

(2011) 07 CHH CK 0047
In the Chhattisgarh High Court
Case No : S.A. No. 344 of 2001

Motilal Yadav

APPELLANT

Vs

Jaisay (Dead) Gadu and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 4 CGLJ 568

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : A.K. Prasad in S.A. No. 344 of 2001 Mr. Sunil Tripathi in S.A. No. 399 of 2001, for the Appellant; M.K. Baeg, Advocate for the Respondents No. 1-A and 2 to 6, Shri Sunil Tripathi, Advocate for the Respondent No. 8 and Shri Ravish Verma, Advocate for the Respondent No. 9 in S.A. No. 344 of 2001 Shri M.K. Baeg, Advocate for the Respondents No. 1-A and 2 to 6, Shri A.K. Prasad, Advocate for the Respondent No. 8 and Shri Ravish Verma, Advocate for the Respondent No. 9 in S.A. No. 399 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Prashant Kumar Mishra, J.—By this common order Second Appeal No. 344/2001 preferred by defendant No. 3 Motilal Yadav and Second Appeal No. 399/2001 preferred by defendant No. 2 Manager, District Co-operative Land Development Bank Limited, Ambikapur is disposed of as both the appeals arise out of common judgment and decree passed by the Court below. The respondents No. 1 to 6 in both the appeals were the plaintiffs whose suit for setting aside the auction sale dated 09/06/1989 and confirmation of sale dated 25/08/1989 as also for permanent injunction, was dismissed by the trial Court, however the first appeal preferred by the plaintiffs has been allowed and as a consequence their suit has been decreed.

2. Case of the plaintiffs, as emerging from the plaint averments, is that the lands covered in Schedule "A" admeasuring 10.89 acres situated at village Sakholi, Tahsil Lundra, District Surguja is their ancestral property in which ancestor

Malhau has half share and other half share was owned by Chhejaku and Kitu. After death of Kitu who was issueless, the other half share was owned by Chhejaku and after his death plaintiffs No. 3 to 6 succeeded the property. Plaintiffs No. 1 and 2 are the legal representatives of Malhau. The lands in Schedule "A" fell in the share of plaintiffs and defendant No. 4 who is also one of the son of Malhau, in the partition effected in the year 1980, however the revenue records continued to remain joint. Defendant No. 4 Thularam obtained loan of Rs. 5,000/- and mortgaged the property with defendant No. 2 who is the appellant of Second Appeal No. 399/2001. The revenue records were corrected in 1980 and the records were updated as mentioned in Schedule "Ka" "Kha" "Ga" and "Gha" with the plaint.

3. It was further stated in the plaint that on account of default in payment of loan the land was sold in auction for Rs. 34,000/- in April 1989, however the sale was later on cancelled. In June 1989 the lands were again put to auction and without giving information to the plaintiffs it was sold in favour of defendant No. 3 Motilal Yadav for Rs. 41,100/-, whereas the market value of the land on the date of auction was more than Rs. 1,00,000/- and further that the rules concerning auction have not been followed and it was overlooked that after sale of the property the plaintiffs would be having less than 5 acres of land. It was alleged that the Sale Officer colluded with defendant No. 3 Motilal Yadav and instead of selling lands belonging to Thularam the entire land were sold and the illegal sale dated 09/06/1989 was later on confirmed on 25/ 08/1989 without giving opportunity of hearing to the plaintiffs. According to the plaintiffs no lands would remain with the plaintiffs No. 3 to 6 after the questioned sale and for this reason also the sale deserves to be cancelled.

4. The defendants No. 1 & 2 preferred their joint written statement, whereas the defendant No. 3 filed his separate written statement. According to these defendants the mortgage was effected with the consent of all the members of family and that Motilal Yadav has purchased the property by making payment of the auction amount. It was further stated in the written statement of defendants No. 1 and 2 that the defendant No. 4 obtained loan of Rs. 10,500/- and that initially 1.692 hectares of land was sold in favour of one Gafuran for Rs. 36,000/- on 26/03/1989 however on his failure to deposit the auction amount the sale was cancelled and fresh auction was conducted on 09/06/1989 in which 4.050 hectares of land was sold in favour of Defendant No. 3 Motilal Yadav for Rs. 41,100/-. It was further stated that all the procedures prescribed under the rules were followed and that even after the auction sale 2.065 hectares of land remains with the plaintiffs.

