NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 3960 OF 2011

GANPATI BABJI ALAMWAR (D)
BY LRs. RAMLU AND OTHERS ...APPELLANT(S)

VERSUS

DIGAMBARRAO VENKATRAO BHADKE
AND OTHERS ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The appellants, who were the original defendants are aggrieved by the dismissal of their second appeal, affirming the judgment of the First Appellate Court, which reversed the dismissal of the suit for redemption of mortgage filed by the plaintiffs.

2. The parties shall be referred to by their original position in the suit for convenience. The plaintiffs purchased daily necessities from the shop of defendant no.1 on credit. A sum of Rs.10,500/- became outstanding after verification of accounts.

On 26.04.1970, the plaintiffs executed an instalment bond, Exhibit 53, to pay the dues in three yearly instalments on the occasion of *Gudi Padwa* in 1971, 1972 and 1973. The plaintiffs defaulted in payment of the first instalment itself. On 29.04.1971, Exhibit 52, the plaintiffs executed a conditional sale deed for sale of their agricultural lands measuring 2½ acres in favour of defendant no.1 for a sum of Rs.11,000/-. The earlier dues of Rs.10,500/- formed part of the consideration. The plaintiffs admitted having received a sum of Rs.500/- earlier. The agreement provided that the plaintiffs upon repayment of the dues by *Gudi Padwa* of 1973 shall be entitled to reconveyance of the lands. In the event of their failure to do so, the sale would become absolute. The plaintiffs having failed to repay the dues, defendant no.1 obtained mutation of the lands in his name on 13.05.1976 and sold the lands to defendant no.2 by a registered sale deed dated 13.02.1978. The plaintiffs thereafter filed the suit for redemption in the year 1980.

3. The Civil Judge held that the nature of the document coupled with the recitals therein and conduct of the plaintiff, left

him in no doubt that the document was a sale deed. The First Appellate Court and the High Court on an interpretation of the document held it to be a mortgage by conditional sale, opining that their existed the relationship of a debtor and a creditor, and not that of a transferor or transferee. Thus, the present appeal.

4. Learned counsel for the appellants submitted that even if Exhibit 52 is interpreted as a mortgage by conditional sale, nonetheless the intention of the parties, the attendant circumstances, including the conduct of the plaintiffs in failing to repay and redeem the property in accordance with the instalment bond within the stipulated time, the failure to object to the mutation proceedings despite notice or to challenge the final order of mutation dated 13.05.1976 in favour of defendant no.1, are all relevant factors to be considered for denial of relief to the plaintiffs. The execution of the instalment bond had been concealed in the suit. The institution of the suit for redemption seven years later after expiry of time for repayment under the agreement, coupled with possession already having been delivered to defendant no.1 on the date of the agreement,

redemption of the mortgage ought not to have been allowed in the facts and circumstances of the case. The plaintiffs did not have a case for an undervalued sale also. Defendant no.2 was a bonafide purchaser. Considering the nature of the contractual agreement, the intention of the parties has to be deciphered from their conduct, including after the agreement. Reliance in support of the submissions was placed on ***The Godhra Electricity Co. Ltd. and another vs. The State of Gujarat and another***, (1975) 1 SCC 199, ***Vanchalabai Raghunath Ithape (Dead) by Lr. vs. Shankarrao Baburao Bhilare (Dead) by Lrs. and others***, (2013) 7 SCC 173, ***Bibi Fatima and others vs. M. Ahmad Hussain and others***, (2017) 11 SCC 832 and ***Vithal Tukaram Kadam and another vs. Vamanrao Sawalaram Bhosale and others***, (2018) 11 SCC 172.

5. Learned counsel for the respondents submitted that Exhibit 52 was not a sale deed, but a conditional sale deed. The existence of a debtor and creditor relationship is clearly established from the recitals in the agreement itself. The right of

reconveyance was incorporated in the same agreement in accordance with Section 58(c) of the Transfer of Property Act, 1882 (hereinafter called as "the Act"). The fact that the dues may not have been paid within the period stipulated in the instalment bond or under the agreement cannot deprive the right of the respondents to bring a suit for redemption within a period of 30 years from the date of agreement in accordance with Article 61(a) of the Limitation Act, 1963. The appellants were conscious of the fact, and therefore did not move for mutation for three long years after expiry of the period for repayment. The appellants did not file any suit under Section 67 of the Act for foreclosure.

