

Life Insurance Corporation Of India vs Devendrappa Bujjappa Kadabi And Ors. on 17 October, 1986

Equivalent citations: AIR1987KANT129, ILR1986KAR3759, AIR 1987 KARNATAKA 129, (1990) 67 COMCAS 357, (1987) 1 ARBI LR 103, ILR 1986 KANT 3759, (1987) 1 COMLJ 183, 1987 UJ(SC) 1 59

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Bench: M.N. Venkatachaliah

JUDGMENT

K.A. Swami, J.

1. This plaintiffs appeal is preferred against the judgment and decree dated 31st January, 1972 passed by the learned District Judge, Dharwad, in Civil Appeal No. 290 of 1964 reversing the preliminary decree dated 29-9-1964 passed by the learned Civil judge, Dharwad, in Special Suit No. 4 of 19621. The trial Court passed a preliminary decree for recovery of a sum of Rs. 18,591-59 p. together with interest and costs. The lower appellate Court has set aside the decree passed by the trial Court and dismissed the suit as brought by the plaintiff-Corporation.

2. The appeal is referred to a Division Bench having regard to the importance of the question of law arising for consideration.

The appellant - the Life Insurance Corporation of India ('Corporation' for short) - is the plaintiff in the suit. Respondents are the defendants. Respondent-1 died during the pendency of the appeal. His legal representatives are brought on record as respondent-I (a) to t (e). The parties will hereinafter be referred to with reference to their array in the trial Court.

3. The suit was brought by the Corporation as the successor-in-interest of the then United Karnataka Insurance Company Ltd., Dharwad 'Company' for short. Plaintiffs case is that the late defendant-1, who was the father of defendants 2 to 4 along with his major son - Defendant-2, executed a simple mortgage deed dated 1-4-1952 for a sum of Rs.30, 000/- in favour of the Company, both as the 'Kartha' of the joint family and also as the guardian of the then minor defendants 3 and 4; that all the assets and liabilities of the controlled-business of the company statutorily stood transferred to and vested in the plaintiff-Corporation consequent upon the coming into force of the Life Insurance Corporation Act, 1956 (hereinafter referred to as the 'Act'); that defendant-1 even after admitting the amount due under the suit mortgage, failed to pay the same. It

was alleged that defendant- I unjustly sought to repudiate his liability in his letter-dated 68-1959 sent through his Advocate, necessitating the institution of this suit. Accordingly, on 2-4-1962, the suit for sale on the mortgage was instituted for recovery of the sum of Rs. 18,591-59 p. said to be due under the simple mortgage dated 1-5-1952 with future interest till payment and costs of the suit and in default of payment of the sum, an order for sale of the mortgaged properties for recovery of the aforesaid amount with interest till idealization, and for a personal decree in the event of insufficiency of the security. The alleged securities were: (1) the storied building with open site and backyard bearing G. R No. 679, situated at Akkipet, Kaighatgi, Taluk Kalghatgi, District Dharwad; (2) the rice-mill bearing G. P. No. 273 (new No. 109), situated in Bhagwan Galli at Kalghatgi, with the open space; (3) Life Insurance Policy No. 6966 with the Company dated 31-12-1951 for Rs. 10,000/-, the yearly premium of which was Rs. 948-12 annas and five yearly premiums were paid and the policy was paid-up for Rs. 3,846/- only, the Date of maturity being 31-12-1964.

4. The defendants contested the suit on several grounds contending inter alia that the plaintiff-Corporation had no locus stand to institute the suit; that the benefit of the mortgage in question had not vested in the Plaintiff-Corporation because it did not form part of the controlled business of the Company; that on 1-3-1952, the company's registration to carry on life insurance business was cancelled under the Insurance Act 1938; therefore, the Company could not have carried on the business of lending loan; that the transaction itself was void and inoperative; that the Civil Court had no jurisdiction to entertain and decide the suit; that when the defendants entered into the transaction, the company suppressed the fact that its registration had been cancelled; therefore the company had exercised fraud upon the defendants; that the entire amount of consideration of Rs. 30,000/- had not been paid; that a sum of Rs. 12,000/- which was retained by the company as interest free deposit could not be held to constitute Good and valid consideration and that the defendants had paid back Rs. 18,000/- received by way of consideration with interest, fully discharging their obligation. It was further contended that the alleged purchase of shares of the value of Rs. 12,000/- was not out of their own volition and free will, and, was not binding on the defendants.

