

(1963) 04 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 50 of 1963

Velu

APPELLANT

Vs

Korathu and Another

RESPONDENT

Date of Decision : 03-04-1963

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 11, 9(3), 91, 92

Citation : (1963) KLJ 418

Hon'ble Judges : M.S. Menon, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : P.K. Kurien and K. Sukutnaran, for the Appellant; T.N. Subramonia Iyer and S. Vaidyanatha Iyer for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—This appeal is against the order of Vaidialingam J. allowing O.P. No. 1535 of 1962 under Article 227 of the Constitution. The facts relevant are as follow :

The appellant had on 10 - 3 - 1118 executed an agreement for sale of immovable property, evidenced by Ext. D1, to the respondent, and received an advance of Rs. 200/- out of the price, agreeing to execute the conveyance on or before 10 - 9 - 1118 when the balance price, Rs. 1,000/- was to be paid. The appellant did not carry out his contract. The respondent enforced specific performance of the contract in O.S. No. 925 of 1118 in the court of the Munsif, Quilon. Though the decree was affirmed by the High Court, the appellant did not care to obey it, and ultimately the Court had to execute the conveyance on behalf of the appellant. The sale deed thus executed by the Court on 24 - 2 - 1125 is Ext. P. 13. The respondent has been put in possession of some of the properties involved; but some remain to be delivered to him under the decree. The Kerala Agriculturists Debt Relief Act, 1958, by its Section 9(3) allowed agriculturists to plead and prove that a transaction purporting to be a sale of

immovable property was really one of debt between the parties, namely, the apparent vendor and vendee, untrammelled Sections 91 and 92 of the Evidence Act. On 24 - 3 - 1959 the appellant moved C.M.P. No. 3905 of 1959, to have the aforesaid sale declared a transaction of debt liable to be discharged under the Act so that he may get back the property on return of the price received; and on 30 - 3 - 1959 moved C.M.P. No. 3967 of 1959 for redelivery of the property already delivered and for stay of delivery of the properties remaining to be delivered under the decree. Those applications, after several vicissitudes, came to be dismissed by the Munsif, but were allowed on appeal by the Subordinate Judge. The respondent filed C.R.P. No. 1234 of 1960 challenging the latter order, and subsequently converted it, with permission of Raghavan J. into O.P. 1535 of 1962 under Article 227 of the Constitution. Vaidialingam J. allowed the O.P., reversed the Subordinate Judge and restored the order of the Munsif dismissing the applications of the appellant. Hence this appeal.

2. Section 9(3) of the Kerala Agriculturists Debt Relief Act, 1958, allows an agriculturist to plead and prove that a transaction executed by him as a sale of immovable property was really one of debt between himself and his vendee and, if that be established, to discharge that debt and redeem the property as if the transaction was really a mortgage. It runs thus:

Notwithstanding anything in the Indian Evidence Act, 1872, in the case of any transaction entered-into on or after 1st January 1946 and purporting to be a sale of immovable property or a lease of usufructs, any agriculturist who is a party to the transaction may plead, adduce evidence and prove that the transaction is really a debt and thereupon the amount advanced shall be deemed to be the principal of the debt and the income from the property or the value of the usufructs, as the case may be, shall be appropriated towards interest calculated at the rate specified in section 5 on the principal and the balance, if any, towards the principal. The amount, if any, outstanding after such appropriation together with the value of improvements, if any, effected by the creditor shall be paid in accordance with the provisions of sub-sections (2), (3) and (5) of section 11, as if the transaction were a usufructuary mortgage and the rights of the creditor and the debtor shall be governed, as far as may be, by the provisions of the said sub-sections :

Provided that this sub-section shall not affect the rights of bona fide alienees of the creditor deriving rights before 20th November 1957.

The onus is on the vendor to prove, by convincing evidence, that the transaction was not in reality one of assignment of property but of debt repayable by him to the other party, namely, the vendee. The appellant's averment that the advance of Rs. 200/- received under the agreement for sale was utilized by him to discharge a debt of his to a third party does not show that the transaction between himself and the vendee was one of debt. Section 9 (3) does not affect a sale whose consideration was intended to discharge the indebtedness of the vendor. What it affects is a transaction which is itself one of debt between the

parties, though it is apparently in the form of a sale of property. The test in such cases is whether the price mentioned in the deed of sale was understood between the parties to be a debt repayable. A debt always connotes a liability to its repayment. A sale of immovable property to be found in reality a transaction of debt, the amount paid under the sale, namely, the price, must necessarily be repayable. If that be established the property assigned under the sale can easily be found to be a mere security for such repayment. There is no case here that the advance received by the appellant was understood to be repayable by him to the respondent. The applications u/s 9 (3) of the Act in the circumstances narrated above were misconceived, and on that ground alone the decision of the learned single Judge accepting their dismissal has to be found right. The appeal has no force and is dismissed.