

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1574 OF 2019

[Arising out of SLP (C) No. 17510 of 2014]

Smt. Gowramma and Anr.

.. Appellants

Versus

Shri Kalingappa (D) represented by LR's & Ors. .. Respondents

J U D G M E N T

M. R. SHAH, J.

Leave granted.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 1.7.2011 passed by the High Court Karnataka in RSA No. 2092 of 2008, by which the High Court has allowed the said appeal and has quashed and set aside the judgment and decree passed by the Court of Principal Civil Judge (Jr. Division), Nanjangud (hereinafter referred to as the 'trial

Court'), confirmed by the first Appellate Court and consequently has dismissed the suit, the original Plaintiffs have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the Appellants herein – original Plaintiffs mortgaged the land in question in favour of one Bangarasetty for a period of five years for Rs.3,000/- and he was put in possession. That the mortgage was done on 3.10.1980. That thereafter, the original Plaintiffs entered into an Agreement to Sell dated 26.4.1982 to sell the same in favour of the Respondent's father – Kalingappa for a sum of Rs.6,000/-. That, Kalingappa filed a civil suit being OS No. 48 of 1983 for specific performance of the agreement to sell dated 26.4.1982. It appears that, in between, Bangarasetty – Mortgagee assigned the mortgage in favour of one Shri N.S. Sundarasetty and he was put in possession of the land. That the learned Court of Munsiff and Additional JMFC, Nanjangud by judgment and decree dated 3.8.1984 decreed the suit for specific performance filed by the aforesaid Kalingappa. Learned Court of Munsiff and Additional JMFC directed the Appellants herein to

execute the sale deed by receiving Rs.1,000/-. Learned Court of Munsiff and Additional JMFC also directed the mortgagee to return the mortgage deed by receiving the mortgage amount and handover the land within one month. It appears that thereafter Kalingappa filed an Execution Petition No. 64 of 1996 for execution of the judgment and decree dated 3.8.1984 passed by the learned Court of Munsiff and Additional JMFC. The said Execution Petition was dismissed as not pressed by an order dated 28.6.1997. However, Kalingappa paid Rs.3,000/- being the mortgage amount to one Sundarasetty (the mortgagee assignee) and Kalingappa was put in possession of the land in question.

2.1 That thereafter, in the year 2002, the Appellants herein – original Plaintiffs filed suit bearing OS No. 45 of 2002 in the Court of Principal Civil Judge (Jr. Division), Nanjangud (hereinafter referred to as the ‘trial Court’) for redemption of the mortgage, possession and mesne profits against the original mortgagee as well as against Kalingappa. Before that Court, it was specifically stated in the written statement filed by Kalingappa that he had taken over the property by redeeming the mortgage in terms of the earlier decree dated 3.8.1984. That by

judgment and order dated 18.3.2004, the learned trial Court partly decreed the suit for redemption of the mortgage filed by the Appellants herein – original Plaintiffs. The learned trial Court also directed the original Defendant No. 1 – Kalingappa to handover the possession of the suit schedule property in favour of the plaintiffs (Appellants herein) on receiving the mortgage amount of Rs.3,000/- within one month from the date of its deposit by the plaintiffs.

2.2 The judgment and order passed by the learned trial Court dated 18.3.2004 in OS No. 45 of 2002 came to be confirmed by the Court of the Civil Judge (Sr. Division), Nanjangud (hereinafter referred to as the ‘first Appellate Court’) vide judgment and order dated 15.7.2008 passed in R.A. No. 45 of 2004.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the first Appellate Court dated 15.7.2008 passed in RA No. 45 of 2004, Respondent No. 1 herein – Kalingappa through his legal heirs preferred RSA No. 2092 of 2008 before the High Court of Karnataka at Bangalore. That, relying upon and considering Section 60 of the Transfer of Property Act, 1882 (hereinafter referred to as the ‘TP Act’), the High Court by the

impugned judgment and order has allowed the said appeal and quashed and set aside the judgment and decree passed by the learned trial Court, confirmed by the first Appellate Court and consequently has dismissed the suit being OS No. 45 of 2002.

2.4 Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court, the original plaintiffs in OS No. 45 of 2002 have preferred the present appeal.

3. Learned counsel appearing on behalf of the Appellants has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed an error in holding that the mortgage was extinguished.

3.1 It is vehemently submitted by the learned counsel appearing on behalf of the Appellants that, as provided under Section 60 of the TP Act, till Shera (endorsement) is written on the mortgage deed or an acknowledgement in writing that the mortgage has been extinguished and got registered, there is no redemption in the mortgage in the eyes of law. It is submitted that in the present case such is not the case and, therefore, both the Courts below rightly decreed the suit for redemption of the mortgage. It

is submitted that, therefore, the High Court committed a grave error in setting aside the concurrent findings of both the Courts below.

