(1930) 03 CAL CK 0031

In the Calcutta High Court

Ananta Lal Sarkhel APPELLANT

Vs

Soudamini Guha and Others RESPONDENT

Date of Decision : 20-03-1930

Acts Referred:

Bengal Land Revenue Sales Act, 1859 — Section 6

Citation : AIR 1930 Cal 621 : 129 Ind. Cas. 401

Hon'ble Judges : Suhrawardy, J;Costello, J

Bench : Full Bench

Judgement

Costello, J.—The suit out of which this appeal arises was brought by a lady named Soudamini Guha and her sons to set aside the sale of a certain property which had taken place under the provisions of the Revenue Sale Law (Act 11, 1859). The plaintiffs claimed a decree for setting aside the revenue sale and in the alternative for a declaration that the plaintiffs'' right with regard to the land in question had not been affected by the sale. The defendants were four in number and defendant 4 was plaintiff''s stepmother in that she was one of the wives of the plaintiff''s father. The allegation made on behalf of the plaintiffs was that this defendant who possessed the property in question as a widow of the plaintiff''s father and therefore had a life interest in it, in order to defeat the future right of plaintiff and her family to succeed to that property had fraudulently conspired with the other defendants to bring about the sale of the land by making default in the payment of the revenue charged upon it. The plaintiffs also sought to set aside the sale on the ground that certain provisions contained in Section 6, Act 11, 1859, had not been complied with in that the property had not been actually advertised for sale and the notice of the sale had been suppressed, or at any rate had not come to the knowledge of the plaintiffs. The defendants pleaded that the allegations of fraud and collusion made in the plaint were not very definitely specified and'' certainly did not contain such particulars as allegations of fraud ought to contain. The learned advocate who appears for defendant 1 made some complaint on that point but I indicated to him in the course of the argument that where a general allegation of fraud is made which the defendant is not in a position to meet he ought to demand further particulars from the plaintiff. If he did not do so he cannot he heard to say afterwards that under the general allegation of fraud evidence was given of a nature which took the defence by surprise. In this particular case it is quite clear from the plaint that the plaintiff''s real allegation was that these defendants conspired together with the object of bringing about a sale of this land in such a way that it could be purchased either by the lady who was a life-tenant or by somebody who was her benamidar or nominee. It is clear that the allegation made against the defendants in substance was that the whole transaction was a fraudulent scheme for defeating the reversioners and enabling the life-tenanti to reacquire the property either in her own name or in the name of somebody else in absolute ownership and thus to deprive the plaintiffs of their contingent interest in the property. The Court of first instance came to the conclusion from the evidence in the case and in the circumstances that there was no room for doubt that:

the sale had been brought about by the collusion and fraud of the defendants with a view to defeat the plaintiffs of their just claim.

and that Court further came to the conclusion that the fraud consisted in the deliberate suppression of the notice of sale proclamation and the subsequent purchase in the name of defendant 1. The Court found that in fact the surplus sale proceeds were taken back by defendant 4 who in collusion with defendants 2 and 3 had purchased the property herself though the ostensible purchaser was defendant 2; and the Court said that it follows from that that the purchase was really a purchase by the defaulting proprietor. The Court found accordingly that the sale was not binding as against the plaintiffs and declared that the revenue sale of the land in question which was estate No. 905 of the Barisal Collecto rate should be set aside and made a further declaration that the plaintiffs'' interest had not been affected by that sale. These conclusions were upheld by the lower appellate Court which dismissed the defendant''s appeal. The lower appellate Court in the course of its judgment said inter alia that it was clear from the acts of defendant 4 that her object was anyhow to prevent this property from passing into the hands of the reversioners and the Court came to the conclusion that there was a conspiracy on the part of defendants 4 to bring about a sale of the property. We are of course bound by the findings of fact of the lower appellate Court and therefore this case must be dealt with on the footing that this sale was in fact brought about by fraud and conspiracy on the part of defendants 4. It is not necessary for me to emphasize the proposition that fraud will vitiate any transaction. No authority is needed for that proposition. It has been laid down repeatedly by Courts in England and in this country as well. Therefore the plaintiffs are entitled on that ground to succeed in the suit which they have brought. We accordingly do not think it necessary to discuss in detail the question whether or not there was in this particular case such a non-compliance with the provisions of Section 6 as would give rise to a right under the provisions of Section 33, Act 11, 1859, to have the sale annulled. That section provides that no sale for arrears of revenue or other demand realizable made after the passing of this Act shall be annulled by a Court of justice except upon the ground of it having been contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of; and no such sale shall be annulled upon such ground unless such ground shall have been declared and specified in an appeal made to the Commissioner u/s 25 of this Act. A suggestion was thrown out in the course of the argument before us that some at any rate of the grounds on which it is sought to have the sale set aside were not specified in the appeal which in fact was made to the Commissioner. We may point out that Section 33 only has reference to suits which are brought by; the defaulting purchaser or by persons claiming through the defaulting purchaser. It does not appear upon the authority that a person who has a substantial interest which is liable to be affected by the sale is debarred from bringing a suit by anything which appears in Section 33, Act 11, 1859; and in that connexion I would refer to the case of Jahnnovi Chaudhuri v. Secretary of State 7 C.W.N. 377. We are of opinion however that the question whether or not it can be said that the plaintiffs who are reversioners to this land have sufficiently substantial interest in the property in suit under the terms of Section 33 is in the circumstances of this case immaterial, for the suit is based on a definite allegation of fraud and that of itself is sufficient to entitle the plaintiffs to the relief, provided that the plaintiffs prove that fraud has been committed and that the plaintiffs'' right residing in them has been adversely affected. If; is manifest that if this revenue sale were allowed to stand and the property sold to remain in the hands of the alleged purchaser then there was nothing further to be done. The rights of the plaintiffs as reversioners will be adversely affected because their right to the succession will be entirely cut off. We are doubtful therefore that where in effect a suit is not one u/s 33 but is one founded on fraud as this suit in substance is, it is competent to the Court to annul the sale in its entirety. All that we are concerned with is to ensure that the defendants fraud shall not adversely affect any right residing in the plaintiffs. Without therefore definitely deciding whether in suits outside the scope of Section 33, Act 11, a revenue sale can be set aside, we are of opinion that for the purpose of this case to safeguard the plaintiffs right and to give them all necessary reliefs it is sufficient if we uphold the decision of the lower appellate Court to the extent that it confirms that part of the decision of the Court of first instance declaring that the plaintiffs'' interest has not been affected by the revenue sale.

2. We accordingly allow this appeal in part by setting aside so much of the decision of the two lower Courts as have the effect of setting aside the revenue sale of Estate No. 905 of the Barisal Collectorate. We accordingly direct that it be declared that the interests of the plaintiffs in that estate has not been affected by the revenue sale in question. Having regard to the circumstances of this case and seeing that the plaintiff respondents in this appeal have maintained only the material part of the original decree of the Court of first instance declaring that

their interest in the property has not been affected by the sale, we think that the appellants ought to pay to the respondents their costs of this appeal and of the Courts below.

Suhrawardy, J.

3. I agree.

