

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1300 OF 2009

SURAJ NARAIN KAPOOR AND OTHERSAPPELLANT(s)

VERSUS

PRADEEP KUMAR AND OTHERSRESPONDENT(s)

JUDGMENT

NAVIN SINHA, J.

The plaintiff's suit for redemption of mortgage, decreed by the trial court and affirmed in first appeal, having been reversed by the High Court, the plaintiff is in appeal. The parties shall be referred to by their respective position in the suit, for convenience.

2. Learned counsel for the appellants submits that the High Court grievously erred in reversing the concurrent findings of two courts that Exhibit-A1 was a mortgage by conditional sale,

and not a sale deed with an option to repurchase. The intention of the parties to create a mortgage by conditional sale only is apparent from the right to redemption being incorporated in the same document, fulfilling the statutory requirement under Section 58(C) of the Transfer of Property Act. Reservation of the right to redemption for five years only, was not relevant as the right would be co-extensive with the statutory period of 30 years.

3. Conversely the submission on behalf of the respondents is that the High Court on an examination of Exhibit-A1 has rightly held that it was a sale with a condition for repurchase, and not mortgage by conditional sale. The recitals in the document were self-explanatory and did not evidence any mortgage or loan, much less to discharge any debt, or the relationship of debtor and creditor. Merely because there may have been an option for repurchase within 5 years incorporated in the same document, would not ipso fact confer on it the nature of a mortgage by conditional sale. The suit for redemption was also not filed within five years.

4. We have considered the submissions. The question whether a document is a mortgage by conditional sale, or a sale with an option to repurchase, is a vexed question to be determined in the facts of each case. Reference may appropriately be made to ***Bhoju Mandal vs. Debnath Bhagat***, 1963 Supp (2) SCR 82, observing as follows:-

4. There is a clear legal distinction between the two concepts, a mortgage by conditional sale and a sale with a condition of re-purchase. The former is a mortgage, the relationship of debtor and creditor subsists and the right to redeem remains with the debtor. The latter is an out and out sale whereby the owner transfers all his rights in the property to the purchaser reserving a personal right of re-purchase. The question to which category a document belongs presents a real difficulty which can only be solved by ascertaining the intention of the parties on a consideration of the contents of a document and other relevant circumstances. Decided cases have laid down many tests to ascertain the intentions of the parties but they are only illustrative and not exhaustive.

5. The true nature of the document therefore has to be determined in the facts of each case, dependent on the nature of the recitals in the document, intention of the parties, coupled with other attendant surrounding circumstances.

There can be no hard and fast rule for determining the nature of the document, devoid of these circumstances. Precedents, in abundance, will not suffice alone, as observed in ***Pandit Chunchun Jha vs. Sheikh Ebadat Ali and another***, 1955 SCR 174, as follows:-

“There are numerous decisions on the point and much industry has been expended in some of the High Courts in collating and analyzing them. We think that it is a fruitless task because two documents are seldom expressed in identical terms and when it is necessary to consider the attendant circumstances the imponderable variables which that brings in its train make it impossible to compare one case with another. Each case must be decided on its own facts.”

6. In the facts of the instant case, considering that the suit had been decreed by two courts, it was considered prudent to re-examine the deed document in its original vernacular version, rather than to rely upon the meaning assigned to the recitals according to the unofficial translators understanding.

7. A bare reading of the original document reveals that it is styled as a sale deed. The vendor specifically recites that he had purchased the property for a sum of Rs.1500/- by sale deed dated 22.6.1948, from its original owners. That he was the exclusive owner of the property, which was not encumbered in any manner and that he had absolute title and authority singularly, to deal with the same to the exclusion of his brothers, from whom he had separated long ago. He was selling the shop for a sum of Rs.4000/- because he had purchased a motor vehicle, which he wanted to run on hire. On receipt of the consideration money he was voluntarily transferring all right, title and interest in the property to the vendee and his legal heirs for all times to come. If the property was found to be encumbered in any manner, the vendee could approach the court, for return of the sale amount, including against the immovable property of the vendor. If the amount was returned within a period of 5 years, either in installments or in lump-sum, the purchaser would execute the sale deed in his favour.

8. The recitals reveal no reference to any loan taken or mortgage created with regard to any immovable property as security for such loan, much less to discharge any debt. It does not evince the creation of a debtor and creditor relationship. On the contrary, the recitals are specific that the vendor was in need of money to run the vehicle purchased by him on hire, and was selling the shop to raise money for the purpose. The suit for redemption was also filed beyond the period of 5 years. Significantly, the first appellate court observed that the recitals indicated that it was a sale deed, but concluded that it was a mortgage by conditional sale, only because the right to redemption was incorporated in the same document, which was but only one of the factors amongst others, to determine the true nature of the document.

9. In ***Tamboli Ramanlal Motilal (Dead) by Lrs. vs. Ghanchi Chimanlal Keshavlal (Dead) by Lrs. and another***, 1993 Supp. (1) SCC 295, the question was similar with regard to the nature of the document, in absence of any intention expressed with regard to creation of a debtor and creditor

relationship. Holding that the document was not a mortgage by conditional sale but sale with an option to repurchase, it was held:-

“17. What does the executant do under the document? He takes a sum of Rs.5,000 in cash. The particulars are (a) Rs.2,499 i.e. Rs. 899 by mortgage of his house on January 27, 1944 and (b) Rs. 1,600 by a further mortgage on May 31, 1947 totaling to Rs. 2,499. Thereafter, an amount of Rs. 2,501 in cash was taken from the transferee. The purpose was to repay miscellaneous debts and domestic expenses and business. It has to be carefully noted that this amount of Rs.5,000 was not taken as a loan at all. As rightly observed by the High Court, by executing this document the executant discharges all the prior debts and outstandings. Where, therefore, for a consideration of a sum of Rs.5,000 with the conditional sale is executed, we are unable to see how the relationship of debtor and creditor can be forged in. In other words, by reading the documents as a whole, we are unable to conclude that there is a debt and the relationship between the parties is that of a debtor and a creditor. This is a vital point to determine the nature of the transaction.

18. The property is sold conditionally for a period of five years and possession is handed over. At the same time, the document proceeds to state ‘Therefore, you and your heirs and legal representatives are hereafter entitled to use, enjoy and lease the said houses *under the ownership right*.’”

(emphasis supplied)

10. In the facts and circumstances of the present case, and for reasons discussed, we find no reason to interfere with the order impugned holding that the document in question was a sale deed with an option to repurchase and not a mortgage by conditional sale.

11. The appeal lacks merits and is dismissed.

.....**J.**
(Ranjan Gogoi)

.....**J.**
(Navin Sinha)

New Delhi,
October 24, 2017.