(1960) 07 BOM CK 0021

Bombay High Court

Case No: Civil Revision Application No. 2028 of 1958

Sampat Haibati		APPELLANT
	Vs	
Bhikajee Ramchandra		RESPONDENT

Date of Decision: July 26, 1960

Citation: (1960) 62 BOMLR 982

Hon'ble Judges: S.M. Shah, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.M. Shah, J.

This revision application is directed against the order passed by the learned Munsiff at Sillod, dismissing the debtors'' application u/s 4 read with Section 24 of the Hyderabad Agricultural Debtors Relief Act. The debtors made an application for a declaration that the transfer of survey No. 41 situated at Mohal, Taluka Sillod, which was effected by a sale-deed was really in the nature of a mortgage. To this application the purchaser Bhikaji was made a party opponent and one Rangoo, who was in possession of the land, was also joined as party to the application. It was contended for the debtors that they had alienated the suit land on 5th Tir 1346 Fasli to opponent No. 1 by a registered sale-deed, but that on the next day opponent No. 1 had executed one bond promising to return the land on payment of Rs. 2,000. Opponent No. 2 was made a party to the application because according to the debtors there was a partition between opponents Nos. 1 and 2 and the land in question had gone to the share of opponent No. 1. In answer to this application made by the debtors opponents Nos. 1 and 2 admitted the debtors'' claim, that is to say, they admitted that the sale in favour of opponent No. 1 was really in the nature of a mortgage. It is certainly surprising and extremely unusual that, a purchaser of a property under a registered sale-deed should accept the contention of the vendor that the transaction was really in the nature of a mortgage. Nevertheless, so far as this application by the debtors was concerned, the fact remains that both opponents

Nos. 1 and 2 admitted that the transaction was in the nature of a mortgage. Rangoo opponent No. 3, however, contested the application stating that he was a protected tenant in respect of the land in question and further that he was declared the owner of the land under the provisions of the Hyderabad Tenancy Act. He alleged that opponents Nos. 1 and 2 had failed in the Revenue Department to get his rights overruled and that, therefore, they in collusion with the debtors had instigated the debtors to make the present application.

2. The learned Munsiff raised two issues in the case, (1) Whether the applicants mortgaged the suit land to Bhikaji (opponent No. 1) in lieu of a loan of Rs. 2,000 for a period of 15 years and executed an ostensible sale-deed on 5th Tir 1346 Fasli as alleged in the application, and (2) What is the effect of Section 25 of the Hyderabad Agricultural Debtors Relief Act over the application. The learned Munsiff'' decided to try the second issue as a preliminary issue and called upon the parties to advance their arguments in respect thereof. After hearing the arguments the learned Munsiff came to the conclusion that inasmuch as opponent No. 3 was declared as the owner of the disputed land u/s 38 of the Hyderabad Tenancy Act in the year 1956 and the objection petition filed by opponent No. 2 was dismissed, that decision of the Revenue authorities was final as far as the right of ownership of opponent No. 3 over the land was concerned and that, therefore, the question as to the transfer by the debtors being in the nature of a mortgage could not be re-agitated. The learned Munsiff was further of the opinion that opponents Nos. 1 and 2 had no concern with the land any longer, and therefore, they could not give any title to the debtors which they did not possess. In the view of the learned Munsiff the land had passed to a third person and when a competent Court had adjudicated the rights of the parties, Section 25 of the Hyderabad Agricultural Debtors Relief Act clearly operated as a bar to the proceedings of the kind before him. In the result, the learned Munsiff decided the preliminary issue against the debtors and dismissed their application. It is against this order of the learned Munsiff dismissing the debtors'' application that the present revision application has been filed in this Court.

3. In support of this application, it was contended by the learned advocate for the debtors that the entire approach of the learned Munsiff was erroneous in law and that in spite of the fact that opponent No. 3 was declared an owner under the Tenancy Act, the debtors'' right to apply for adjustment of their debts u/s 4 of the Hyderabad Agricultural Debtors Relief Act and also to apply for a declaration that the particular transaction purporting to be a sale was in the nature of a mortgage, could not be whittled down. On the other hand, it was contended by the learned advocate for opponent No. 3 that the debtors having failed to take any action for as long as 20 years on the alleged agreement of reconveyance, could not possibly maintain an application u/s 4 read with Section 24 of the Hyderabad Agricultural Debtors Relief Act on the basis thereof. He contended that the declaration of ownership in favour of oppo-No. 3 was protected by the provisions of Section 25 of that Act and consequently the learned Munsiff. was perfectly right in dismissing the

debtors'' application.

