Dharba Veera Venkata Satyanarayana and anr. Vs. National Insurance Company Ltd.

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Court : Chennai

Decided On : Apr-25-1946

Reported in : AIR1947Mad51; (1946)2MLJ126

Appellant : Dharba Veera Venkata Satyanarayana and anr.

Respondent : National Insurance Company Ltd.

Judgement :

Henry Lionel Leach, C.J.

1. On the 26th October, 1914, Venkayya, the father of the appellants, insured his life with the respondent company under two policies, each for Rs. 2,000. On the 4th August, 1936, he borrowed from the respondent Rs. 1,500 on the security of the two policies. The surrender value then amounted to Rs. 1,700. iThe assured continued to pay the premiums until the 22nd March, 1938, when he defaulted. The result was that the respondent, under the terms of the contracts of insurance, converted each policy into a paid up policy for Rs. 1,782. This was on the 22nd September, 1939. By the month of August, 1940, Venkayya owed the respondent in respect of the loan granted to him, including interest more than the surrender value of the two policies. The indebtedness exceeded the surrender value by Rs. 210. The respondent called upon him to repay the loan or to reduce the amount outstanding to something below the surrender value. Venkayya did not comply with this demand and on the 27th December, 1940, the respondent cancelled the policies under the terms of the contract relating to the loan. When the loan was granted to him the assured signed a bond in which he agreed that in case of default of payment on demand made of him, the company should have the power to sell the policies and in the event of the sale being to the company itself, the price should be the then surrender value. There was a further provision to the effect that the company should have the right to cancel the policies on payment of the surrender values, the cancellation to be deemed to be a sale within the meaning of the bond. It was in exercise of this alternative power that the respondent cancelled the two policies on the 27th December, 1940. Allowing for the full surrender value, there was still due to the respondent the sum of Rs. 107-6-0.

2. Venkayya died on the 12th May, 1942. On the 9th February, 1943, his two sons and his widow instituted a suit in the Court of the District Munsiff of Coconada for an account of the amounts payable under the two policies to them as the heirs of Venkayya and for a decree for the total sum found to be due. They maintained that the provision in the bond for the cancellation of the policies amounted to a clog on the equity of redemption. This plea was accepted by the District Munsiff, who passed a decree for the taking of accounts. The respondent appealed to the Subordinate Judge of Coconada, who agreed with the District Munsiff. The respondent then

appealed to this Court. The second appeal came before Byers, J., who held that there was no clog on the equity of redemption and dismissed the suit. The learned Judge gave leave to the plaintiffs to appeal under Clause 15 of the Letters Patent and this appeal is the result. The appellants are the two sons of Venkayya. His widow, died during the pendency of the appeal in the Court of the Subordinate Judge.

3. We consider that Byers, J., erred in disturbing the decisions of the Courts below. A mortgagee is not allowed at the time of the loan to enter into a contract for the purchase of the mortgaged property. In referring to this rule Lord Macnaughten in Samuel v. Jarrah Timber and Wood Paving Corporation (1904) A.C. 323. pointed out that it was founded on sentiment rather than reason, but it was established that a mortgagee can never provide at the time of making the loan for any event or condition on which the equity of redemption shall be discharged and the conveyance absolute. The provision in the bond signed by Venkayya that in default of payment by him of the loan the respondent should have the right of cancelling the policies and paying the surrender values amounted to a stipulation that the respondent as the mortgagee should have the right of purchasing the policies at their surrender values and as this was made a condition of the loan the rule referred to applies.

4. In Samuel v. Jarrah Timber and Wood Paving Corporation (1904) A.C. 323. the facts were these. A limited liability company borrowed money upon the security of its debenture stock and gave the lender the option to purchase the stock at 40 per cent. within 12 months. Within that period and before the company gave notice of its intention to repay the loan, the lender claimed to purchase the stock at the agreed price. It was held by the House of Lords, affirming the decision of the Court of Appeal, that the option was void and that the company was entitled to redeem the loan on payment of principal, interest and costs. The Lord Chancellor (Lord Halsbury) said:

I regret that the state of the authorities leaves me no alternative other than to affirm the judgment of Kekewich, J., and the Court of Appeal. A perfectly fair bargain made between two parties to it each of whom was quite sensible of what they were doing, is not to be performed because at the same time a mortgage arrangement was made between them. If a day had intervened, between the two parts of the arrangement, the part of the bargain which the appellant claims to be performed would have been perfectly good and capable of being enforced; but a line of authorities going back for more than a century has decided that such an arrangement as that which was here arrived i& contrary to a principle of equity, the sense or reason of which I am not able to appreciate, and very reluctantly I am compelled to acquiesce in the judgments appealed from.

The principle has been applied by the Courts of India. In Kanaran v. Kuttooly (1897) 8 M.L.J. 62 : I.L.R. 21 Mad. 110, this Court held that a stipulation in a mortgage deed that if the mortgage money was not paid on the due date, the mortgagor would sell the property to the mortgagee at a price to be fixed by umpires was unenforceable as constituting a fetter on the equity of redemption.

5. If Venkayya had acquiesced in the cancellation of the policies under the terms of the bond, his heirs would not have been able to maintain this action; but he did not acquiesce. If at the time payment was demanded he had agreed to sell his policies to the respondent for their surrender value, the position would have been the same; but he did not do this. The respondent look over the policies on its own initiative and

without any acquiescence on the part cf Venkayya, which in law it was not entitled to do. It cannot be said that the respondent took any unfair advantage of Venkayya; it obviously did not, but this does not alter the position.

6. The appeal must be allowed and the decree of the Subordinate Judge restored with costs before Byers, J., and in this Court. In this Court we fix the advocate's fee at Rs. 150.

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