Pandurang Dhoni Chougule

Vs

Maruti Hari Jadhav

Civil Appeal No. 163 of 1963

(CJI P. B. Gajendragadkar, K. N. Wanchoo, J. R. Mudholkar, J. C. Shah, S. M. Sikri JJ)

26.04.1965

JUDGMENT

GAJENDRAGADKAR, C.J. –

This appeal by special leave arises out of proceedings initiated under the provisions of the Bombay Agricultural Debtors Relief Act, 1939 (No. 28 of 1939) (hereinafter called 'the Act'). The respondent Maruti Hari Jadhav and two others moved the B. A. D. R. Court at Karad on May 26, 1949, for adjustment of the debt alleged to be due from them to the appellants, Pandurang Dhondi Chougule & others. Their case was that the debt in question was due under a mortgage deed executed by their grant-father in favour of the grand-father of the appellants on August 29, 1881. By this mortgage, six agricultural lands situated at Kapil in the former State of Oundh had been mortgaged to the mortgagee with possession for a sum of Rs. 575. In 1908, the respondent's predecessors-in-interest sued on this mortgage in the Court of the Sub-Judge at Kapil (Civil Suit No. 28 of 1908-09). This suit was, however, withdrawn with liberty to file a fresh suit. The followed another suit by the respondents in the sam

It appears that the State of Oundh merged in the erstwhile State of Bombay and thereafter, the Act was extended to the said State. That is how the respondents commenced the present proceedings under the provisions of the Act thus extended to the State of Oundh.

The appellants also made an application for the adjustment of the debt due under the decree in Suit No. 102/1932-33 in the Court of Joint Civil Judge, Karad; but in doing so, they made it perfectly clear that they were making the application as a matter of precaution and without prejudice to their contention that the equity of redemption had been extinguished and the parties no longer stood in the relationship of creditors and debtors. In fact, it was the appellants the first made the application on May 19, 1949, and the respondents followed by their application on May 26, 1949. For the purpose of hearing, these two applications were consolidated by the trial Court.

At the hearing of these proceedings, the appellants raised several contentions. They urged that the mortgage was extinguished and the respondents were therefore, not entitled to claim adjustment of the debt, and they also contended that the application made by the respondents was barred by time. The trial Judge rejected the appellants' argument that the mortgage had been extinguished, and held that the equity of redemption still vested in the respondent. He, however, found that the respondents' application for adjustment of the debt was barred by time. In the result, the respondents failed and their application was dismissed.

The matter then went in appeal to the District Court, North Satara. The appellate Court held that the

decree in suit No. 102 of 1932-33 amounted to a final decree which absolutely debarred the right of the mortgagors to redeem the property in view of the fact that they had failed to pay the decretal amount within the time prescribed by it. It also agreed with the view taken by the trial Court that the respondents' application was barred by limitation. In the result, the appeal preferred by the respondents was dismissed.

The dispute then reached the Bombay High Court in its revisional jurisdiction under s. 115 of the Code. Before the High Court it was urged that the Code of Civil Procedure did not apply to the State of Oundh at the relevant time; that is why by an interlocutory judgment, the High Court remanded the proceedings to the trial Court with a direction that the issue as to whether the Code of Civil Procedure applied to the State of Oundh at the relevant time, should be tried. On remand, the trial Court made a finding that the Code of Civil Procedure had been made applicable to the State of Oundh as far back as 1909-10. The High Court had also directed that the issue as to who was in possession of the property at the relevant time, should be tried; and the finding returned by the trial Court was that the appellants were in possession of the mortgaged property not as mortgagees, but as owners from 2nd March, 1937.

After these findings were returned, the revision application was argued before the High Court; and the main point which was urged before the High Court at that stage was whether the respondents' right to redeem the mortgage had been extinguished by the decree passed in civil suit No. 102 of 1932-33. The High Court has differed from the District Court and has taken the view that the decree did not determine the respondent's right to redeem the mortgage. In regard to the finding recorded by the courts below that the respondents' application was barred by time, the High Court took the view that the question as to whether the application is within sixty years from the expiry of the period prescribed in the mortgage deed for repayment is entirely irrelevant inasmuch as the said application is substantially for the adjustment of debt under the decree passed in suit No. 102 of 1932-33. On that view of the matter, the High Court has set aside the orders passed by the courts below and has remanded the proceedings to

Before proceeding to deal with the contentions raised before us in the present appeal, it would be convenient to set out the relevant portion of the decree in suit No. 102 of 1932-33. The operative part of the decree reads thus :-

> "The plaintiffs should pay to defendants 1 and 2 Rs. 3,677-12-6 within six months from today and should recover possession of the suit property as the heirs of Gopala free from the mortgage. In case the plaintiffs do not pay the amount within the prescribed time, the plaintiffs shall be deemed to have lost the right of redemption for all time."