There was a counter-statement filed by the plaintiff-Corporation with the permission of the Court as per Exhibit-23; and the defendants also filed a rejoinder as per Exhibit-30. It is not necessary to refer to the same.

5. On the pleadings, the trial Court framed as many as 19 Issues. The trial Court negated the contentions of the defendants and decreed the suit as aforesaid. In the appeal, preferred by the defendants, learned District Judge has reversed the decree and dismissed the suit. In the appeal before the learned District Judge, only Issues 1, 3, 4, 5, 6, 10, 11, 12 and 15, were pressed.

6. Learned District Judge inter alia, held that the mortgage transaction did not form part of the controlled business of the company and consequently, the right of action in regard thereto did not vest in the plaintiff Corporation under Sec. 7 of the Act; that the consideration of Rs. 30,000/- mentioned in the mortgage deed (Exhibit-75) in so far it included the sum of Rs. 12,000/- retained by the Company as interest-free deposit to be used subsequently for allotment of shares in favor of defendants 1 and 2, failed. In regard to the sum of Rs. 12,000/- originally taken-as

interest free deposit and later transferred to the share account, learned District Judge held that the adjustment of the deposit for allotment of shares in favour of defendant-I and his two brothers was tainted and that it was the duty of the company to have disclosed the fact of cancellation of the licence and the notice issued in that connection by the Controller, before bringing pressure on the defendants to purchase shares on incurring the debt from the company. It was also held that the company was in a position to dominate and to influence defendants in respect of the consideration of the mortgage to the extent of Rs. 12,000/- as such, it stood vitiated; therefore, the defendants were entitled to, avoid the transaction in question to that extent. Accordingly, learned District Judge allowed the appeal, set aside the preliminary decree passed by the trial Court and dismissed appellant's suit.

7. Before us, the defendants sought for amendment of the written statement. By the order dated 8-1984, we have allowed the application - L A. III filed by the defendants seeking amendment to the written statement. As a result thereof, the following plea has been permitted to be raised:

" 17-A. The mortgage transaction between the plaintiff and defendant No. Others and I is illegal and void since it contravenes the provisions of Sec. 23 and 24 of the Contract Act read with Sec. 54 of the Indian Companies Act, 1913, inasmuch as 'its object and consideration consisted of the price of shares of Karnataka United Insurance Co., to defendants on credit basis. The plaintiff cannot, therefore, enforce the aid mortgage claim against these defendants who are the mortgagors."

The defendants have also filed a memo dated 8th June, 1984, which reads thus :

"The advocate for the respondents submits as under:

The respondents submits that the payments made by them towards the mortgage amount would not be claimed back by way of refund or restitution from the Plaintiff-appellant Corporation as a result of the plea allowed to be taken by this Humble Court,"

8. It is, no doubt, contended on behalf of the plaintiff-Corporation that the findings recorded by the learned District Judge are not correct and, are opposed to law and the preliminary decree passed by the, trial court is entitled to be restored. However, it is not disputed before us - and it is also a finding of fact recorded by learned District Judge -that out of the consideration amount of Rs. 30,000/-, a sum of Rs. 12,000/ was not paid in cash but was retained as interest-free deposit to be adjusted towards the share certificates of the company to be issued to the defendants and in fact the share certificates were issued to the first defendant and his two brothers for the aforesaid sum of Rs. 12,000/-.

9. It is also not disputed, before us that the remaining sum of the consideration amount of Rs. 18,000/- and the interest thereon had been paid by the defendants before the suit and that the suit claim relates wholly to this disputed sum of Rs. 12,000/and interest thereon.

