

(1917) 02 CAL CK 0014
In the Calcutta High Court

Mahendra Chandra Datta and Others	APPELLANT
Vs	
Abhoy Charan Sarma and Others	RESPONDENT

Date of Decision : 22-02-1917

Acts Referred:

Land Acquisition Act, 1894 — Section 18(2)(b)

Citation : 40 Ind. Cas. 355

Hon'ble Judges : Newbould, J; N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a proceeding under the Land Acquisition Act and the question involved in the appeal is whether the appellant or the respondent should get the compensation awarded by the Collector.

2. A preliminary objection has been taken on behalf of the respondent that the reference u/s 18 was barred by limitation, inasmuch as it was not made within six weeks from the date of the Collector's award. It is contended that, as a Mukhtear appeared at some stage of the proceedings, it must be taken that the appellant was represented before the Collector at the time when the Collector made his award.. It appears, however, that some time before the date of the award, the Collector passed an order that the appellant should go to the Civil Court; and it does not appear that the Mukhtear took any further part in the proceedings before the Collector. That being so, the appellant was not present or represented before the Collector at the time when he made his award. The reference having been made within six months of the award was within time u/s 18, Sub-section (2), Clause (b) The preliminary objection is accordingly overruled.

3. The dispute between the parties relates to compensation for five plots of land, namely, plots Nos. 14, 19, 20, 58 and 28. So far as plot No. 28 is concerned, it appears that, after the delivery of possession thereof to the appellants' predecessor, who purchased it at an execution sale, the respondent preferred a claim which was successful and no suit was brought within the period of

limitation. The claim, so far as this plot is concerned, was not pressed in argument before the Court below and must accordingly be disallowed.

4. With regard to the remaining four plots, the appellant claims to have purchased them in execution of a decree against Bimala Sundari, widow of Dinonath, in respect of debt due by the latter. The respondent, on the other hand, claims title to one half of them by right of adverse possession, and the other half by virtue of one Baikuntha having given up the same in his favour." He says that these lands originally belonged to one Jagannath and that, after the death of Jagannath and his widow Annapurna, they were inherited by their daughter's sons Ratanmoni and Banku Behari, that Banku Behari sold his 8 annas to Baikuntha and that it was this Baikuntha who gave up the 8 annas in his favour. So far as Ratanmoni's 8 annas share is concerned, the respondent claims it by right of adverse possession.

5. The learned District Judge has found that "neither party has been able to prove his title, and, as the respondent was in possession, he disallowed the claim of the appellant. The learned Judge seems to have proceeded upon the assumption that the properties originally belonged to Jagannath. That, however, was not the case of the appellant, and there is really no evidence on the side of the respondent to show that the properties originally belonged to Jagannath. The witnesses who deposed on the point have no personal knowledge about the matter, and we must hold that the respondent has failed to prove that Jagannath was entitled to the lands. But assuming that Jagannath had any title to the lands and that they descended to his daughter's sons, Ratanmoni and Banku Behari, we do not think that the title of the respondent has been made out. As stated above, so far as Banku Behari's share is concerned, all that the respondent said in his written statement in the Court below was that Baikuntha had given up his right in his favour, and that throws considerable doubt upon the evidence adduced by him to prove that there was a purchase of the 8-anna³ share from Baikuntha.

6. Then, as regards the share of Ratanmoni, the respondent claims his title by adverse possession for over twelve years. He himself in his deposition said that he had been . in possession for about eleven or twelve years and one of his witnesses, Dinonath Sarma, said that it was for fourteen or fifteen years. But Dinonath is his brother-in-law and he went further than the respondent himself as to the period for which the respondent was in possession. As stated above the respondent in his written statement claimed title to Ratanmoni's share by adverse possession for twelve years but adduced evidence to show that he had also purchased Ratanmoni's share. That evidence cannot be accepted and we think that neither the purchase from Ratanmoni nor from Baikuntha has been satisfactorily proved.

7. The learned Judge relied upon the fact that the respondent was in possession; and it is contended before us that the respondent should be awarded the compensation unless the appellant can show a better title. The learned Judge

was of opinion that the properties belonged to Jagannath and that, if the appellant purchased the properties from Annapurna, that purchase was not binding upon the reversionary heirs of Jagannath or persons claiming under him. But, in the first place, it has not been shown that the properties belonged to Jagannath; and, secondly, even if the properties belonged to Jagannath and were inherited by his widow Annapurna, the purchase by the appellant or his vendor from Annapurna is not void. It is only voidable at the instance of the reversioners or persons claiming under them. That is well settled. See *Bijoy Gopal Mukerji v. Krishna Mahishi Debt* 34 I.A. 87 : 9 Bom. L.R. 602 : 11 C.W.N. 424 : 5 C.L.J. 334 : 2 M.L.T. 133 : 17 M.L.J. 154 : 4 A.L.J. 329 : 34 C. 329 : (P.C). A purchaser from a Hindu widow, although he is not able to show either legal necessity or consent of the reversioner, is entitled to sue in ejectment. See *Kishori Pal v. Sheikh Bhushai Bhuiya* 3 Ind. Cas. 78 : 14 C.W.N. 106. We have already found that the respondent has not proved any title derived from the reversioners of Jagannath, assuming that the title belonged to him. That being so, he cannot question the title of the appellant even if he is taken to have purchased from Jagannath's widow Annapurna. He, however, claims his title through Dinanath and it is not disputed that he purchased the interest of Dinanath at the execution sale. In any view of the matter, we think that the appellant has proved his title to the four plots and that he is entitled to the compensation in respect of them.

8. The respective values of plot No. 28 and of the other four plots do not appear from the record before us. We accordingly send the case back to the lower Court in order that the value of plot No. 23 may be ascertained and the compensation awarded in respect of that plot may be given to the respondent Abhoy Charan Sarma out of the five plots, the subject-matter of the appeal, and that the compensation in respect of the other plots Nos. 14, 19, 20 and 58 may be given to the appellant. The parties will get their costs in both the Courts in proportion to their success. We assess the hearing fee in this Court at five gold mohurs.