

SUPREME COURT OF INDIA

Subhash Malhari Muneshwar

Vs.

Arvinde Anandrao Kadam

C.A.No.6254 of 2010

(R.Banumathi and Indira Banerjee,J.,)

10.10.2018

JUDGMENT

R.Banumathi,J.,

1. This appeal arises out of the Judgment dated 08.04.2005 in Second Appeal No. 360 of 1988 passed by the High Court of Bombay, Nagpur Bench, in and by which the High Court reversed the judgment of the First Appellate Court holding that the Exhibit P-33/document in question was a sale with condition to repurchase.

2.The case of the appellants-plaintiff(s) is that an amount of Rs.3,000/- was borrowed from the respondent and in security the property was mortgaged under Exhibit P-33 (15.02.1975) with condition that if the amount is paid on or before 15.03.1980, the property can be redeemed. The appellants-plaintiff(s) filed the suit for redemption of the mortgage alleging that the document (Exhibit P-33) was a mortgage by conditional sale and not a sale with condition for reconveyance.

3. The Trial Court dismissed the suit holding that the document Exhibit P-33 was not a mortgage with conditional sale; but a sale deed with condition for repurchase. The first Appellate Court reversed the judgment of the Trial Court holding that the Exhibit P-33 is a mortgage by conditional sale as defined under Section 58(c) of Transfer of Property Act and not a sale with condition to repurchase. The High Court in Second Appeal, reversed the judgment of the First Appellate Court by holding that Exhibit P-33 was a sale with condition to repurchase and not a mortgage by conditional sale.

4. We have heard Ms. Astha Deep, Advocate appearing for the appellants as well as Mr. Akshat Shrivastava, learned amicus appearing on behalf of the respondent(s) and perused the impugned judgment and materials on record.

5. Learned counsel appearing for the appellant(s) submitted that the condition embodied in the document Exhibit P-33 to re-purchase the property clearly indicates that it is a mortgage by conditional sale as defined under Section 58(c) of the Transfer of Property Act. It was

submitted that even if the condition that the respondent- defendant(s) are to enjoy the property in lieu of interest were not incorporated in Exhibit P-33, the same would not take away the character of the document, namely, that it is a mortgage by conditional sale. In support of her contention, learned counsel has placed reliance upon judgment of this Court in *Patel Ravjibhai Bhulibhai (D) Thr. Lrs vs. Rahemanbhai M.Shaikh (D) Thr. Lrs. & Ors. reported in*¹.

6. Per contra, learned counsel appearing for the respondent(s) submitted that recitals in the documents are clear indication that Exhibit P-33 is only a sale with condition to repurchase. Placing reliance upon judgment of this Court in *Vanchalabai Raghunath Ithape (Dead) by Lrs. And Shankarrao Baburao Bhilare (Dead) by Lrs. and Others reported in*², the learned counsel submitted that based on the recitals in document Exhibit P-33 and the evidence of the parties and considering the intention of the parties, the High Court rightly held that it was a sale with condition to repurchase and the impugned judgment warrants no interference.

7. We have considered the rival contentions and perused the impugned judgment and materials on record.

8. To determine the nature of the document whether it is a mortgage by conditional sale or a sale deed with condition for reconveyance, the recitals in the document and the intention of the parties are relevant. The Trial Court extracted the relevant clause in Exhibit P-33 and pointed out that it was a sale deed with condition for repurchase. To appreciate the contentions of the parties, we may usefully refer to relevant recitals in Exhibit P-33 which reads as under:

In the year 1975, for the reasons stated below execute this conditional sale deed as under:-

We have received from you in the presence of the Registrar's office a sum of Rs.3,000/- and in consideration of the said amount we hereby give this land with the structures to you under this conditional sale deed. We have also delivered the possession of land without crops to you. We have given this land to you under this conditional sale deed and the possession is also given. You are absolutely entitled to use the land according to your desire and the possession is not with us. There is no charge of anybody on the said land and in case it is found we will be responsible for the same. We will have no objection for your changing the name in the Revenue Record'.

9. As pointed out by the High Court, the recitals in the document that transfer of interest with vesting of absolute rights upon the respondents are clear indications that the document is only a sale with condition for repurchase. As pointed out by the High Court as well as the Trial Court, the clauses in the deed clearly indicate that it is a sale deed with condition to repurchase and not a sale with conditional mortgage as stipulated under Section 58(c) of the Property of Transfer Act. As rightly pointed out by the learned counsel appearing for the respondent-defendant(s) that Exhibit P-33 document does not contain any recital as to

enjoyment of the property in lieu of the interest payable on the amount. Any oral evidence adduced in this regard cannot be looked into in view of the prohibition under Section 92 of the Indian Evidence Act.

10. Admittedly pursuant to Exhibit P-33 possession was handed over to the respondent(s) vesting on them the absolute right to enjoy the property. Exhibit P-33 does not show that the amount of Rs.3,000/- was taken as a debt or loan; nor does the document show that the income from the land was to be appropriated towards the interest by the respondent(s). We do not find any ground warranting interference with impugned judgment. In the result, the appeal is dismissed.

11. The parties are to bear their respective costs.

12. We place on record the valuable assistance rendered by learned amicus, Mr. Akshat Shrivastava appearing on behalf of the respondent(s).

Judgment Referred.

¹(2016) 12 SCC 0216

²(2013) 7 SCC 0173