10. In view of these undisputed facts, we do not consider it necessary to go into the other questions raised by the plaintiff Corporation bearing on the correctness of the findings recorded by the learned Appellate Judge except the following points :

(1) Whether the entire mortgage transaction in question between the Company and the defendants was in contravention of the provisions contained in Sec. 54A of the Indian Companies Act, 1913 and as such, it was null and void having regard to the provisions contained in Ss. 23 and 24 of the Indian Contract Act?

(2) If not, whether the mortgage transaction in question was void only to the extent of the consideration amount of Rs. 12,000/-?

(3) What order?

11-1. Point Nos. 1 and 2: These two points can conveniently be considered together. The Company was a limited company. It was not. A subsidiary company of a public company. At the relevant point of time, the Indian Companies Act, 1913 was in force. Article 2 of the Articles of Association (Exhibit-156) of the Company, provided that none of the funds of the Company shall be employed in the purchase of, 'or lent on,, shares of the company. Sub-section (2) of Sec. 54A of the Indian Companies Act, 1913 was as follows:

54A. Restrictions on purchase by company or loans by company for purchase of its own shares. -

(1) xx xx xx (2) No company limited by shares other than a private company, not being a subsidiary company of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial, assistance for the purpose of or in connection with a purchase made or to be made by any person or any shares in the company;

Provided that nothing in this section shall I be taken to prohibit, where the lending of money is part of the ordinary business of a company, the lending of money by the company in the 'ordinary course of its business."

Thus, Article 2 of the Articles of Association of the Company and the aforesaid sub-sec. (2) of Section 54A of the Indian Companies Act, 1913, prohibited the company from giving directly or indirectly any financial assistance by any means, for the purpose of or in connection with a purchase made or to be made by any person or any shares in -the company. It is not the case of the Plaintiff Corporation that lending money was part of the ordinary business of the company and the mortgage debt in question was advanced by the company in the ordinary course of its business. No doubt, para-7 of the Memorandum of Association permitted the company to grant loans in general on mortgages or otherwise to approved individuals as are carried on by purely Waning and investment companies and in particular without prejudice to the generality of the words contained in the said paragraph. But, a mere provision in the Memorandum of Association to enable the company to do

the business of lending money is not sufficient to attract the proviso to, sub-sec. (2) of Sec. 54A of the Indian Companies Act, 1913, unless it is shown that, lending of money was part of the ordinary business of the company and the loan in question was lent by the company in the ordinary course of its business. Therefore, in this case, there is no scope for applying the proviso to sub-sec.(2) of Sec. 54A of the Indian Companies Act, 1913, as that part of the loan was clearly intended to enable purchase of the shares of the lender-company itself.

11.2. In view of the prohibition to lend money or give any financial assistance in any manner by the company to purchase its shares, the adjustment of Rs. 12,000/- being a part of the consideration of the suit mortgage - by the company towards the purchase of its share became unlawful. The object of the company was clearly to increase its own share capital. The adjustment of the part of the consideration of the mortgage towards the share capital was forbidden by law. In the instant case, as already pointed out, the entire consideration of the suit mortgage was not unlawful. It was only to the extent of Rs. 12,000/- out of the consideration of Rs. 30,000/-, the consideration was not lawful as law forbade it. e., S. 54A(2) of the Indian Companies Act, 1913. Therefore, we are now required to see whether the entire suit mortgage was void or it was void only to the extent of Rs. 12,000/-, which was adjusted towards share certificates of the company issued to defendant-I and his two brother. The answer to this question depends upon the effect of Sec. 24 of the Indian Contract Act, on the mortgage in question.

11.3. Sections 23 and 24 of the Indian Contract Act are as follows:

"23. The consideration or object of an agreement is lawful, unless -

It is forbidden by law; or is of such amature that, if permitted, it would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as. Immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."

There is a distinction between an agreement and transfer of property. Sections 23 and 24 of the Indian Contract Act, deal with consideration and object of an agreement. The provisions of the' Contract Act, do not, as a matter of course, apply to transfer of property. Section 4 of the Transfer of Property Act, provides thus:

"4. The chapters and sections of the Act which relates to contracts shall be taken as part of the Indian Contract Act, 1872. And Sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908."

