

(1924) 11 BOM CK 0027

Bombay High Court

Case No: Appeal from Order No. 69 of 1923

Ramchandra Hanmant
Deshpande

APPELLANT

Vs

Kashinath Laxman
Deshpande

RESPONDENT

Date of Decision: Nov. 11, 1924

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 23
- Evidence Act, 1872 - Section 92

Citation: AIR 1925 Bom 288 : (1925) 27 BOMLR 241

Hon'ble Judges: Norman Macleod, J; Crump, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Norman Macleod, Kt., C.J.

The plaintiff tiled this action in 1920 asking for a declaration that the sale-deed, Exhibit 27, was of the nature of a mortgage, and prayed that the amount due under it to the mortgagee might be ascertained. The document was passed on May 27, 1902, and even if the previous decision of the Court that agriculturists in this District were not entitled to take advantage of Section 10A of the Dekkhan Agriculturists' Relief Act had been set aside since the case was heard in the trial Court as Sections 2 and 20 of the Act were only extended to this District from January 21, 1903, the plaintiff could not take advantage of that extension. After the suit was dismissed in the trial Court, the District Judge in appeal made an order that the suit should be remanded to the lower Court under Order XLI, Rule 23, Civil Procedure Code, for trial on the other issues which had been framed.

2. Now in 1902 the plaintiff and his father were joint. The father had sold the property as manager of the joint family. It is not suggested in this case that the father was exceeding the powers he had as such manager. The real question is whether the son can dispute

the transaction of his father by seeking to call evidence to show that the document, although on the face of it a sale, was in reality a mortgage. , It was contended in both the lower Courts that the real question then was whether the plaintiff was a representative in interest of his father. If he was not, he could lead evidence and prove Exhibit 27 to be a mortgage u/s 91) of the Indian Evidence Act. The proper question to be considered was whether the plaintiff was a party to the document of 1902 so that he would be excluded from calling the evidence which he sought to adduce u/s 92 of the Indian Evidence Act. It is clear" that if a father as one of the joint owners sells, as representing all the other members joint with him, those other members; must be treated as parties to the document. Otherwise most disastrous results would follow if the members of a joint family were enabled to dispute the transaction effected by the manager of the family, not on the ground that the manager had no power to effect the transaction, act on the ground that the transaction was really a different One from what it appeared to be on the face of the document. That is the real point in dispute, and we are of opinion that as the plaintiff was joint with his father at the time of the transaction of 1902, clearly he must be considered as a party thereto, and he cannot, therefore, seek to show by calling oral evidence that the sale-deed was a mortgage. The appeal, therefore, must be allowed and the decree of the trial Court restored with costs throughout.