The District Court has held that this decree is a composite decree and on the failure of the respondents to pay the decretal amount within the time specified, their right to redeem the mortgage is extinguished by virtue of the express terms contained in it. The High Court has construed the decree as a preliminary decree and has found that the clause purporting to extinguish the equity of redemption does not affect its essential character as a preliminary decree and does not in law put an end to the relationship of creditors and debtors between the parties.

The first question which falls for our decision in the present appeal is whether the High Court was justified in interfering with the decision of the District Court that the decree in question extinguished the respondents' right to redeem the mortgage. Mr. Sinha for the appellants contends

that in reversing the conclusion of the District Court, the High Court has exceeded its jurisdiction under s. 115 of the Code. In our opinion, this contention is well-founded and must be upheld.

The provisions of s. 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of s. 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well-settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proc

The history of recent legislation in India shows that when Legislatures pass Acts dealing with socio-economic matters, or make provisions for the levy of sales-tax, it is realized that the operative provisions of such legislation present difficult problems of construction; and so, sometimes, the Act in question provides for a revisional application to the High Court in respect of such matters or authorises a reference to be made to it. In such case, the High Court will undoubtedly deal with the problems raised by the construction of the relevant provisions in accordance with the extent of the jurisdiction conferred on it by the material provisions contained in the statute itself. Sometimes, however, no such specific provision is made, and the questions raised in regard to the construction of the provisions of such a statute reach the High Court under its general revisional jurisdiction under s. 115 of the Code. In this class of cases, the revisional revisional jurisdiction of the High Court has to be exercis

This question has been recently considered by this Court in Manindra Land and Building Corporation Ltd., v. Bhutnath Banerjee and Others (1) A. I. R. 1964 S. C. 1336; and Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai (2) A. I. R. 1964 S. C. 1341. The effect of these two decisions clearly is that a distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. It is, we think, undesirable and inexpedient to lay down any general rule in regard to this position. An attempt to define this position with precision or to deal with it exhaustively may create unnecessary difficulties. It is clear that in actual practice, it would not be difficult to distinguish between cases where errors of law affect, or have relation to, the jurisdiction of the court concerned, and where they do not have such a relation.

Considering the point raised by Mr. Sinha in the light of this position, it seems to us that the High Court was in error in assuming jurisdiction to correct what it thought to be the misconstruction of the decree passed in civil suit No. 102 of 1932-33. As we have already seen, in the present debt adjustment proceedings, one of the points which arose for decision was whether the mortgage debt was subsisting at the time when the respondents made their application, and the District Court had found that the respondents' equity of redemption had been extinguished. This finding was based on the construction of the said decree. It is difficult to see how the High Court was justified in reversing this finding under s. 115 of the Code. The construction of a decree like the construction of a document of title is no doubt a point of law. Even so, it cannot be held to justify the exercise of the High Court's revisional jurisdiction under s. 115 of the Code because it has no relation to the jurisdiction of the Court. Li

This conclusion is enough to dispose of the present appeal, because the main ground on which the High Court has reversed the concurrent decision of the courts below dismissing the respondents' application for adjustment of the debt, is furnished by its finding that the decree in question did not extinguish the equity of redemption vesting in the respondents. In fact, it was as a result of this decision that the High Court reversed the finding of the courts below that the respondents' application was barred by time. Having regard to the fact that we are inclined to take the view that the High Court exceeded its jurisdiction in reversing the finding of the District Court as to the effect of the decree in question, we do not think it is necessary to consider the further question as to whether the High Court was right in holding that the decree in question, we do not think it is necessary to consider the further question as to whether the High Court was right in holding that the decree in question was a prelimin

The result, is, the appeal is allowed, the order passed by the High Court is set aside and that of the District Court restored. There would be no order as to costs.

Appeal allowed.

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