(1940) 06 CAL CK 0012

In the Calcutta High Court

Amiya Bikash Datta and Others APPELLANT

Vs

Mohaluxmi Bank Ltd. RESPONDENT

Date of Decision : 27-06-1940

Acts Referred:

Public Demands Recovery Act — Section 3(1)

Citation : AIR 1940 Cal 587

Hon'ble Judges : Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—The defendants are the appellants in this ease and in the suit out of which this appeal arises the plaintiff, the Mahaluxmi Bank Ltd. sued for a declaration to the effect that the plaintiff''s right had not been affected by a certificate sale which was held on 8th January 1934 by which the defendants purchased certain property. It appears that this property had been purchased by the plaintiff Bank on 8th August 1931 in execution of a mortgage decree and that the Bank obtained possession in the execution proceedings on 3rd November 1931. Thereafter the plaintiff applied for mutation in the Collectorate records and the mutation order was made on 23rd September 1932. In the meantime a certificate had been filed against the former proprietors of this property in respect of arrears of case and at the ensuing certificate sale which was held on 8th January 1934 this property was purchased by Annada Charan Datta, the father of the principal appellant. The plaintiff Bank took the usual steps under the Public Demands Recovery Act to have the sale set aside, but as these steps were unsuccessful the Bank instituted the suit out of which this appeal arises. The first Court held that the certificate sale which took place on 8th January 1934 was binding on the plaintiff Bank, but this decision was reversed by the lower Appellate Court on the ground that the certificate sale was void. In arriving at this conclusion the learned Subordinate Judge found that there was nothing on the record to show that the plaintiff''s name had been inserted in the certificate record at any place except in the sale proclamation. The learned advocate for the respondent asks me to treat this finding as a finding of fact by which the appeal should be concluded. I am however not prepared to accept this contention, because in arriving at this finding the lower Appellate Court has not taken into consideration certain important circumstances which will presently appear. Admittedly, in a case of this nature the plaintiff Bank would be bound by the sale which took place on 8th January 1934, if the Bank was a "certificate debtor." This expression has bean defined in Section 3(1), Public Demands Recovery Act, in the following terms:

Certificate debtor" means the person named as debtor in a certificate filed under this Act, and includes any person whose name is substituted or added as debtor by the certificate officer.

2. It is not contended that the plaintiff Bank was substituted but it is argued with considerable force that the Bank was added as a debtor by the certificate officer. The circumstances upon which the learned advocate for the appellants relies in support of this argument, have not received proper consideration in the judgment of the lower Appellate Court. In the first place it is significant that, on 23rd September 1932, an order was passed for the mutation of the plaintiff''s name in the Collectorate records. After notices u/s 7, Public Demands Recovery Act, had been served on the persons against whom the certificate was filed on 16th September 1932, it would appear that a report was made to the certificate officer on 10th April 1933, to the effect that the property had already been sold to fine plaintiff Bank. Thereafter, on 3rd May 1933, a note Ex. T, was recorded by the certificate officer asking the land registration officer for details with regard to the mahal and the names of the other recorded proprietors and there was a direction to the affect that the matter should be put up on 20th May 1933. On the latter date the case again came before the certificate officer -who stated that the names of two more recorded proprietors had been supplied to him and he directed that notices should issue against them. It also appears that on 26th October 1933, the usual sale proclamation was issued under Rule 46 of the rules in Schedule 2 to the Act, and admittedly this proclamation contained the plaintiff''s name.

3. In a case of this sort, to nullify the effect pf a certificate sale, a very heavy onus would lie on the plaintiff to show that there had been a non-compliance with the requisite formalities required under the Public Demands Recovery Act, and that the plaintiff''s name had not been added within the meaning of Section 3(1) of the Act. Having regard to the circumstances set forth above, it seems to be clear in this case that the plaintiff [Bank has not discharged this onus. On the contrary, in my judgment, the above mentioned circumstances clearly show that the plaintiff''s name was added within the meaning of Section 3(1) of the Act, at any rate, as far back as 20th May 1933. It is clear that the peon''s report dated 10th April 1933, which drew attention to the fact that the property had been sold to the plaintiff, resulted in enquiries being made in respect of this matter in pursuance of the certificate officer''s order, dated 3rd May 1933. We know that the plaintiff''s name had been mutated in the Collectorate records on 23rd

September 1932, and it is therefore almost impossible to avoid the conclusion that one of the two recorded proprietors to whom reference was made in the certificate officer''s order, dated 20th May 1933, must have been the plaintiff. There is a presumption to the effect that the usual notices u/s 7, Public Demands Recovery Act, were duly issued in pursuance of the order made by the certificate officer on 20th May 1933, and, as the plaintiff''s name actually appears in the sale proclamation dated 26th October 1933, there is also a presumption to the effect that this sale proclamation was drawn up after notice to the plaintiff as required under Rule 46(2) contained in Schedule 2 to the Act. These presumptions were of course rebuttable, but it is clear that they were not rebutted. In the result, I am of opinion that in view of the considerations and circumstances set forth above, the plaintiff''s suit must fail. It follows that the judgment of the lower Appellate Court must be set aside, and this appeal is allowed with costs throughout. The decision of the first Court is restored and affirmed. Leave to appeal under Clause 15. Letters Patent is refused.

