

M. N. Dodamani and Others

Vs

U. S. D. Walikar (Dead) by Lrs and Others

Civil Appeal No. 691 of 1970

(A. C. Gupta, P. N. Shinghal JJ)

29.07.1980

JUDGMENT

GUPTA, J. –

1. The only question that arises for decision in this appeal by special leave is whether the respondents before us are entitled to relief under Section 25(ii) of the Bombay Agricultural Debtors Relief Act, 1947. The question arises on the following facts. On June 1, 1927 the predecessors-in-interest of the appellants transferred to one Krishnaji who plots of land bearing survey Nos. 125/1 and 136 measuring respectively 14.5 and 21.31 acres in village Murnal, Bagalkot Taluk in Bijapur District. The document by which the transfer was effect, described as a sale deed, shows that the two items of property were sold "absolutely" for a total sum of Rs. 2000. In 1932, Krishnaji sold the plot bearing survey No. 136 to one Ramanna, predecessor-in-interest of respondents 2(a) to 2(e), for Rs. 400. In 1935, Krishnaji sold the other plot, survey No. 124/1, for Rs. 1000 to Utalsab Dogrisab Walikar, predecessor-in-interest of respondents 1(a) to 1(c). After the Bombay Agricultural Debtors Relief Act, 1947, came into force, the appellants applied under Section 4 of the Act for adjustment of debts claiming that the transaction in 1927 was really not a sale but a mortgage. The trial Court held that the transaction was a mortgage and not a sale but dismissed the application on the view that the respondents were entitled to protection under Section 25(ii) of the Act. The District Judge reversed the decision and allowed the application under Section 4. The matter was taken to the High Court in revision and the High Court recorded a consent order that the transaction was not a sale but a mortgage and remitted the case to the trial Court for a decision on the question whether the purchasers, Ramanna and Walikar, were transferees for value without notice of the real nature of the transaction between the appellants' predecessors and Krishnaji and as such entitled to the protection of Section 25(ii). This Order of the High Court was made on January 25, 1963. At this stage we may mention that our attention was drawn to an order made in the same matter by the High Court on January 31, 1962, which is reported in 1962 Mysore Law Journal 682, that shows that the same learned Judge had set aside the order of the appellate Court and restored that of the trial Court. Counsel for both sides appeared to think that the order made by the High Court in 1962 must have been set aside later on review though neither of them was able to produce the order by which the 1962 Order had been set aside. However both learned counsel agreed that for the purpose of this appeal it is the Order of the High Court made on January 25, 1963 that need be considered. That the 1963 Order held the field would be apparent from the fact that the case was reconsidered by the trial Court as directed by the aforesaid Order. The trial Court on hearing the matter after remand dismissed the application under Section 4 on the finding that the purchasers were bona fide transferees for value without notice of the real nature of the original transaction. The lower appellate Court reversed this decision. The purchasers then moved the High Court in revision from the order passed by the appellate Court. The High Court by the impugned order set aside the order of the

appellate Court and restored that of the trial Court agreeing with the trial Court that the purchasers had no notice of the real nature of the transaction of 1927.

2. Section 24 of the Bombay Agricultural Debtors Relief Act, 1947 empowers the court to declare any transfer of land by a person whose debts are being adjusted under this act purporting to be a sale, to be a mortgage if the court was satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. Section 25(ii) provides that nothing in Section 24 shall apply to any bona fide transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds under a registered deed executed on or before the 15th day of February, 1939.

The document evidencing the transfer of the plots to Krishnaji in 1927 is described as a "sale deed" and contains a statement that the vendors "have absolutely sold both the said lands to Krishnaji" and that the "entire ownership" was Krishnaji's "alone". It is also said that possession of the lands has also been given to Krishnaji. The High Court found that the purchasers from Krishnaji had no "actual knowledge or notice" of the real nature of the transaction in 1927. But the High Court also held that the notice contemplated in Section 25(ii) was "actual notice" and that "constructive notice was clearly beyond the contemplation of Section 25(ii)". It seems to us that construing the notice referred to in Section 25(ii) as actual notice only is likely to defeat the purpose of the statute which was enacted to provide for the relief of agricultural debtors in the province of Bombay. We are of the view that Section 25(ii) does not exclude constructive notice. However on the facts of the case it appears that the transferees had no notice, actual or constructive, of the real nature of the transaction of 1927. It has been found that they had no actual notice; the High Court appears to have also found that they had no constructive notice. Referring to the provision of Section 25(ii) requiring that the transferee must hold under a registered deed executed on or before February 15, 1939 the High Court says :

It will be seen that the reference is to a period anterior to the coming into force of the Act, a period therefore during which the special provisions of the Act could not have been within the contemplation of anybody. If those provisions were not in contemplation it is impossible to postulate a situation where any given circumstances could be regarded as sufficient to excite suspicion that the transaction might be hit by the statute and therefore persuade people to start and pursue further enquiries.

Mr. S. S. Javali appearing for the appellants contends that the fact that the lands in question were transferred for a smaller amount in 1932 and 1935 than the price Krishnaji had paid for them in 1927 was a circumstance that should have put the transferees on enquiry and that if reasonable enquiries had been made they would have knowledge of the real nature of the transaction of 1927. The fact that the lands were sold to the respondents for a price lower than what they fetched in 1927 might have been due to various reasons and it cannot be said that this ground alone was sufficient to raise a suspicion that the transaction of 1927 was really a mortgage. As pointed out by the High Court, the Act of 1947 could not have been within the contemplation of anyone in 1932 or 1935. Ramanna in his deposition said that he paid Rs. 400 for the land as it was "fallow", and that if there were no weeds the price would have been Rs. 600. As for the land sold to Utalsab, he was dead when the matter came up for hearing before the trial Court. The record of rights also does not contain any indication that the transaction of 1927 was in the nature of a mortgage. The evidence discloses that Krishnappa put the transferees in possession of the lands in question. There was, therefore, no such occasion or circumstance to impel the transferees to start an enquiry as to the real nature of the transaction between Krishnaji and the predecessors-in-interest of the appellants in

1927.

3. The appeal is dismissed but in the circumstances of the case without any order as to costs.

</html