
(2013) 12 OHC CK 0004
In the Orissa High Court
Case No : W.P. (C) No. 4479 of 2012

Meena Devi Panch

APPELLANT

Vs

Bina Shukla

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 1 OLR 884

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—The petitioner in the present writ petition has sought for exercising jurisdiction under Article 227 of the Constitution of India by setting aside the order dated 27.2.2012 passed in Title Appeal No. 4/80 of 1995/92. By the said impugned order, the learned Second. Additional District Judge Puri rejected the prayer of the petitioner for determination of the value of the disputed property at the present market rate for the purpose of its repurchase by the opp. party No. 1.

2. The facts reveal that in 1981 a dispute arose relating to sabik Plot No. 374 under sabik khata No. 15 constituting an area of Ac. 0.070 decimals, out of a total area of Ac. 0.280 decimals, situated in mouza Daitapada Sahi, Town/District-Puri.

3. To trace out the bone of defence, which has led to the present writ petition, it would be appropriate to delineate the facts in detail which show that the above property originally belonged to one Jagannath Prasad Sharma, who expired leaving his widow - Golaprani and two daughters, Bina Sukla and Bimala. After" death of Jagannath, there was a completed partition in the family and the disputed property fell to the share of the widow-Golaprani and Bina, each having 50% share in the same. Again after death of the widow-Golaprani, her 50% share in the disputed property was succeeded by her two daughters Bina and Bimala. Thus, out of the disputed property, Bina became the owner over 75% and Bimala became the owner over 25%. The disputed property consists of a two storied building adjoining the Grand Road at Puri. On the ground floor of the

building facing main road, there are shop rooms which have been let out to monthly tenants. One such shop room was taken on monthly rent by late father-in-law of the present petitioner several years back, when Jagannath was alive. After the death of Jagannath and the father-in-law of the petitioner, the husband of the petitioner continued as the tenant under Golaprani and Bina. After death of Golaprani, there was a further partition of the property between the two sisters.

4. As has been indicated earlier, Kishanlal Panch, the husband of the present petitioner was continuing as a tenant in respect of one shop room in the ground-floor of the building standing on the disputed property. In 1981, Bina the present opp. party No. 1 initiated H.R.C. Case No. 22 of 1981 before the H.R.C. - S.D.J.M., Puri for eviction of the husband of the petitioner. During pendency of the H.R.C. proceeding, on 28.5.1986, Bimala the other sister sold her entire 25% share in the disputed property constituting an area measuring Ac. 0.070 decimals which fell to her share in the partition between the two sisters, to the present petitioner and the property has been described in the sale deed as the western half of the southern 50% share of the widow-Golaprani adjoining Badadanda in the west. On the same day, some of the properties were sold separately in favour of the proforma opp. party No. 3 which are not very much in dispute.

5. In the same year of purchase of the property by the present petitioner, the opp. party No. 1 filed T.S. No. 78 of 1986 (renumbered as T.S. No. 6/78 of 1990/1986) for partition of the entire property with a prayer for re-purchasing the property purchased by the present petitioner. -In the year 1992, the H.R.C. proceeding was allowed in favour of opp. party No. 1 and an order of eviction was passed against the husband of the present petitioner. T.S. No. 6/78 of 1990/1986 was decreed on 26.8.1992 in favour of the opp. party No. 1 decreeing the prayer for partition and repurchasing the property purchased by the present petitioner. In the same year, the husband of the petitioner filed H.R.C. Appeal No. 2 of 1992 before the C.J.M., Puri challenging the order of eviction passed against him. The petitioner also filed T.A. No. 4/80 of 1995/92 before the learned District Judge, Puri challenging the decree for partition and repurchase passed in the suit as indicated above. The petitioner's appeal, i.e. T.A. No. 4/80 of 1995/92 was allowed on 15.9.1997 and the decree for repurchase passed in the suit was set aside. Thereupon the present opp. party No. 1 filed S.A. No. 273 of 1997 before this Court. By judgment dated 22.4.2008, this Court allowed the Second Appeal and set aside the judgment of the learned lower appellate Court thereby allowing the prayer for repurchase in favour of the present opp. party No. 1. This Court, while allowing the appeal, remitted the matter back to the learned lower appellate Court for determination of the market value of the property for the purpose of repurchase. The said order was challenged by the present opp. party No. 1 before the Hon'ble Supreme Court, but yielded no result. On 8.9.2010, the H.R.C. Appeal No. 2 of 1992 filed by the husband of the present petitioner was dismissed and challenging the said judgment, it is submitted by the parties that

W.P. (C) No. 15929 of 2010 is pending before this Court. The present opp. party No. 1 pursuant to the eviction order passed in the H.R.C. proceeding filed Execution Case No. 8 of 2010 for eviction of the husband of the present petitioner which is stated to be still pending where the present petitioner has filed a petition under Order 21, Rule 99 of the C.P.C. claiming ownership and possession of the property in question in pursuance of her purchase as indicated above and thus challenging the maintainability of the execution proceeding.

