
(1955) 05 CAL CK 0008
In the Calcutta High Court
Case No : A.F.A.O. No. 26 of 1954

Govinda Chandra Ghose

APPELLANT

Vs

Provabati Ghose

RESPONDENT

Date of Decision : 10-05-1955

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : AIR 1956 Cal 147 : 59 CWN 886

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Amarnath Roy, for the Appellant; Somendra Chandra Bose, for the Respondent

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.—The appellant before me was the sole judgment debtor in the executing court. Respondent Srimati Provabati Ghose filed an application for execution of a decree passed in a suit for specific performance of a contract of re-conveyance of some Immovable property on the strength of a purchase from some Mahomedan decree holders, one of whom, namely, Sajita Bibi was admittedly a minor. The interest of Sajita Bibi in the decree purports to have been conveyed to the respondent by her mother and "de facto" guardian Nurjehan Bibi (vide kobala Ex. A).

Appellant Gobinda Chandra Ghose took several objections to the execution of the decree. The objection material for the purpose of this appeal was that under the kobala executed by the original decree-holders an interest in immovable property was transferred and as the "de lacto" guardian had no authority to transfer the minor's interest, the share of the minor in the decree was not acquired by the respondent.

This objection was overruled by the courts below along with all other objections taken by the judgment-debtor. He has therefore preferred this Second Appeal in

this Court.

2. The only question which arises for decision in this appeal is whether a decree passed in a suit for specific performance of a contract for sale of Immovable property creates any interest in the property. If the answer to this question be in the affirmative, then there is no doubt that the appeal must be allowed and the execution of the decree should be refused so far as the share of the original minor decree-holder Sajita Bibi in the decree is concerned.

After hearing the learned Advocates for both parties I find it difficult to accept the contention of Mr. Roy who appeared on behalf of the judgment-debtor appellant that when a decree is passed in a suit for specific performance of a contract for sale of immovable property an interest in the property is created in favour of the decree-holder.

Section 54, Transfer of Property Act lays down that a contract for sale of Immovable property does not by itself create any interest in such property. If that be so, it is difficult to see how a decree passed on the basis of such a contract creates that interest. The decree merely super adds the sanction of the Court to the contract entered into by the parties and makes it enforceable through the medium of the Court. "immovable property" has thus been defined in Clause 26 of Section 3, General Clauses Act, 1897.

"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth".

Having regard to this definition of Immovable property and also to the nature of the decree passed in a suit for specific performance of a contract for sale of Immovable property, I fail to see how a decree of the above description can create any interest in Immovable property.

3. The point which has arisen for decision in this appeal does not seem to be directly covered by any precedent. Mr. Bose appearing on behalf of the respondent, however, drew my attention to some cases of this Court in which it has been held that an assignment of a mortgage decree comprising Immovable property does not create any interest in immovable property and should be regarded as an assignment of moveable property (vide the cases of -- "Gous Mahomed v. Khawas Ali Khan" 23 Cal 450 (A); -- Baij Nath Lohe Vs. Binoyendra Nath Palit and Soshi Mohun Deb (B); and -- Ram Ratan Chuckerbutty Vs. Jogesh Chandra Bahttacharya and Others (C).

Now, a mortgage of Immovable property certainly creates an interest in favour of the mortgagee in such property. But if an assignment of a decree passed on such a mortgage does not constitute an assignment of Immovable property, there is all the greater reason why a decree passed on an agreement for sale of Immovable property should not be regarded as an assignment of Immovable property because such an agreement, unlike a mortgage, does not, by itself,

create any interest in Immovable property.

4. Mr. Roy appearing on behalf of the judgment-debtor appellant further contended that in the present case it has been expressly recited in the deed of assignment executed by the original decree-holders that their interest in the property which was the subject matter of the contract for sale was also sold to the respondent and so the deed of sale should be regarded as a sale deed of immovable property.

In my judgment, there is no force in this contention because up to the time of the execution or the conveyance in favour of the respondent, the original decree-holders had not acquired any interest in the property in question. They had only got a decree passed upon an agreement for sale of Immovable property and so they could convey only their interest in the decree and nothing more in favour of the respondent.

The recital that their interest in the property in question was sold to the respondent was a mere surplusage and it cannot be regarded as constituting a transfer of an interest in Immovable property.

5. In the above connection Mr. Roy on behalf of the appellant also drew my attention to a case reported in -- "Puchha Lal v. Kunj Behari Lal" AIR 1914 Cal 21 (D), and contended that although the right of the original decree-holders had not been perfected by a kobala they had acquired some right in the property by virtue of the decree. The case cited by Mr. Roy has no bearing on the facts of the present case. There a person purchased a property for Rs. 500/- by an unregistered deed and was placed in possession.

It was held that in the absence of circumstances showing that such purchaser was not entitled to sue his vendor for specific performance, a subsequent purchaser of the property under a registered conveyance could not regain possession from the former purchaser. In the present case, the original decree-holders never got possession of the property and the decree which was passed in their favour did not create any interest in the property itself in their favour.

That being the case, the transfer of the share of the minor decree-holder in the decree by her "de facto" guardian was not void. In my judgment the courts below have rightly overruled the objection put forth by the judgment-debtor.

6. The appeal is therefore dismissed. The parties will bear their own costs in this court.