(1998) 03 KAR CK 0066

In the Karnataka High Court

Case No : Regular Second Appeal No. 565 of 1994

Vijaya Bank, Farahatabad, District Gulbarga APPELLANT

Vs

Revanashiddappa RESPONDENT

Date of Decision : 11-03-1998

Acts Referred:

Citation : (1999) 2 CivCC 108 : (1999) 1 KarLJ 537

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

Bench : Single Bench

Advocate : Sri K.S. Hanumantha Rao, for the Appellant; Sri Rajeev, for Sri G.S. Visweswara, for the Respondent

Judgement

1. The defendant is the appellant. The suit for declaration that the seizure of the tractor is illegal and unauthorised and for a mandatory injunction against the defendant to release the tractor, was decreed by the Courts below and the defendant-Bank is before this Court. I wonder as to how the suit is maintainable. Under the Law of Hypothecation, if a property is hypothecated, it is open to the person who lends to proceed against the property hypothecated and there cannot be any injunction restraining exercise of a right flowing out of a contract especially on hypothecation.

2. The learned Counsel for the appellant relies upon interim order passed by this Court. But that interim order was passed on humanitarian ground and equitable consideration that the tractor and trolley are absolutely essential for carrying on agricultural operations and only on that consideration a direction was given to release the tractor on some conditions. That does not mean that the Bank has no right to seize. An agreement of hypothecation is normally entered into between the Bank and customer. If the power is given to the Bank to seize, that power cannot be taken away. In this case, the agreement shows that the Bank has got power to seize the hypothecated goods, if the amount is not paid. In fact, the very clause says that as and when there are arrears, it is open to the Bank to come and demand the key of the tractor and the trolley so that they can take

both into their custody as security for the due repayment of money. Therefore, the right cannot be restrained nor be nullified by declaratory decree granted by the Civil Court. The suit itself is not maintainable and injunction cannot be granted.

3. Holding therefore the suit is not maintainable and holding that the judgment and decrees of the Courts below are against law and on the face of it, the second appeal is allowed and the suit is dismissed. It need not be said that the terms of the hypothecation agreement shall be enforced by the Bank in accordance with law.