

Pakeerappa Rai vs Seethamma (Dead) By Lrs And Ors. on 1 May, 2001

Equivalent citations: JT2001(5)SC537, RLW2002(3)SC424, (2001)9SCC521

Bench: V.N. Khare, S.N. Variava

JUDGMENT

Khare, J.

1. It is alleged that Yajaman took a loan of Rs. 1000/- from Mahabala Raj (hereinafter referred to as the 'creditor') on executing pronote for purposes of filing a suit for recovery of possession of land from Ramanna Rai and other members of the kavaru. On 1.12.60, Yajaman filed a suit being O.S. No. 459/1960 for recovery of possession of the said property from Ramanna Rai and others. Seethamma was also made one of the defendants in the suit. When the suit came up for final hearing, plaintiff Yajaman did not prosecute the suit. Under such circumstances, Seethamma filed an application that she may be transposed as the plaintiff in the suit. The said application was opposed by other defendants, including the plaintiff who filed a counter affidavit (Ex.A-49). Consequently, the application for transposition filed by Seethamma was dismissed. On 25.10.1962 the creditor filed O.S. No.592/1962 against Yajaman representing kavaru for recovery of the principal amount of Rs.1000/- and interest against pronote (Ex.A-39). Yajaman did not contest the suit and the Court decreed the suit ex parte on 27.11.1962 - In execution proceeding brought by the creditor the suit property was attached. At this stage, Seethamma filed R.E.P.No.104/1963 under Order XXI Rule 53 of the Code of Civil Procedure alleging that the property was not liable to be attached as the same was obtained by collusion and exercising fraud. The application of Seethamma was thus rejected on 16.11.1964. Seethamma and Ungappa Raj filed O.S. No.2/1965 on 3.1.1965 for setting aside the ex parte decree passed in O.S. No.592/1963, as well as order of the executing Court dated 16.11.1964 being fraudulent, collusive and not binding on the family. This suit, along with three other suits were tried together by the trial court. The trial court dismissed the suit brought by Seethamma. However, On appeal the first Appellate Court allowed the appeal and decreed the suit. It is relevant to mention that during pendency of the suit, the property was sold at court auction. The appellant herein purchased the property in the said court auction. The creditor as well as the auction purchaser preferred second appeals before the High Court. The High Court dismissed the said appeals. It is against the said judgment the appellant has preferred this appeal.

2. Learned Counsel appearing on behalf of the appellant urged that the finding recorded by the first Appellate Court that auction purchaser was not a stranger to the suit is based on no evidence on record and inasmuch as the conclusion arrived at is erroneous and the High Court committed serious mistake of law in not interfering with the said finding. Plaintiff Seethamma in her evidence stated about the nearness of the auction purchaser with other defendants. It was brought on record

that auction purchaser was near to the husband of Laxmi who was one of the defendants in O.S. No. 133/1963 which was tried along with the suit out of which the present appeal arises. The first Appellate Court, on the basis of the said evidence, came to the conclusion that the auction purchaser was not a stranger to the suit. Under such circumstances, it cannot be urged that the conclusion arrived at by the court below was erroneous. The position would be different if the High Court has the jurisdiction to reappraise the evidence. In such a situation the High Court might have come to a different conclusion. But the High Court in exercise of power under Section 100 CPC cannot interfere with the erroneous finding of fact howsoever the gross error seems to be. We, therefore, do not find any merit in the contention of the learned Counsel for the appellant.

3. It was then urged that there being no allegation in the plaint that Ex A-39 pronote was sham and bogus document, the first Appellate Court committed serious mistake of law in holding that Ex.A-39 was a sham and fraudulent document. Ex.A-49 is a counter affidavit filed by Yajaman wherein he stated that he filed the suit spending his own money by way of court fee and other incidental expenses and he is entitled to be paid by defendant Seethamma all the costs so far incurred by him by way of court fee. This document was admitted in the evidence with the consent of the parties. It is on the basis of Ex. A-49 the court below found that the pronote is an antedated document and, in fact, Yajaman had not borrowed Rs. 1000/- from the creditor on 1.12.1960 on executing Ex.A-39. The said conclusion has been arrived at by way of inference and cannot be held as erroneous.

4. For the foregoing reasons, we do not find any merit in the appeal. No other point was pressed. The appeal fails and is hereby dismissed. There shall be no order costs.