From the aforesaid provisions contained in Sec. 4 of the Transfer of Property, Act, it is clear' that all -the provisions of the Indian Contract Act, are not made applicable to. Transfer of immovable properties. Therefore, the provisions of the Indian Contract Act, as a whole., cannot be read as part of the Transfer of Property Act. It is, only such parts or' provisions of the Transfer of Property Act, which relate to contract alone are. To be read as part of the Indian Contract Act therefore, such of the provisions in the Transfer of Property Act, which relate to contracts shall I have to be interpreted in the light of the provisions contained in the Contract Act. Transfer of ownership of immovable property is effected by compliance with certain legal, formalities, in accordance with the provisions I contained in the Transfer of Property Act and Registration Act: Once there is a completed conveyance, the matter does not. Remain in the domain of contract, and the consequences of the distinction between an agreement which is normally executor and completed conveyance are attracted. A mortgage is both a debt and a conveyance. Section 6(h) of the Transfer of Property Act provides that "No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872, or (3) to a person legally disqualified to be transferee."

Thus, S. 6 of the Transfer of Property Act, which deals with the topic of "what may be transferred" provides that no transfer can be made for an unlawful object or consideration 'within the meaning of S. 23 of the Contract Act. 'I he result is that the validity of a transfer of property must be tested in the light of only 23 ' Of the Indian Contract Act. Apart from-S. 6(h)l of the Transfer of Property Act, which make' only S. 23 of the Indian Contract Act applicable to transfer of property, there is no other, provision in the Transfer of Property Act, which makes S. 24 of the Contract Act, applicable to transfer of poverty.

11.4. In Dip Marian Singh v. Nageshar Prasad, reported in AIR 1930 AH 1 (FB), the question as to whether Sec. 24 of the Indian Contract Act, was applicable to transfer of immovable property, was considered. The principal question that was considered by the Full Bench was as to the legal effect of including non-transferable occupancy land along with other properties which were transferable in a registered mortgage deed.-It was held by Sulaiman, J., as follows :

"There can be no doubt that there is a, clear distinction between a contract which still to be performed and specific performance of which may be sought, and a conveyance ~y which title to property has actually passed. Cases-of mere contract are governed by the provisions of the. Contract Act. Cases of transfer of immovable property are governed by the Transfer of Property Act. A mere contract to mortgage or sale would not amount to an actual transfer. Of any interest in the immovable property (S. 54,T. P. Art), but a deed of sale or mortgage, if duly registered would operate- as a conversance of such interest. Once a document transferring immovable property has been registered the transaction out of the domain of amere contract into one, of a conveyance. Such a completed transaction would be governed by the provisions of the Transfer of Property Act, and only so much of the Contract Act as are applicable thereto.

It is significant that the whole of the has not been made applicable to transfer of immovable properties. S. 4, T. P. Act, merely makes pertain. Provisions of the Transfer of Property Act, relating to contracts as part of the Contract Act and not vice Contract Act versa.

It is S. 6(h), T. P. Act, which lays down that no transfer can be made for an unlawful object or consideration within the meaning of S. 23, Contract Act. Sub-cl. (i), further, Bench of the Oudh Chief Court and it was provides that nothing in that section would authorise a tenant having an untransferable right of occupancy to assign his right as such tenant.

Thus an attempted transfer of an untransferable right of an occupancy tenant is merely declared to be unauthorised and therefore void and ineffectual. Similarly, a transfer for an unlawful object or consideration is declared to be void and ineffective. So far as these sections go they do not lay down the law that if such a non-transferable interest included among other transferable properties, the whole transaction is illegal. It is noteworthy that in order to bring in the operation of S. 6(h), the object or consideration for the transfer should be unlawful. The section would be inapplicable where the object of the consideration for the transfer is itself not unlawful but the transfer may be ineffective on some other ground, xx xx xx xx Coming back to the question how much of the provisions of the Contract-Act, are to be deemed to have been incorporated in the Transfer of Property Act, I must point out what has in some cases been overlooked that S. 24, Contract Act, has not been made applicable to transfers of-immovable property. There is therefore no justification for stating broadly that ever if the transfers of several items of properties can be split up and separated, the whole transaction is void because one part of it may be vitiated. Of course, where the object of the consideration of the transfer is unlawful, as that word is defined in S. 23, Contract Act, the transfer is not effective.

xx xx xx xxIf the effect of enforcing the contract would necessarily be to defeat the provisions of any law the contract would undoubtedly be void, but if it consists of several distinct parts which can be separated, the whole transaction would not be bad unless the provisions of S. 24, Contract Act, are applicable to it."