6. After the order of remand was passed by this Court in the Second Appeal, the matter was remitted back to the learned lower appellate Court for adjudication regarding determination of the value of the property in question. The petitioner, before the learned lower appellate Court is the appellant No. 1, who filed two petitions dated 6.8.2011 and 21.1.2012 with a prayer for permission to adduce evidence with regard to the present market value of the suit property and to admit the report of the valuer submitted by the petitioner, into evidence. In the subsequent petition dated 21.1.2012, the petitioner stated that the report of the valuer who has valued the suit properties about one and half years back has been filed as per the direction of the Court and in the meanwhile, the value of the suit property having gone up to Rs. 3,00 crores, she should be permitted to produce the witnesses. Objection was filed by the present opp. party No. 1, who is respondent No. 1 before the Court below, to the petition dated 6.8.2011 questioning the maintainability of such a petition and alleging mala fide on the part of the petitioner on the ground that the said application has been filed to delay the proceeding. It was contended on behalf of the opp. party No. 1 that the report of the valuer has no relevance which is a created one and filed at a belated stage and such a report cannot be looked into for disposal of the appeal. It was further contended in the objection that it is a settled position of law that the valuation of the property is to be determined either on the date of the suit or on the date on which, the impugned sale deed was executed. She also filed an objection to the application dated 21.1.2012 reiterating the same grounds in her earlier objection.

7. The learned lower appellate Court relying upon decisions of this Court, by the impugned order, came to the conclusion that the value of the property should be taken to be its value as on the date of filing of the suit and not the present market value. Hence,, there is no necessity to consider the valuation report submitted by the valuer on 10.9.2010 nor there is necessity to permit the appellant (petitioner herein) to produce any witness to show the enhancement of the market value of the suit property. Coming to the above conclusion, the teamed lower appellate Court rejected the prayer made by the petitioner in her applications dated 6.8.2011 and 21.1.2012 and posted the matter to 20.3.2012 for furnishing market value of the suit property as it was on 1.7.1986 i.e., the date of suit.

8. Mr. Mohanty, learned counsel appearing for the petitioner vehemently urged that the learned lower appellate Court has committed an error of law in relying

upon the decisions in the cases of Lal Kejriwal and Others Vs. Bhawanath Jha, and Sadasiba alias Sadananda Nayak and Another Vs. Baban Sahoo and Others, . He further contended that the learned Court below should have relied on the decision of the Hon''ble Supreme Court in the case of Vimalleshwar Nagappa Shet Vs. Noor Ahmed Sheriff and Others, and on the decision in the case of Naveen Kumar and another v. State of Haryana and others, >2012 (3) CCC 125 (P & H.). It was urged by Mr. Mohanty that the Hon''ble Supreme Court in the case of Vimalleshwar Nagappa Shet (supra), has observed that it is well settled that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. He, therefore, submitted that in view of such observation in the aforesaid judgment, the learned lower appellate Court should have exercised its discretion by taking this aspect into consideration that the disputed property is situated in Puri town and that too, on the Grand Road and the price has escalated manifold in the interregnum period. On that basis, learned lower appellate Court should have fixed the present market value as the valuation of the property. Referring to the judgment of the Punjab and Haryana High Court in the case of Naveen Kumar and another (supra), Mr. Mohanty submitted that in the said case, "the said High Court relying upon the judgment of the Hon''ble Supreme Court, that for calculating the stamp payable on an agreement of sale upheld the finding of the Collector, who made an enquiry u/s 47A of the Registration Act and demanded additional stamp as payable by taking the value of the property as per market rate on the date of registration and refusing to allow the date of execution of the agreement of safe as the relevant date for determining the market value.

9. Learned counsel for the contesting opp. party No. 1; however, supporting the impugned order contended that there is no illegality or apparent error committed on the part of the learned lower appellate Court in passing the said order as the learned lower appellate Court has rightly relied upon the decisions in the case of Lal Kejriwal and others (supra) and Sadasiba alias Sadananda Nayak and another (supra), wherein on similar facts, the Patna High Court and this Court have held that the value of the property on the date of filing of the suit for pre-emption is to be taken into consideration.

10. The moot question, therefore, which is required to be addressed in the present judgment, is as to when, a suit for pre-emption is decreed, what should be the amount to be deposited by the successful party for repurchase of the property sold to the stranger? Whether the said amount should be the value of the property as on the date of sale to the stranger as mentioned in his sale deed or the value of the property as on the date of filing of the suit for pre-emption or the value of the property at the market rate when the decree is passed by the Court?.

