
(2014) 09 SC CK 0128
In the Supreme Court Of India
Case No : C.A. No. 80/2011

Baburao Karhkar

APPELLANT

Vs

Vilas Atmaram Bandodkar

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : 2015 (12) SCC 659 = 2014 (10) SCALE 535

Hon'ble Judges : Sharad Arvind Bobde, J;Ranjan Gogoi, J

Bench : Division Bench

Judgement

1. This appeal arises out of judgment and order of the High Court by which the decision made by the learned Trial Court on 20.07.2009, directing the Respondent herein to vacate and hand over possession of the suit scheduled property to the Appellant on payment of Rs. 18,30,378/- along with interest at the rate of 6%, has been reversed. The relevant facts that will be required to be noticed for the present adjudication may be very briefly noted at the outset.

2. The property consisting of a house/building which is the principal bone of contention between the parties belonged to one Atmaram and Premavati. Following the death of the aforesaid owners, inventory succession proceedings were initiated in the year 1989 by the Respondent, who is one of the sons of the deceased and was appointed as an Administrator of the Estate of the deceased. The succession proceedings were governed by the Portuguese Code of Civil Procedure (hereinafter referred to as "the Portuguese Code") which required the property to be put up for family auction/licitation. In the said family auction no outsider and only the family members are allowed to participate. The deceased couple had three sons and two daughters. The auction amongst the children of the deceased was held on 27.06.2007 and the Appellant No. 1 was the highest bidder by offering an amount of Rs. 47,00,500/-. The Respondent, admittedly did not bid. Thereafter, as required, the chart of partition setting out the total value of the inheritance; the value of the share of the parties and the owelty money payable by the highest bidder was drawn on 04.09.2007 and the final order of

the Court approving the same was made on 02.10.2007.

3. It is the contention of the Mr. M.B. Da Costa, learned Senior counsel appearing for the Appellants that the owelty money due to the other heirs was paid except to the Respondent who refused to vacate the house and to accept his share of the owelty money (which was a larger share because of the mother's Will dated 14.09.88 in his favour). In these circumstances, the Appellants had made an application to the Court on 14.01.2008 seeking a direction to the Respondent - Vilas Atmaram Bhandodkar to accept the owelty money and to vacate the house property. In response to the said application the Respondent filed a reply on 26.06.2008 seeking the following directions:

"1) The auction purchaser i.e. Appellant No. 1 should produce receipts of owelty money paid to other legal heirs.

2) A demand draft of Rs. 18,30,378/- be tendered to the Respondent or the amount be deposited."

4. No order on the said application was passed by the Court and it is on 15.10.2008 that the Appellant No. 1 voluntarily deposited the sum of Rs. 18,30,378/- in court. Thereafter, on 18.12.2008, the Respondent filed an application to declare the auction null and void. Finally on 20.07.2009, the learned Trial Court made an order directing the Respondent to hand over vacant possession of the house property on payment of the amount of Rs. 18,30,378/- together with interest at the rate of 6%. The said order was declined to be reviewed by the learned Trial Court. An appeal was filed by the Respondent before the High court. It is the order passed in the appeal that has been challenged in the present appeal.

5. The High Court considered the provisions contained in Article 1417(c) of the Portuguese Code and came to the conclusion that the reply dated 26.06.2008 filed by the Respondent before the Court amounts to demand within the meaning of Article 1417(c) of the Portuguese Code and payment not having been tendered by the Appellants within 3 days thereof, the auction sale was null and void. Accordingly the order of the Trial Court was reversed.

6. We have heard Shri M.B. Da Costa, learned senior counsel for the Appellants/ auction purchasers and Shri Soumil Ghosal, Learned Counsel for the Respondent/ creditor.

7. Learned Counsels for the parties have placed before us two translated versions of the provisions of Article 1417(c) of the Portuguese Code as made by (I) the Institute of Juridical Co-operation of the Faculty of Law of the University of Lisbon; (II) by Mr. M.S. Usgaocar in Family Laws of Goa Daman & Diu; and comments on Article 1417 by Noted Portuguese Jurist Joao Antonio Lopes Cardoso, in his book Judicial Partitions -Theory and Practice Vol. 11 ed. 1955. The provisions of Article 1417(c) of the Portuguese Code in Portuguese and the two translated versions and comments by noted Portuguese Jurist Joao Antonio

Lopes Cardoso are reproduced herein below for a complete understanding of the same.

Article 1417(c) of the Portuguese Code in Portuguese

"c) Os nao licitantes a quem hajam de caber as tornas devidas pelos licitantes scrao notificados para, dentro de tres dias, reclamarem, querendo, o pagamento. Se o reclamarem, sera notificado o licitante para depositar a importancia das tornas, sob pena de ficar sem efeito a licitacao.

Nao sendo reclamado o pagamento, as tornas vencerao os juros legais desde a data da sentenca dc partilhas e os crcdores delas poderao fazer registrar hipotcca legal sobre os bens adjudicados so devedor.

