for the above reliefs.

3. The trial Court held, inter alia that the plaintiff had failed to prove possession of the suit land and that by reason of the provision of section 40 of the Bombay Agricultural Debtors Relief Act, the sale was invalid. He accordingly dismissed the plaintiff's suit.

4. Against the said judgment and order in appeal, the Extra Assistant Judge was required to consider mainly the findings of the trial Court as to the plaintiff's title to the suit land, the fact of his possession as well as the sale being invalid or void by reason of section 40 of the Bombay Agricultural Debtors Relief Act. The learned Extra Assistant Judge, Satara held in favour of the plaintiff on the question of plaintiff's title to the plaintiff on the question of (sic) suit land and his possession thereof. He also held negating the finding of the lower Court that the sale deed Ex. 94 was not invalid or void by reason of section 40 of the Bombay Agricultural Debtors Relief Act. He accordingly decreed the plaintiff's suit.

5. As regards the question of possession, since, it is a finding of fact by the Appellate Court, the same could not be agitated in the Second Appeal. The only contention on the point of law that has been urged by the learned Counsel for the appellants-defendants in this Second Appeal was as to the correctness of the finding of the Appellate Court that the sale deed Ex. 94 was not void u/s 40 of the Bombay Agricultural Debtors Relief Act.

6. Section 40 of the Bombay Agricultural Debtors Relief Act (hereinafter called the said Act) so far as is relevant in this case provided as under :

"...no alienation of any property belonging to a debtor who is a party to any proceeding (under this Act or any award registered under this Act) made by him before all his debts are discharged shall be valid, except with the previous sanction of the Court."

The said section has been made subject to sections 41 and 53 of the Act with which we are not concerned in this case. Broadly speaking under the said section to make an alienation of the property belonging to the debtor under the Act void or invalid it was necessary that (1) a debtor who is party to the alienation must be a party to any proceedings under the Act or award registered under the Act and (2) that alienation must be made before all his debts are discharged.

7. The said view of section 40 is made quite clear in a decision of this Court in the case of Himatsing Dhansing Rajput v. Sonu Devsing Rajput, reported in 56 Bom.L.R. 69. There, inter alia it was pointed out that once an application is made against a debtor for adjustment of his debts, Legislature desired that all his property should remain intact, available for the purpose of discharging his debts. It however pointed out that there is in a sense an absolute prohibition against

transfers until the debts of the creditors are fully discharged. It also pointed out that ... the provisions of section 40 apply to all alienations made subsequent to the commencement of the proceedings under the Act until the debts due by the debtor are discharged. It further points out that the prohibition enacted by section 40 comes into operation as soon as an application is made u/s 4 and its operation continues until the debts due by the debtor are discharged.

8. The only question to be considered in this case was, therefore, whether the debts of the defendants were discharged before the alienation was made as contended by the plaintiff or whether the debts had remained to be discharged at the time of alienation.

9. To understand this contention few facts may be mentioned :---It is not disputed as is evident from Ex. 83, that on 16th July, 1953, in a proceedings taken by one Kondiba Kale against the present defendants, an award was made against the defendant in respect of certain debts. The said Kale had thereafter taken out execution proceedings under Darkhast No. 94 of 1967 for attachment of certain properties of the defendants including the suit property. In respect of the said Darkhast on 8th July, 1957, notices u/s (sic) Order 21, Rule 22 were issued. However, thereafter no orders appear to have been passed on the Darkhast. On 22nd July, 1969 orders disposing of the said darkhast were passed in view of the pursis filed by the creditor Kondiba Kale, being Exhibit 16 in the said Darkhast proceedings and Ex. 82 in these proceedings. Although in the said pursis dated 22nd July, 1968 Kale had stated that debts in respect of the said award have been paid, the said pursis did not mention any dates of payment.

10. On 6th March, 1968, any application for mutation of entries in the revenue records in respect of the said land in the name of the defendant by deleting the name of Kale as creditor was made by the defendants. On 13th June, 1968, the said mutation entry was certified. The said mutation entry in terms mentioned that the debt was paid off on 1-1-1965.

11. It was contended by the learned Counsel for the appellants that although the sale was effected on 30-7-1965 the fact that it was only in 1968 that the execution application by the plaintiff came to be disposed of and the mutation entry came to be certified and, that the mutation entry was in respect of only one of the lands though two other lands were also sought to be attached, created suspicion as to the debts being discharged. He further pointed out that the evidence of the creditor Kale who was also examined did not say specifically as to when exactly the debt was discharged although saying that it was discharged 5 or 6 years prior to his giving evidence in 1971. It is true that had these circumstances stood by themselves they would have created some suspicion as to the plaintiff's case about the debts being discharged on 1-1-1965 i.e. prior to the deed of sale which was on 30-7-1965. However, in this particular case in the sale deed executed by the defendants there appears to be an admission on the part of the defendant themselves that at the time of the execution of the sale deed the debts were discharged. As the learned Judge has pointed out that the

sale deed executed by the defendants specifically stated that feydr fcuk dthZ vkgs i.e. the property was free of any debts. Further the said admission finds corroboration in the 7/12 Extract of Record of Rights Ex. 4. On their said admission the defendants cannot now contend that at the date of sale deed the debts were not discharged. The learned Assistant Judge was therefore, right in coming to the conclusion that the plaintiff had proved that the defendants' debt was discharged at the date of the sale deed and therefore, the sale was not invalid by reason of the provision of section 40 of the said Act. The said contention of the learned Counsel for the defendants cannot be accepted. The result, therefore, is that appeal fails and is dismissed with costs.