6. We have considered the respective submissions on behalf of the parties. The appeal raises a singular question of law as to whether the agreement dated 29.04.1971, Exhibit 52, was a mortgage by conditional sale or it was a sale with an option to repurchase.

7. The plaintiffs owed Rs.10,500/- to defendant no.1 for credit purchases of daily necessities from the shop of the latter. The instalment bond was executed by the plaintiffs on 26.04.1970, to repay the amount in three instalments falling due on the *Gudi*

Padwa day in 1971, 1972 and 1973. On failure to pay the first instalment in 1971, the agreement in question, Exhibit 52, came to be executed on 29.04.1971. Defendant no.1 got the mutation done in his name after notice to the plaintiffs on 13.05.1976, i.e. three years after the last date for payment of instalments on *Gudi Padwa* in 1973. Defendant no.1 then resold the land to defendant no.2 on 13.02.1978. The suit for redemption of mortgage was filed in 1980.

8. We deem it necessary to incorporate the agreement dated 29.04.1971 for better appreciation of the controversy falling for adjudication by us.

"Exh.52
Stamp
Sub- Registrar, Degloor.
Conditional Sale Deed

The Conditional Sale deed of land out of Taulka Degloor, Dist; Nanded, Muncipal Council, Degloor, agricultural land bearing Survey No. 156/A) Admeasuring 99 Arrs, assessment Rs. 5-14 paise. Consideration Rs. 11.000/-.
date: 29.04.1971
Purchasers: Dukan "Sadasaukh Jankidash" Degloor
owners:-
1- Gangadas s/o Satnarayanlal Daga
2- Haridas s/o Satnarayanlal Daga
3- Sridas s/o Satnarayanlal Daga

4- Jagmohandas s/o Satnarayanlal Daga
Age: 17 years Minor through Guardian
Mother Chanddevi w/o Satnarayanlal Daga
5- Shelabai w/o Ajay Kumar
6- Sundrabai d/o Satnarayanlal
7- Chanddevi w/o Satnarayanlal
8- Laxmibai w/o Kedarnath
All R/o Hyderabad Andhra Pradesh (A.P.)
Through General Power of Attorney
Ramnivas s/o Bankatlal Jhawar
Age: 55 Years,
Occ. Agriculture & Private Service,
R/o Degloor, Tq: Degloor.

Transferors: 1) Venkat Nagorao Bhadke
2) Keshavrao
3) Digamberrao
4) Dattatryarao
5) Suryakant Father of all Venkatrao Bhadke
Age: 71, 36, 33, 31, 29 respectively.
Occupation of all: Agri.
Residents of Degloor.

For the reasons the conditional sale deed is executed, that in District Nanded, Taluka Degloor, at Degloor proper we own & possess agricultural land survey no. 156/1 admeasuring 99 Arrs, assessment Rs. 5.14 paise, having four boundaries towards East: Agri Land of Nagnath Devji Motewar, West: Road, North: Agri Land of Tukaram Nagorao, South : Agri. Land of Ramrao Nagorao, this agricultural land today on 29.04.1971 is given to you till the Gudi Padwa of the year 1973 by this deed for consideration of Rs. 11,000/- (In words Eleven Thousand Only) by this conditional sale and the possession of said agricultural land is handed over to you.

That we will pay the above consideration on expiry of the above term and then will seek the possession of our agricultural land. If we fail to make the payment after the expiry of said period then you can consider this as permanent sale deed and can cultivate the property for perpetuity. If anyone objects your cultivation then we will

make redressal of the same. If any private or government encumbrance is found on the land then we will be solely responsible for the same. That in all there are total dues of Rs. 10,500/- (Ten thousand five hundred only) to be paid by us to you. That we have examined & confirmed the accounts & have executed instalment bond on 26.04.1970. That amount & Rs.500/- which we have received earlier in cash from you. Accordingly there is no objection or grievance for receiving Rs.11,000/- (in words Rs. Eleven thousand only) & giving possession. The purchasers are agriculturists. Even after purchase of this land their land holding will not be excess than the ceiling limits as per the provisions of Maharashtra Agricultural Lands (Ceiling & Holdings) Act, 1961 & not more than 2/3 of minimum holding prescribed under the Act. Therefore for this transaction there is no need to seek permission of Deputy Collector as required under Hyderabad Tenancy & Agricultural Lands (Amendment) Act, 1965. The executants of this deed are not from Scheduled Caste and Scheduled Tribes. Hence this Conditional Sale deed is executed by us with free will & satisfaction & signed on 29 April 1971."