3.2 It is further submitted by the learned counsel appearing on behalf of the Appellants that, as such, in the present case, though there was a decree in favour of Kalingappa in O.S. No. 48 of 1983 for specific performance of the agreement to sale dated 26.4.1982, however, thereafter, he did not execute the decree and, in fact, the Execution Petition was dismissed as not pressed and, therefore, the right of Kalingappa under the decree passed in O.S. No. 48 of 1983 was extinguished and, therefore, the right of the mortgagor to redeem the mortgage was saved/survived. It is submitted that, therefore, the plaintiffs – legal heirs of the mortgagor were entitled to redeem the mortgage and, therefore, they rightly filed the suit for redemption of the mortgage.

3.3 Making the above submissions, it is prayed to allow the present Appeal.

4. Learned counsel appearing on behalf of Respondent Nos. 1 to 4 – legal heirs of deceased Kalingappa has supported the impugned judgment and order passed by the High Court.

4.1 It is vehemently submitted by the learned counsel appearing on behalf of original Defendant No. 1 (since dead and now represented through his legal heirs) that considering Proviso to Section 60 of the TP Act and considering the fact that Kalingappa paid the mortgage amount of Rs.3,000/- to Sundarasetty – mortgagee assignee and Kalingappa was put in possession, the High Court has rightly observed and held that the mortgage was extinguished by the act of the parties. It is submitted that, therefore, the High Court has rightly dismissed the suit for redemption of the mortgage. Therefore, it is prayed to dismiss the present appeal.

5. Heard the learned counsel appearing on behalf of the respective parties at length.

5.1 At the outset, it is required to be noted that Sundarasetty was assigned the mortgage by the original mortgagee – Bangarasetty and, in fact, he was also put in possession of the

land in question. It is true that Kalingappa – the mortgagee earlier filed a suit for specific performance and there was a decree in favour of Kalingappa – original Plaintiff in OS No. 48 of 1983. However, the Execution Petition filed by Kalingappa was dismissed as not pressed and, therefore, his rights under the judgment and decree passed in OS No. 48 of 1983 for specific performance of the agreement to sell dated 26.4.1982 was extinguished. Therefore, thereafter the question was only with respect to the mortgage. As observed hereinabove, in the year 1982, the original Mortgagee – Bangarasetty assigned the mortgage in favour of Sundarasetty and, therefore, Sundarasetty became the mortgagee assignee and, in fact, he was also put in possession of the suit land. It is required to be noted that the decree passed by the learned Court of Munsiff and Additional JMFC in OS No. 48 of 1983 was in two parts. The first part was for specific performance of the agreement to sell in favour of Kalingappa. The second part was in favour of the mortgagee/mortgagee assignee and the mortgagee/mortgagee assignee were directed to receive the mortgage amount and to return the mortgage deed with the Shera (endorsement) and to handover the suit property to the plaintiff – Kalingappa. It

appears that, pursuant to the second part of the judgment and decree passed in OS No. 48 of 1983, Kalingappa paid Rs.3,000/- being the mortgage amount to Sundarasetty – mortgagee assignee and in turn Kalingappa was put in possession thereof. In view of the factual situation and considering the Proviso to Section 60 of the TP Act, the High Court has rightly observed and held that **by the act of the parties**, namely, by act of Sundarasetty receiving Rs.3,000/- being the mortgage amount from Kalingappa and putting him in possession, the mortgage is extinguished. The submission on behalf of the Appellants – original Plaintiffs that the mortgage can be said to have been extinguished only in a case where there is a Shera (endorsement) written on the mortgage deed or an acknowledgment in writing that the mortgage is extinguished and got registered, there is no redemption in the mortgage in the eyes of law is concerned, the aforesaid has no substance, considering Proviso to Section 60 of the TP Act. Considering Section 60 of the TP Act, mortgagor has a right to redeem the mortgage as provided under first part of Section 60 of the TP Act, however, provided the right conferred in favour of mortgagor has not been extinguished **by act of the**

parties or by decree of the Court, as per Proviso to Section 60 of the TP Act. In the present case, by act of the parties, i.e. on Sundarasetty – mortgagee assignee receiving Rs.3,000/- being the mortgage amount from Kalingappa and by putting him in possession, as rightly observed by the High Court, the mortgage is extinguished and, therefore, the suit for redemption of the mortgage preferred by the Appellants herein – original plaintiffs was not maintainable. No error has been committed by the High Court in dismissing the suit for redemption of the mortgage preferred by the Appellants herein-original plaintiffs. We are in complete agreement with the view taken by the High Court.

5.2 In view of the above and the reasons stated above, the present Appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, without costs.

.....J.
(L. NAGESWARA RAO)

.....J.
(M. R SHAH)

New Delhi;
February 08, 2019.