I. Article 1417(c) of the Portuguese Code translated by the Institute of Juridical Co-operation of the Faculty of Law of the University of Libson. "c) Those who did not bid and have the right to a compensation for the owelty of partition shall be notified to, within three days, if they so wish, demand payment.

If they demand it, the bidder shall be notified to deposit the amount of the compensation for the owelty of partition, failing which the licitation shall be void. If the payment is not demanded, legal interest shall apply to compensation for the owelty of partition, starting from the date of the judgment relating to the partition, and its creditors may register a legal mortgage over the property awarded to the debtor."

II. Article 1417(c) of the Portuguese Code translated by the Mr. M.S. Usgaocar in Family Laws of Goa Daman & Due

"c) Those who have not taken the properties in location and who are to be allotted the owelty money due by those who were successful in the licitation, shall be notified to demand within three days the payment, if they so desire. If the demand is made the successful bidder shall be notified to deposit the amount failing which the licitation will be of no effect.

Where the payment is not demanded, the owelty money shall earn the legal interest from the date of final judgment of partition and the creditors thereof may register the legal hypothecation over the properties adjudicated to the debtor."

III. Comments by Noted Portuguese Jurist Joao Antonio Lopes Cardoso, in his book Judicial Partitions - Theory and Practice Vol. 11 ed. 1955 on Article 1417

"If the Registry finds, when preparing the chart, that the assets taken in the auction exceed the share of the respective interested party, it shall make a memo in the form of a Chart stating precisely the amount of the excess (Article 1417 Code of Civil Procedure)

Thereafter, those who did not offer any bid or rather those who receive less, to whom owelty money is due by the highest bidders or by those who have

exceeded their respective share, shall be notified to demand the payment within three days, if they so wish.

If they make a demand, the Highest bidder or the person who has been allotted in excess shall be notified to deposit the owelty money under pain of the auction becoming ineffective. (Article 1417 cl. (c) civil Procedure Code)""

8. Though the Learned Counsels for the parties have urged different meanings to the translated versions to further their respective cases, on close scrutiny, we do not find any variance in the meanings of the translated provisions of the Code. In fact, according to us, the purport and meaning of Article 1417(c) is clear and unambiguous. After a chart of partition is drawn up and approved by the Court, under Clause (c) of Article 1417, a duty is cast on the Court to identify all the parties who had not taken part in the family auction" licitation and ensure service of notice on such person(s) so that within 3 days of receipt of such notice, the said parties i.e. creditors can raise a demand for payment, if they so wish. Once such a demand is raised the auction purchaser/successful bidder is duty bound to pay the amount, failing which the licitation will cease to have any legal effect. No time limit for payment by the auction purchaser is specified. It is in the aforesaid backdrop of the provisions of the Code that the Court will be required to examine the rival stand of the parties as projected before us in the present appeal.

9. Admittedly, in the present case, no notice was issued by the Court to the creditor(s) to raise any demand for payment as required under Article 1417(c) of the Code. The High Court has proceeded on the basis that the reply filed by the Respondent before the learned Trial Court on 26.06.2008 constitutes such a demand and further that within 3 days thereof payment was not made by the Appellants thereby vitiating the auction proceedings. Even if we are to proceed on the aforesaid l3 basis insofar as the demand of the Respondent is concerned, the alleged failure on the part of the Appellants to deposit the amount within 3 days could not have occasioned a default to vitiate the auction proceedings, as held by the High Court. Article 1417(c) does not contemplate invalidity of the licitation on failure to deposit the amount demanded by the creditor within 3 days. The period of 3 days has been stipulated for raising a demand by the creditor after such creditor receives the notice that he may raise a demand for payment. If Article 1417(c) is to be read in the manner indicated above we do not see how the High Court could have held the auction proceedings/licitation to have been vitiated on the alleged failure of the auction purchaser/appellants to pay the amount within 3 days. In any case, the "demand" made in the reply dated 26.6.2008 is not pursuant to any notice issued under Article 1417(c) of the Code.

10. All the above facts lead us to the conclusion that the High Court was not correct in holding that in the present case the licitation was rendered invalid as there had been a failure on the part of the Appellant to pay the amount demanded by the Respondent as required under Article 1417(c) of the Code. The conclusions recorded by the High court in the impugned order are plainly

untenable and would justify interference. The impugned judgment and order of the High Court, dated 08.10.2009 is, therefore, set aside and the order dated 20.07.2009 passed by the learned Trial Court is restored.

11. It appears that the amount deposited by the Appellant before the learned Trial Court on 15.10.2008 has been kept in a fixed deposit account. As a consequence of the disposal of the present appeal and the findings recorded therein we direct the said amount including upto date interest thereon, be paid to the Respondent/creditor immediately after the Respondent vacates and hands over the possession of the suit scheduled property to the Appellant. The appeal is accordingly disposed of in the above terms.