11. Section 4(1) of the Partition Act provides that if a partition suit by transferee of share in a dwelling house is filed and the share of a dwelling house belonging to an undivided family has been transferred to a person, who is not a member of

such family and such transferee sues for partition, the Court shall, if any member of the family being a share holder undertakes to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share holder and may give all necessary and proper protection in that behalf.

12. The decision in the case of Vimleshwar Nagappa Shet (supra) of the Hon''ble Supreme Court relied upon by the learned counsel for the petitioner is with regard to a suit for specific performance seeking performance of an agreement to sell. The Hon''ble Supreme Court found that the plaintiff in the said case was aware that defendant No. 3, who was a minor, had a share in the property and the application made by the other defendants before the civil Court for appointment of defendant No. 2 as guardian on the said minor was not persuaded and, in fact, it was dismissed. Consequently, his share remained unsold to the plaintiff. Referring to Section 20 of the Specific Relief Act, 1963, the Hon''ble Supreme Court observed that the said section confers discretionary powers and it is also well settled that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time.

13. In the instant case, there is no question of grant of decree for specific performance, but the suit was for pre-emption along with partition. The decree for pre-emption has already been confirmed by this Court in the earlier Second Appeal, which was remitted to the learned lower appellate Court only for the purpose of ascertaining the value of the property so that the successful plaintiff will be required to deposit the said amount for execution of the sale deed by the defendant stranger purchaser. Hence, the question of discretionary power of the Court available u/s 20 of the Specific Relief Act is not available in the facts of the present case. The observation of the Hon''ble Supreme Court with regard to escalation of price of property thus, does not come to the aid of the petitioner.

14. In the case of Naveen Kumar and another (supra), the Punjab and Haryana High Court was also dealing with the suit for specific performance and the ratio therein, according to this Court, is also not applicable to the facts of the present case. The Patna High Court in the case of Lal Kejriwal and others (supra) was dealing with a case involving a decree for, pre-emption. Referring to Section 4 of the Partition Act, the Patna High Court observed that Sub-section (1) of Section 4 on its plain reading, gives option to any member of the family, who is a co-sharer in respect of the dwelling house, a portion whereof has been transferred to a person who is not a member of such family, to purchase the share of such transferee, if a suit for partition is filed by that transferee and on such option being exercised, the valuation of such share has to be determined. The amount so determined has to be deposited by such co-sharer, whereupon the share of the transferee is to be sold to such co-sharer. This option can be exercised at any stage of the suit. With regard to question as to what will be the crucial date for the purpose of fixing valuation of the share of such transferee-the date of the

institution of the suit or the date of filing of the application u/s 4 of the Act, it was observed by the said High Court that there is nothing in Section 4 from which this question can be answered. The Court expressed that it will be more reasonable to hold that the valuation should be fixed with respect to the date when option to purchase in accordance with Section 4 of the Partition Act is exercised by the defendant co-sharer.

15. Reference was made to the decision in the case of AIR 1952 193 (Nagpur) and a case from this Court i.e., Bhikari Behera Vs. Dharmananda Natia and Others, in both the aforesaid cases, it was held that the date of the institution of the suit should be the relevant date for the purpose of fixing of the value of the house in question, because, the valuation of the building had gone up during the period between the purchase and the institution of the suit. However, in the aforesaid cases, the question, as to whether the relevant date was the date of institution of the suit or the date of exercising option u/s 4 of the Act, was not considered. The Patna High Court expressed that the valuation should be fixed taking into account the date on which the option u/s 4 of the Partition Act is exercised. This view is also supported by the Division Bench decision of the Calcutta High Court in the case of Subal Chandra Modak Vs. Gostha Behari Das, and also another decision of the said High Court. Thus finding, the Patna High Court confirmed the order of the Court below fixing the valuation of the property-when option was given to purchase the share of the petitioners,

16. This Court in the case of Sadasiba alias Sadananda Nayak and another (supra) relied upon the case of Bhikari Behera (supra) and held that the view expressed by the Division Bench of this Court that valuation is to be made on the date of sale prevail as judicial discipline, since the decision of the Division Bench is binding on the Hon"ble Single Judge until overruled by a larger Bench or the Hon"ble Supreme Court or statutorily its effect is taken away.

17. In view of the above position of law and further finding that the stranger purchaser would not be entitled to make a profit out of the sale transaction since he has remained in possession till the decree was passed or for any further period and has enjoyed the same, in agreement with the earlier decision of this Court, I am of the view that the valuation of the property should be determined as on the date, of filing of the suit and not the present market value.

18. In view of the above conclusion, I find absolutely no error in the impugned order to be interfered with. The writ petition is accordingly dismissed being devoid of merit. All pending. Misc. Cases also stand disposed of.