

Gopal Krishna v. Anandpalsingh and ors.

ACT & SECTIONS

TRANSFER OF PROPERTY ACT, 1882 - Section Section 58 (c)

LIMITATION ACT, 1963 - Section Article 61 (a)

HEADNOTE

(i) Mortgage by conditional sale - True nature of document - "*Shartiya Farokhtnama*" - Document dated 17.03.1969 (Ex.P/1) termed *Shartiya Farokhtnama* - Contents showed conditional reconveyance on repayment - Consideration inconsistent with surrounding sale transactions - Held, not an absolute sale but mortgage by conditional sale u/s 58(c) TPA - Findings of both courts below treating it as sale held perverse.

(ii) Limitation - Redemption - Right to redeem accrued on expiry of 5-year period i.e. on 17.03.1974 - Suit filed in 2002 held within 30-year period under Article 61(a) - Courts below erred in applying 3-year limitation - When transaction is mortgage, plea of estoppel under section 115 of the Evidence Act cannot defeat statutory right of redemption - Impugned judgments set aside - Suit decreed for redemption of mortgage and possession, with directions for reconveyance on payment of Rs. 11,000/-.

सम्पत्ति अंतरण अधिनियम, 1882 - धारा 58(ग)

परसीमा अधिनियम, 1963 - अनुच्छेद 61(क)

(i) सशर्त विक्रय द्वारा बंधक - दस्तावेज की वास्तविक प्रकृति - "शर्तीय फरुखतनामा" - दिनांक 17.03.1969 (प्र.पी/1) के दस्तावेज को शर्तीय फरुखतनामा कहा गया - इसकी अनुस्वरूप में पुनः विक्रय का प्रावधान भुगतान की शर्त पर था - विचारण मूल्य आसपास की विक्रय लेन-देन से असंगत - अभिनिर्धारित, यह पूर्ण विक्रय नहीं अपितु संपत्ति अंतरण अधिनियम की धारा 58(ग) के अंतर्गत सशर्त विक्रय द्वारा बंधक है - दोनों अधीनस्थ न्यायालयों द्वारा इसे विक्रय मानना विकृत दृष्टिकोण माना गया।

(ii) परसीमा - मोचन - मोचन का अधिकार 5 वर्ष की अवधि समाप्ति अर्थात् दिनांक 17.03.1974 पर उत्पन्न हुआ - 2002 में प्रस्तुत वाद अनुच्छेद 61(क) के अंतर्गत 30 वर्ष की अवधि में माना गया - अधीनस्थ न्यायालयों द्वारा 3 वर्ष की सीमा अवधि मानना त्रुटिपूर्ण - जब लेन-देन बंधक है, तब साक्ष्य अधिनियम की धारा 115 के अंतर्गत प्रतिषिद्ध की याचना वैधानिक मोचन अधिकार को नष्फल नहीं कर सकती - विवादित निर्णय अपास्त - वाद ₹11,000/- के भुगतान पर पुनः विक्रय के निर्देश के साथ बंधक मोचन एवं आधिपत्य हेतु स्वीकार किया गया।

HELD

Relevant extracts from the judgment:

In view of the factual matrix of the case, this Court is of the considered opinion that the mortgagee purchased the mortgage property in pursuance to Shartiya Farokhtnam Ex.P/1 and therefore, the relations of mortgagor and mortgagee continues to subsist even thereafter. In view of the same, the right to redeem the mortgage is not extinguished and in the eyes of law, the purchase of the mortgaged property must be deemed to have been in favour of the mortgagor/appellant.

Since, the aforesaid deed i.e. Ex.P/1 which is particularly, in any manner, not an absolute sale deed and varies from the contents of actual and absolute sale deed, the learned Courts below have wrongly held the same is absolute sale whereas Ex.P/1 which is clearly a mortgage and falls within the definition of mortgage by conditional sale as prescribed under Clause (C) of Section 58 of the Transfer of Property Act. Hence, the Answer of Substantial Question No.I is "Yes". The learned trial Court has committed an error of law in holding that Ex.P/, is outright sale.

In view of the factum that since, the learned Courts below have erred in holding the

Ex.P/1 as outright sale whereas the same is not an outright sale, but rather mortgage by conditional sale, the Limitation period for redemption shall be 30 years which is a settled and prescribed law and is not in dispute. Since, it is not in dispute that the suit is filed in the year 2002 which is within 30 years from the date of 17.03.1974, the suit is filed within limitation. The period for limitation as prescribed under Section 61(a) of the Limitation Act, 1963 reads as under:

By a mortgagor- (a) to redeem or to recover possession of immovable property mortgaged: Thirty years.

In view of the aforesaid discussions, right to redeem accrued to the plaintiff only expiry of five years i.e. 17.03.1974 and the suit having been instituted in the year 2002 is absolutely within the limitation period as prescribed by law.

In view of the aforesaid settled prescribed law, the second substantial Question of Law that whether the suit as instituted can be treated as barred by limitation, despite having been instituted within the prescribed period of 30 years, the answer is "negative" and that is in favour of appellant. The answer of this question is having togetherness with answer of question No.1, since, the answer of first substantial question is positive, the answer of second substantial question of law is automatically changed as above, in view of prescribed law of Limitation.