Sia Ram vs Radhey Shiam on 5 October, 1955

Equivalent citations: AIR1956ALL332, AIR 1956 ALLAHABAD 332, 1956 ALL. L. J. 96

JUDGMENT

Gurtu, J.

1. The plaintiff filed this suit for recovery of possession over the grove in suit for an injunction and for recovery of Rs. 600 as damages. The plaintiff's allegations were that he was the owner of the grove No. 398 in village Faridpur, that the defendant had been working as his 'karinda' when he had forged a few bonds and pronotes and also a sale deed in respect of the grove in dispute.

He had obtained registration of the sale-deed by means of a suit and he had taken forcible possession of the grove and had misappropriated the timber of the trees in that grove, that the sale-deed was without consideration and is liable to be cancelled. The defendant denied the allegations made by the plaintiff. The suit was decreed by the trial Court. The appeal filed against the judgment was also dismissed.

The finding of the Court below is that although the plaintiff executed the sale-deed it was definitely proved that the sale-deed was without consideration.

2. The defendant preferred this appeal and the case came up before me on 4-5-1955. On that date it being admitted that the grove was protected land to which the provisions of the U. P. Regulation of Agricultural Credit Act, 1940 (hereafter to be referred to as the Act) applied, I sent down an issue as to whether the permission 'granted by Sri Jagat Narain, Revenue Officer to sell the grove was a valid permission under Section 24, U. P. Regulation of Agricultural Credit Act (Act 14 of 1940) for decision.

The finding has been returned that the permission Ex. 4 granted by Sri Jagat Narain under Section 24 of Act 14 of 1940 was not a valid permission. The learned counsel for the appellant did not file any objection to this finding in time but he did file one later and he wanted to show that Sri Jagat Narain was an Assistant Collector in charge of the sub-division within which this protected land lay. But he has not been able to satisfy me in this respect.

Ultimately he had to admit that the finding returned by the learned Civil Judge cannot be attacked.

3. This being protected land and a permanent alienation thereof having been made otherwise than in accordance with the provisions of the Act by virtue of Section 25 (1) of that Act, the alienation could take effect only as a mortgage in the form prescribed by Clause (a) to Sub-clause (1), of Section

13 of the said Act.

4. The learned counsel asked me to revise and alter the terms of the sale-deed and convert it into a mortgage in the prescribed form on such terms as I consider to be equitable so that such mortgage should take effect in supersession of the sale-deed. When I turn to Section 13 (1) (a) of the Act I find that a usufructuary mortgage is to be created with a view to enable the mortgagee to receive the rents and profits of the land in lieu of interest and towards the payment of the principal.

In a case where it is established that no consideration has passed, i. e., in a case where there is no principal amount towards which the mortgagor would be required to make any payment or in respect of which the mortgagor would be liable to pay interest, it is obviously not possible to revise the terms of the sale-deed and to create a mortgage in favour of the mortgagee. To do so in the present case, in my opinion, would be to run counter to the intention of Section 13 and would be against equity.

The right to obtain a revision of the terms of the permanent alienation by way of sale made otherwise than in accordance with the provisions of this Act rests upon the basis that there has been a passing of consideration and that the vendee has paid money to the vendor. I, therefore, feel that having regard to the language of Section 13 of the Act and having regard to the object of that Section, I would not be justified in revising the terms of the alienation and creating a mortgage in favour of the vendee.

Moreover, it is obvious that if I were to accede to the prayer of the appellant that I should create a mortgage in favour of the vendee, the duration of the mortgage deed being entirely in my discretion, I could not make the mortgage period a day longer than today. Obviously, I could not allow anybody to continue in possession of land when possession had been obtained of the land without payment of any consideration.

Were I to create a mortgage of which the term ended today, tomorrow the plaintiff would file a suit for redemption and since he would be required to pay nothing towards the redemption, his suit would automatically be decreed and all that would happen would be that if the mortgagee contested the suit he would be saddled with costs. In these circumstances nothing could be gained by my adopting a course which would lead to an unnecessary litigation.

On the contrary, I think that I am Justified having regard to the language of Section 13 in refusing to create a mortgage in favour of the vendee. The right of the vendee to remain in possession under the Act rests upon the mortgage so created. As no mortgage is being created by me and the sale-deed being ineffective as a sale-deed, it can in my view, be declared invalid and I so declare it.

Once the sale-deed is invalidated, the plaintiff's suit for possession must be decreed automatically. I do not agree with the contention of the learned counsel that in any case the sale-deed cannot be set aside. Therefore, for the reasons given, I uphold the operative part of the lower court's orders.

5. The appeal is accordingly dismissed with costs. In consequence the plaintiff is entitled to possession and other reliefs which have been decreed by the Court below. I confirm the decree of the Court below.

6. Permission to file a Special Appeal is allowed.