
(1981) 08 KAR CK 0032

In the Karnataka High Court

Case No : Civil Revision Petition No. 3377 of 1980

Syndicate Bank

APPELLANT

Vs

Sowdagar Moinuddin and Sons and Others

RESPONDENT

Date of Decision : 12-08-1981

Acts Referred:

Citation : AIR 1982 Kar 351 : (1981) 2 KarLJ 416

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : R.C. Castelino, for the Appellant; Murlidhar Rao, for the Respondent

Judgement

1. This revision petition is disposed of at the stage of admission after, notice to respondents.

The respondents had obtained financial facilities from the petitioner-Bank by creating a mortgage of certain immovable properties by deposit of title deeds in favour of the bank. In that behalf the respondents executed an agreement dated 11th Feb., 1976 which dealt with the nature of the loan and the mode of repayment. They also gave in writing to the bank a memorandum informing the bank of the fact of their having deposited the title deeds at an earlier date, That memorandum is dated 11-2-1976. The suit filed by the petitioner is for foreclosure of the mortgage and prayer is for realisation of the loan amount outstanding, by the sale of the immovable properties. Several issues have been raised in the said suit. The first issue with which we are now concerned in this revision petition is as follows:

"(1) Whether the articles of the agreement and form 11-B are admissible in evidence?" The Court below has held trying the first issue as preliminary issue that the said documents viz., the articles of agreement for repayment of loan and Form 11-B relied on by the plaintiff, are not admissible in evidence for want of payment of sufficient stamp duty as well as for lack of registration. In other words, the court below has come to the conclusion that the said two documents

are themselves documents which create the equitable mortgage.

2. Shri R. C. Castelino, learned counsel appearing for the plaintiff-revision-petitioner has contended that the court was clearly mistaken in its legal view of the matter inasmuch as neither of the documents pertains to issue No. 1 nor do they evidence creating an equitable mortgage in favour of the bank. Lower court records have been perused and it is seen in the articles of agreement there is not a whisper about the mortgage. It refers to a loan advanced to the signatories thereto and the mode of its repayment and the utilisation of the loan. Similarly, the memorandum has also been rejected as not admissible. Aft that is stated in the memorandum is that on an earlier date a mortgage had been created by deposit of title deeds with the bank. That cannot be said to be a deed of mortgage or a document which creates mortgage. A Full Bench of this Court had occasion to consider a similar question in the case of *Murugharajendra Company v. Chief Controlling Revenue Authority* 1974 1 Kant LJ 177 : AIR 1974 Kant 60, wherein, Venkataramaiah, J., as he then was, speaking, for the Full Bench held as follows-

"A document referring to what had been done earlier, by the constructive delivery of title deeds with no intention to create an equitable mortgage is not an instrument evidencing, deposit of title deeds and is not liable for stamp duty under Art. 6 of the Schedule to the Karnataka Stamp Act."

This ruling of the Full Bench is clearly applicable to the facts of the case on hand.

3. For the reasons I have already given, the two documents now held to be inadmissible in evidence do not in themselves evidence the mortgage, particularly the latter one. I have already stated that the agreement for repayment of the loan and utilisation of the loan do not even mention the equitable mortgage. The second document merely recites the fact of having deposited the title deeds at an earlier date. Therefore, that document is not required to be stamped nor registered. The Court below has clearly acted illegally without understanding the law on the subject and the decision of this Court referred to by me above.

4. The counsel for respondents-defendants is absent. Therefore, this order is made in the absence of respondent and their counsel.

5. In the result, this revision petition is allowed. The finding of the trial Court is set aside in so far it relates to issue No. i. The Court below is directed to admit the documents in question in evidence.

6. There will be no order as to costs.

7. Revision allowed.