The decision in Dip Narain Singhs case was followed in Gappo Singh v. Har Charan, reported in AIR 1935 Oudh 501, by a Division held that Sec. 24 of the Contract Act, did not apply to the transfers under the Transfer of Property Act; therefore, where transfer of several items of properties could be split up and separated, the whole transaction was not void because one part of it was vitiated. A Division Bench of the same Court, again in Bhagwat Singh v. Harikishen Das, reported in AIR 1942 Oudh 1, reiterated the 'same view following the decision in Dip Narain Singh's case AIR 1930 All 1, and distinguished the decision in Muhammad Khalilur Rahman v. Mohammad Muzammilullah, reported in AIR 1933 All 468, as being not applicable to the case of a mortgage deed under which some transferable and non-transferable properties were mortgaged. In Muhammad Khalilur Rahman's case, no opinion different from the view of the Full Bench in Dip Narain Singh's case was

expressed. After referring to Dip Narain Singhs case, it was held that in a case where the terms of the deed contained two separate contracts in the first part of which the debtor admitted a sum of Rs. 20,000/- as due by him and undertook to pay the same on demand, the, debtor was quite competent to enter into that contract. In the second part, the debtor mortgaged certain property by way of security. This part was invalid. The two parts could be separated. Therefore, it was held that the plaintiff was entitled to maintain the suit on the basis of the personal covenant to pay as per the first part of the deed, which the debtor had agreed to pay on demand. It was further held that the right of the plaintiff to recover the amount due on the basis of the agreement was perfectly valid as it was not dependent on the failure of the debtor to perform the contract of mortgage; therefore, it was held that Sec. 24 of the Contract Act, did not apply. Thus, the decision in Mohd. Rahman's case AIR 1933 All 468, also rested on the severability of the valid portion of the contract. This was also the principle which was adopted in Dip Narain Singh's case.

11.5. It may also be noticed that in Eastern Mercantile Bank Ltd. v. N.T. Philip, , the entire mortgage deed has been held to be void, applying S. 24 of the Contract Act. That was a case in which an agreement to stiffling the prosecution was the consideration for the mortgage deed on which the claim was founded in the suit. It was specifically stated in the mortgage deed that a sum of Rs. 2,400/- misappropriated by the son of the mortgagor and as a compromise the police prosecution pending against the son of the mortgagor was to be withdrawn. As the whole consideration for the mortgage was opposed to public policy inasmuch as it was for stiffling prosecution and as there was no question of severance of any part, of the mortgage deed from the invalid portion, as such the entire transaction was vitiated, consequently, S. 23 of the Contract Act itself attracted to the case; therefore, there was no question of application of S. 24 of the Contract Act. Hence the decision in Eastern Mercantile Bank Ltd.'s case cannot be held as laying down the law that Sec. 24 of the Contract Act, applies to the completed conveyance.

11.6. Similar is the position in Soundatti Yellama Municipality v. Shripadbhat Seshbhat, reported in AIR 1933 Bom 132. In that case, the Municipality leased the levy of toll on pilgrims, though it had no power to levy toll on pilgrims which was in the nature of tax. The lessee failed to pay the amount due under the lease. The Municipality filed a suit for recovery of the amount. One of the contentions raised by the defendant was that the Municipality was not competent to levy toll on pilgrims; therefore the contract granted to him by the Municipality to levy on, and to collect the toll from, the, pilgrims was altogether void. It was held that the Municipality had no power to impose the toll. Consequently, it was held that the contract itself was void. Therefore, it was also a case where the contract in its entirety was void. As such there was no question of application of Sec. 24 of the Contract Act. Nevertheless, it was observed in that case that where a part of the~ consideration was unlawful; the general rule was that when a valid part could not be severed from the illegal part of the contract, the contract was altogether void.