5. The trial Court by its judgment and decree dated 20th October, 1994 dismissed the suit after finding that all the joint holders have consented to the loan transaction, however the trial Court did not record any finding as to whether rules were followed while conducting the auction on a disproportionately low price than the prevailing market value.

6. The first Appellate Court, by the impugned judgment and decree, has allowed the plaintiffs appeal after finding that loan was obtained only by defendant No. 4 Thularam and that in the notice for repayment of loan exhibited as D/4 and D/4-A it is mentioned that the principal amount is Rs. 10,437/- and the outstanding interest is Rs. 7693.45 making the total outstanding amount as Rs. 18130.45/- as on 02/07/1988 when the notice was issued, however in the notice Ex. D/9 dated 09/06/1989 total outstanding was mentioned as Rs. 34,776.45/- and thereafter auction sale was affected for Rs. 41,100/-.

7. On perusal of the record it is found that Ex. D/8 is the note-sheet of the recovery proceeding initiated by the Recovery Officer u/s 18 of the Act. From the said proceeding it would appear that the auction was knocked down in favour of Gafuran on 26/03/1989. In the said auction an area of 1.692 hectares spread over six Khasras were sold for Rs. 36,000/- though the said Gafuran failed to deposit remaining 85% of the auction amount, however it does not appear from the subsequent proceeding that the said auction sale was cancelled. Order-sheet of Recovery Officer recorded on 23/05/1989 speaks of issuance of fresh auction notice in Form 8 fixing the date of auction as 09/06/1989. In the sale notice Ex. D/9 issued on 23/05/1989 it is mentioned that an area of 6.115 hectares of land situated on 20 Khasra Nos. will be put to auction, however on the date of auction i.e. on 09/06/1989 an area of 4.050 hectares of 10 Khasra Nos. were sold.

8. Rule 66 of the Chhattisgarh Co-operative Societies Rules. 1962 makes provision regarding attachment and sale of immovable property. Clause (e) of sub rule (1) of rule 66 of the above rules makes the following provision :--

(e) Proclamation of sale shall be published by affixing a notice in the office of the Recovery Officer, office of the Cooperative Central Bank and in the Tahsil office at least thirty days before the date fixed for the sale. It shall also be published by beat of drum in the village. Such proclamation shall, where attachment is required before sale, be made after the attachment has been affected. Notice shall also be given to the decree-holder and the judgment-debtor. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible--

(i) the property to be sold,

(ii) any encumbrance to which the property is liable,

(iii) the amount for the recovery of which the sale is ordered, and

(iv) every other matter which the Sale Officer consider material for a purchaser to know in order to judge the nature and value of the property.

9. From the above provision it would clearly appear that the proclamation of sale shall be published at-least 30 days before the date fixed for the sale, however the relevant sale proclamation (Ex. D/9) was issued on 23/05/1989 fixing the date of sale as 09/06/1969 which is less than 30 days from the date of issuance of proclamation. Moreover the proclamation was issued for sale of 6.115 hectares

whereas the sale was conducted for 4.050 hectares. If the area is to be sold in auction was required to be reduced, a fresh proclamation was required. Thus, for these reasons the auction sale conducted on 09/06/1989 was apparently in violation of the mandatory provisions of Rule 66(1)(e) of the Rules, 1962.

10. Though the provision quoted by the Court below contained in Section 37-A of the Act may not be attracted as the concerned Bank is a Land Development Bank, yet since there was clear breach of rules while conducting the sale, this Court is not inclined to admit these appeals, as no substantial question of law arises for determination in these appeal. The second appeals fail and are hereby dismissed.