4. Now, it must be remembered that opponent No. 3 was only a protected tenant in respect of the suit land and it was only by virtue of certain provisions of the Tenancy Act that a declaration was given in his favour by the competent authority under that Act that he had become the owner of that land. To the proceedings before the competent authority under the Tenancy Act for this purpose, however, the debtors were not at all parties and quite rightly so, because, they had already sold the land to opponent No. 1, and it was opponent No. 1 and also opponent No. 2 whose names had appeared in the record of rights as the owners of the land ever since the sale-deed was passed in favour of opponent No. 1 in 1346 Fasli. Opponents Nos. 1 and 2 opposed the application made by opponent No. 3 before the authority under the Tenancy Act, but eventually that application was allowed and opponent No. 3 was declared the owner of the land. This, however, could not affect the right of the debtors which was conferred upon them by the provisions of a different, statute altogether. The Hyderabad Agricultural Debtors Relief Act conferred a special privilege upon the agricultural, debtors to apply to the Debtors'' Court for the purpose of being relieved from all their debts in the manner prescribed by that Act. Along, with this privilege and for the effective exercise of this privilege another special privilege was granted to them and that was to contest any alienation that they had made in the past as being one in the nature, of a mortgage. All that the debtors have done in this case is to exercise, this privilege conferred upon them by the Hyderabad Agricultural Debtors Relief Act and irrespective of whether they eventually succeed or lose, the application made by them for a declaration that the transaction purporting to be a sale was really in the nature of a mortgage must, be entertained and decided on its merits. The protection, which opponent No. 3 seeks u/s 25 of the Hyderabad Agricultural Debtors Relief Act, I am afraid, is not available to him. That section protects any transfer which has been adjudged to be a transfer other than a mortgage by a. decree of a Court of competent jurisdiction or by a Board established, u/s 3 of the repealed Act. Obviously, this provision does not apply to the sale-deed sought to be attacked by the debtors in the present application. That sale-deed was never the subject-matter of any litigation in any competent Court or before any Board so far and that, therefore, there was no occasion for the same being adjudged as a, transfer other than a mortgage. That section further protects a bona fide transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds a registered deed executed on or before the commencement of the Act. Admittedly, this provision also does not protect opponent No. 3, because, by no stretch of imagination can he be said to be a bona fide transferee for value without notice of the real nature of the transfer by the debtors in favour of opponent No. 1, nor can he be said to be a transferee under a registered deed executed on or before the commencement of the repealed Act. All that opponent No. 3 in this case has got is a declaration by a competent authority under the Tenancy Act that he had become the

owner of the land in question. It may be that a sale certificate has been granted to him in order to confer a title upon him. But on account of the sale certificate he does not become a transferee for value without notice of the real nature of the transfer by the debtors in favour of opponent No. 1 nor does he become a transferee under a registered deed executed on or before the commencement of the repealed Act. That declaration and certificate, if any, were granted to him under the Tenancy Act, whereas this clause of Section 25 of the Hyderabad Agricultural Debtors Relief Act talks about a registered deed executed on or before the commencement of the repealed Act, and the Act which was repealed by the Hyderabad Agricultural Debtors Relief Act was the Debts Conciliation Act of 1349 Fasli. Obviously, that Act came into operation as far back as in 1349 Fasli (1940 A.D.) and in order to secure the protection under Clause (2) of Section 25 the transferee must be one under a registered deed executed on or before the commencement of the repealed Act i.e. on or before 1349 Fasli i.e. 1940 A.D. In this case, the declaration and the certificate, if any, were granted to opponent No. 3 in 1956. Obviously, therefore, this clause of Section 25 of the Hyderabad Agricultural Debtors Relief Act can have no application and opponent No. 3 can derive no benefit out of it.

5. The position, therefore, is that irrespective of the declaration given to opponent No. 3 as regards the ownership of the land, the debtors'' right to contend that the transaction purporting to be a sale was in the nature of a mortgage is not affected at all, and, therefore, it is necessary that their application should be disposed of on merits.

6. In the result, the application is allowed, the order passed by the learned Munsiff is set aside and the application is remanded to him for disposal according to law. The costs of this revision application will be costs in the application. The Rule is made absolute.