9. Section 58, clause (c) of the Transfer of Property Act defines mortgage by conditional sale as follows:-

> "Where the mortgagor ostensibly sells the mortgaged property—
> on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or
> on condition that on such payment being made the sale shall become void, or
> on condition that on such payment being made the buyer shall transfer the property to the seller,
> the transaction is called a mortgage by conditional sale and the mortgagee, a mortgagee by conditional sale;

> Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale."

10. Whether an agreement is a mortgage by conditional sale or sale with an option for repurchase is a vexed question to be considered in the facts of each case. The essentials of an agreement, to qualify as a mortgage by conditional sale, can succinctly be summarised. An ostensible sale with transfer of possession and ownership, but containing a clause for reconveyance in accordance with Section 58(c) of the Act, will clothe the agreement as a mortgage by conditional sale. The execution of a separate agreement for reconveyance, either contemporaneously or subsequently, shall militate against the agreement being mortgage by conditional sale. There must exist a debtor and creditor relationship. The valuation of the property, and the transaction value, along with the duration of time for reconveyance, are important considerations to decide the nature of the agreement. There will have to be a cumulative consideration of these factors, along with the recitals in the agreement, intention of the parties, coupled with other attendant

circumstances, considered in a holistic manner. The language used in the agreement may not always be conclusive.

11. In ***Bhaskar Waman Joshi (deceased) and Ors. vs. Shrinarayan Rambilas Agarwal (deceased) and Ors.,*** AIR 1960 SC 301, the principles for determination of the nature of the document were explained as follows:-

> "7…The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts."

12. In the light of the aforesaid discussion and the facts of the present case, an examination of the recitals in the agreement dated 29.04.1971 holistically, including the heading of the document, we are left with no doubt that it was not a sale deed with an option for repurchase but a document of mortgage by

conditional sale. An agriculturist will normally not so easily dispose his agricultural land, the source of his survival and livelihood merely for purchases made by him on credit. The dire financial straits of the plaintiffs is evident from the fact that they were left with no option but to mortgage 2½ acres of their agricultural lands for credit purchase of daily necessities. The financial stringency of the plaintiffs is apparent from their failure to repay anything even after execution of the instalment bond. Given the limitations of the plaintiffs because of their poor financial status, the fact that they may not have objected to the mutation so done three years later cannot be considered as sufficient for a contrary interpretation of the agreement dated 29.04.1971, especially when the Appellate Court held that the plaintiffs were in possession of the lands. In the facts of the case, a debtor and creditor relationship stands clearly established and hardly needs further elucidation. The limitation for the right to redeem, under Article 61(a) of the Limitation Act 1963, is 30 years. The suit for redemption was therefore within limitation. In the facts of the present case, we do not consider the delay of seven years in filing the suit so fatal, as to disinherit the plaintiff from his agricultural lands.

13. In ***Vanchala Bhai*** (supra), there was a finding that their existed no relationship of debtor and creditor. In that background, the delay of 11 years in institution of the suit for redemption was considered as a relevant factor.

14. In ***Bibi Fatima*** (supra), the agreement was held to be a mortgage by conditional sale as the respondent had continued to be in possession of the lands and the loan was raised to discharge debts.

15. The observations in ***Vithal Tukaram Kadam*** (supra) that attendant surrounding circumstances should be considered, and upon which learned counsel for the appellant laid much emphasis, in our opinion is of no avail to him in the facts and circumstances of the present case. The question whether the appellant was a bonafide purchaser or not cannot be considered relevant in the facts of the present case and may require further evidence. It is therefore left open for consideration vis-à-vis defendant no.1 in an appropriate proceeding if instituted by the appellant.

16. We find no merit in the appeal. The appeal is dismissed.

.....J.
[NAVIN SINHA]

.....J.
[INDIRA BANERJEE]

NEW DELHI
SEPTEMBER 12, 2019