11.7. It follows from the above discussion that Sec. 24 of the Contract Act, does not apply to a completed transaction of a transfer of property; the provisions of the Indian Contract Act, apply to the transfer of property only to the extent they are made applicable. Section 6(h) of the Transfer of Property Act makes applicable the provisions of Sec. 23 of the Indian Contract Act, to a transfer of property. Section 23 of the Indian Contract Act, does not prohibit enforcement of valid portion of

the transfer of property or debt, if it is severable from the invalid portion. Applying the aforesaid conclusions to the facts of the present case, it is seen that the suit transaction is a mortgage. The mortgaging is both a debt and a transfer of interest in immovable property. The mortgage debt in question was valid to the extent of Rs. 18,000/. The remaining portion of the debt amounting to Rs. 12,000/. Was invalid because it was hit by sub-sec. (2) of S. 54A of the Companies Act, 1913 read with Sec. 23 of the Contract Act. The invalid portion of the debt i.e. severable. The valid portion has already been paid.

11.8. It is an established principle, rooted in public policy, that the Courts of law do not aid or do not become instrumental in enforcing transaction *ex turpi causa*. We may usefully refer to the observations made in *Selangor United Rubber Estates Ltd. v. Cradock*, reported in (1968) 2 All ER 1073:-

"It is not disputed by the plaintiff-Company that if a contract or "consensual arrangement" is illegal *ex facie*, or made for an illegal purpose, then the Court will not assist in enforcing the contract or "consensual arrangement" (whether e. g. by specific, performance, money judgment, or damages) or to recover property (including money) passed in pursuance of it. The plaintiff Company contends, however, that such refusal of the court to assist is limited to cases of contract or "consensual arrangement" and does not extend in particular to claims based on breach of trust.

The ambit, within which such consequences of the illegality operate, has by no means been clearly defined. This -amply appeared from the arguments before me. The usual field of its operation is certainly contract; but then contract is the field, which gives most scope for its operation. The principle governing such consequences of illegality is not, however, just a twig of any particular branch of the law, but is rooted deeply in public policy - that the Courts are not to be instruments for illegality. The policy is not that the Courts are not to be instruments for aiding illegality in, contract, but may be instruments for aiding illegality in other branches of the law. It is in accordance with this substantial public policy nature of the courts' refusal of aid to illegality that such illegality is not treated as a matter of pleading, or a matter merely as between the parties, but as a matter of which the Court will, of its own initiative, take cognizance irrespective of pleadings or wishes of the parties. The objection to aiding illegality is thus not limited in its origin in public policy to any particular form of action."

This being the position, the plaintiff corporation is not entitled to recover the suit claim as it represents the invalid portion of the consideration of the mortgage.

11.9. For the reasons stated above, Points I and 2 are answered as follows:

The entire mortgage transaction between the company and the defendants was not in contravention of the provisions contained in Sec. 54A of the Indian Companies Act,

1913; as such, the entire mortgage transaction was not invalid. The mortgage transaction in question in so far it included Rs. 12,000/- as part of the consideration which was adjusted towards the share capital of the Company was invalid.

12. Having regard to the fact that the amount claimed in the suit under the suit mortgage admittedly represented the sum of Rs. 12,000/- adjusted towards the share capital of the company and the interest thereon, and as it is held that it was invalid, the plaintiff Corporation is not entitled to recover the same. Hence, the ultimate conclusion reached by the learned Appellate Judge that the suit has to be dismissed, is correct and it is accordingly affirmed. Consequently, the appeal has to fail.

13. For the reasons stated above, the appeal is dismissed. However, there will be no order as to costs.

14. At the end, we consider it necessary to clarify that the dismissal of the suit does not come in the way of the United Karnataka Insurance Company Ltd. Dharwad, calling, upon the defendants to surrender the shares.

15. Appeal dismissed.