

(1982) 08 BOM CK 0013

In the Bombay High Court

Case No : Spl. Civil Application No. 1392 of 1977

Tukaram Ramchandra Mirgal

APPELLANT

Vs

Shankar alias Sakharam Kirshnaji Dabholkar and Others

RESPONDENT

Date of Decision : 04-08-1982

Acts Referred:

Maharashtra Debt Relief Act, 1975 — Section 2

Citation : AIR 1983 Bom 116 : (1982) MhLj 854

Hon'ble Judges : Kania, J;Chandurkar, J

Bench : Division Bench

Advocate : R.T. Walwalkar, for L.G. Khare, for the Appellant; S.V. Joglekar and N. Yande, Asstt. Govt. Pleader, for the Respondent

Judgement

Kania, J.—This is a petition under Art. 226 of the Constitution praying in the main for quashing and setting aside an order passed by the Tahaildar, Chiplun, dated 15th April, 1977 on an application by respondent 1 to 3 under the provision of the Maharashtra Debt Relief Act. 1975.

2. Respondent 1 to 3 and their brothers formed a joint Hindu family and the said joint family owned land bearing Khata No. 453 admeasuring 5 acre 26 gunthas at village Kherdi in Chiplun taluka of Rantagiri district On 7th Dec., 1967 the petitioner purchased from respondent 1 to 3 as representing the said join family a house bearing house No. 1603, viz., "Krishna Bhuvan". of village Panchayat, Kherdi, along with certain surrounding land admeasuring 13 gunthas for a sum of Rs. 5,500/-. On the same by another documents was entered into whereby the petitioner agree to return the property sold under the aforesaid sale deed on the payment of the whole amount by respondent 1 to 3 provided the repayment was made within whole amount to respondent 1 to 3 provided the repayment was made within the next ten years. On the coming into the force the Maharashtra Debt. Relief Act, respondent 1 to 3 made an application that they be declared as marginal farmers as defined in the said Act and that the transaction which took place on 7th Dec., 1967 was only a mortgage and not the sale and that they

should be granted relief under the said Act and the house, viz. "Krishna Bhuvan", returned to them free from all encumbrances. The Tahsildar by his impugned judgment held that on the appointed day under the said Act, there was a debt and that respondent 1 to 3 were "debtors" as defined under the said Act, was he passed an order for the return of the whole property mentioned in the sale deed dated 7th Dec. 1967 to respondent 1 to 3 free from all debts and encumbrances on the footing that the transaction which took place on 7th Dec. 1967 was a mortgage and not a sale. It is this decision of the Tahsildar which is sought to be impugned in the present application.

3. We may point out that, under S. 2, Maharashtra Debt Relief Act, 22nd August, 1975 was the appointed day and S. 4 provided for the liquidation of certain debts outstanding on that date. The submission of Mr. Walwalkar, the learned counsel for the petitioner, is that, in the present case, there was no relationship of debtor and creditor on the appointed day between the petitioner and respondent 1 to 3 at all, as the transaction which took place between them was one of sale with a separate agreement to repurchase. In view of this, the provisions of the aforesaid Act documents not come into play at the respect of this transaction. It seem that there is substance in the contention of Mr. Walwalkar. In *K. Simrathmull Vs. S. Nanjalingiah Gowder*, , the facts were that the plaintiff borrowed a certain amount from the defendants and in lieu thereof executed a decree of conveyance of certain land with a house thereon in favour of the defendants. On the same day another deed of reconveyance was executed by the defendants. By this deed the defendants agreed to reconvey the house but the exercise of the right of demanding reconveyance by the plaintiff was subject to two conditions. The plaintiff broke one of the conditions and the plaintiff refused to reconvey. It was held by the Supreme Court that the sale deed, the deed of conveyance and the rent note executed by the plaintiff were part of the same transaction. It was, however, held that the plea of the plaintiff that the sale deed constituted a transaction of mortgage by conditional sale was inadmissible, because the sale deed and the covenant for reconveyance were contained in separate documents, In *Abdul Latif Vs. Abdul Gani Serang*, , it has been held by the Calcutta High Court that a mortgage by conditional sale is a transaction essentially different from a sale with a condition of repurchases. In a sale with a conditions of repurchase the ownership vests in the transferee from the date of the documents and there is no question of any debt being in existence after the transaction. In a case of mortgage y conditional sale, the debt subsists and right to redeem remains with debtor,. In our view, it is clear that the transaction in the petitioner before us was one of a sale with a condition of repurchase with the result that there was no relationship of debtor and creditor arising out of that transaction and the provisions of the Maharashtra Debt Relief Act did not come into play at all.

4. The only submission of Mr. Joglekar, the learned counsel for respondent 1 to 3, was that it appear from the judgment of the Tahsildar that respondent 1 to 3 at some stage promised to pay the petitioner the entire amount of what they

regarded as their debt" and requested the petitioner to return the property pledged with him.. the petitioner by his reply demanded a larger amount for the return of the property. This according to Mr. Joglekar shows that it was admitted that there was a debt. Even if this is so, this, in our view, cannot alter the legal position. Nor is it possible to act on admission which is not specifically before us. There is merely a reference to the larger demand of Rs. 7,650/- by the petitioner in the order of the Tahsildar and it is not possible to act upon that. In view of the aforesaid, the order of the Tahsildar is clearly bad in law and liable to be struck down.

5. In the result, the petition is allowed, the rule made absolute and the impugned order of the Tahsildar set aside.

6. Looking to all the facts and circumstance of the case; there will be no order as to costs.

7. Petition allowed.