

MHSN090000072014



Order below Exh.54 in R.C.S.No.1/2014

[Ashok Sawanta Mali v/s. Bhaskar Atmaram Mane & Ors.]

The present application is filed by plaintiff under Section 83 of the Transfer of Property Act for depositing mortgage amount.

2. By filing present application it is submitted by the plaintiff that, the plaintiff has filed present suit for redemption of mortgage and for execution of reconveyance deed. The plaintiff had mortgaged Gat No.301/1 on 04.12.1997 wherein the defendants denied to accept the amount of mortgage of Rs.65,000/- on 20.12.2013. Therefore, the plaintiff has filed present suit. Wherein the defendants appeared and they denied to execute the reconveyance deed. Therefore, permission may be granted to deposit an amount of Rs.65,000/- in the Court.

3. On the other hand the Ld.Advocate for the defendants filed his say at Exh.57 and denied the contents of the application. He further submitted that, the present suit is filed under Section 60 of the T.P.Act for redemption of mortgage and execution of reconveyance deed. Wherein the defendants have filed their written-statement and accordingly, the issues have framed at Exh.32. Wherein, the issue no.5 is regarding the limitation, whether suit of the plaintiff is filed within the period of limitation

and the another issue no.4 that, whether plaintiff is entitled for the relief claimed, these issues are going to be decided at the time of decision of suit. Therefore, the present application is not tenable. Further it is submitted that the present application is filed under Section 83 of the T.P.Act. Such application cannot be filed after filing of suit. The provision in the said section is procedural in nature. Therefore, on these grounds also, the application is not tenable. Further it is submitted that even for the sake of argument it is taken into consideration that the plaintiff succeeds in his claim, then also, preliminary decree will be passed under Order XXXIV Rule 7 wherein the principle amount, interest etc., will be decided and the Court can direct the defendants to deposit the said amount. Therefore, the present application is premature. Further it is submitted that the deed which is executed by the plaintiff is not only the mortgage deed, but wherein the condition is mentioned that the if the plaintiff fails to repay the amount within the one year, then the said deed will be considered as sale-deed. Accordingly, the issue no.3 has been framed and the burden lies on the defendants. This issue is also going to be decided at the time of decision of the suit. Therefore, the present application may be rejected.

4. Heard both sides. Perused record. After perusal of record it is seen that, the present suit is filed for redemption of mortgage deed dated 04.12.1997 and for execution of reconveyance deed. The plaintiff has filed present application under Section 83 of the Transfer of Property Act. The Section 83 of the Act states about, Power to deposit in Court money due on mortgage. The Section 60 of the Act states about Right of

mortgagor to redeem. After going through Section 83 it is seen that, at any time, after the principal money payable in respect of any mortgage has become due and before a suit for redemption of the mortgaged property. I have gone through the pleadings of the parties wherein it is the contention of the plaintiff that defendants refused to accept the amount of mortgage and therefore, he has filed the present suit . On the other hand, it is the contention of the defendants that the plaintiff never shown his willingness to repay the amount of mortgage. Further, the period of repayment of mortgage money was for one year. On the basis of these pleadings the issues have been framed at Exh.32 wherein the issue regarding the limitation and entitlement of relief have been framed. Further, the bare reading of the deed dated 04.12.1997, it is seen that the period for repayment was fixed and failure on the part of plaintiff for repayment within the stipulated period will result the said mortgage deed into a sale-deed. Therefore, whether the said deed was mortgage deed or conditional mortgage will be decided at the time of decision of the suit. Further it is seen that Section 83 of the Transfer of Property Act states about summary procedure regarding the depositing of mortgage money. In the present case, the suit has been already instituted in the year 2014. Whether the plaintiff has made any attempts for repayment of mortgage money, prior to filing the suit will be decided at the time of decision of the suit. Further, if plaintiff succeeds in his suit claim then the appropriate directions can be given to the defendants. Therefore, permission of depositing of mortgage money and directions to the defendants to accept the same will be premature and will cause prejudice. Hence, I proceed to pass the following order.

ORDER

1. Application is rejected.
2. No order as to costs.

TASGAON.

Date : 23.03.2023

(Omprakash M.Mali)

Civil Judge Jr.Dn.,

TASGAON.

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original order.

Name of the Stenographer	:	U.P.Patil
Court	:	Civil Judge Jr.Dn. and Judicial Magistrate F.C., Tasgaon.
Date	:	23.03.2023
Order signed by the Presiding officer on	:	23.03.2023
Order uploaded on	:	23.03.2023