

(1995) 01 AHC CK 0041
In the Allahabad High Court
Case No : Second Appeal No. 742 of 1991

Munni Lal and Ors.

APPELLANT

Vs

Misri Lal & Ors.

RESPONDENT

Date of Decision : 25-01-1995

Acts Referred:

Uttar Pradesh Co-operative Land Development Bank Act, 1964 — Section 16, 19
Uttar Pradesh Co-operative Land Development Bank Rules, 1971 — Rule 24, 26

Citation : (1995) 01 AHC CK 0041

Hon'ble Judges : D.S.Sinha, J

Final Decision : Dismissed

Judgement

D.S.Sinha, J.—Heard Sri Keshari Nath Tripathi, learned Senior Advocate, annealing for the appellants and Sri N. K. Sharma learned counsel appearing for the respondent No. 1. No body appears for the respondents Nos. 2, 3, 4 and 5.

2 This appeal under Section 100 of the Code of Civil Procedure, 1908, hereinafter called the Code, is directed against the decree and judgment of the II Addl. Civil Judged Jaunpur passed in Civil Appeal No. 145 of 1986 reversing the decree and judgment of the VII Addl. Munsif Jaunpur rendered in Original Suit No. 254 of 1978 between Misri Lal and the U. P. State Cooperative Land Development Bank Ltd., Lucknow and others dismissing the suit of the plaintiffrespondent seeking a declaration that the sale proceedings in respect of the disputed property were illegal, unauthorised, irregular and void ab initio and praying for injunction restraining the defendants from interfering with his possession over the property in dispute.

3 It appears that Misri Lal, plaintiff and Gooder, the defendant No. 3, jointly took loan from the U. P. State Cooperative Land Development Bank Ltd (hereinafter called the Bank) and committed default m repayment thereof. Consequently, recovery proceedings under the provisions of the U. P. Cooperative Land Development Banks Act, 1964 hereinafter called the Act and he U P Cooperative Land Development Rules, 1971, hereinafter called the Rules, were initiated.

These proceedings culminated into the auction of the property in dispute which took place on 29th June, 1977. The defendants No. 5, 6 and 7, the appellants herein, purchased the disputed property. The sale was confirmed in their favour on 9th November, 1977 and the sale certificate was issued to them on 21st June, 1978. Thereafter, the plaintiff instituted the suit for declaration and injunction. The suit was contested by the defendants No. 1, 2, 5, 6 and 7. But the defendants No. 3 and 4 filed written statement supporting the claim of the plaintiff.

4. The trial court after considering the evidence produced before it came to the conclusion that the proceedings in question were perfectly in order and suffered from no illegality. It found that the proceedings had been conducted in conformity with and after due compliance of the requirement of law. The trial court, therefore, dismissed the suit of the plaintiff by means of its decree and judgment dated 16th August, 1986.

5. Aggrieved by the decree and judgment of the trial court, the plaintiff preferred an appeal under Section 96 of the Code. The lower appellate court did not agree with the findings of the trial court. On a reappraisal of the evidence on record, it held that requisite notice of the proceedings was not served and as such the proceedings were illegal and liable to be set aside. It, therefore, reversed the decree and judgment of the trial court and decreed the suit of the plaintiff by means of its decree and judgment dated 26th March, 1991.

6. Relying upon Section 19 of the Act, the learned counsel for the appellants contends that the appellants who are the auctionpurchasers acquired indefeasible right upon sale of the disputed property in their favour followed by confirmation of sale and issuance of the sale certificate and their title cannot be questioned on the ground of any irregularity in the proceedings culminating into sale including failure to comply the requirement of notice of sale. Therefore, the learned counsel contends that the suit of the plaintiff for declaration and injunction against the appellants could not be decreed and the lower appellate court committed illegality in reversing the decree and judgment of the trial court and decreeing the suit. On the other hand, the learned counsel representing the plaintiff respondent No. 1 contends that the proceedings leading to the sale of the disputed property in, favour of the defendant appellant auctionpurchasers were illegal for want of notice contemplated by the Rules 24 and 26 of the Rules. Therefore, the learned counsel contends that the suit of the plaintiff respondent No. 1 was rightly decreed.

7. Section 19 of the Act provides that where any property is sold in exercise or purported exercise of a power of sale under Section 16, the title of the purchaser shall not be questioned on the ground that the circumstances required for authorising the sale had not arisen ; or that due notice or the sale was not given ; or that the power of sale was otherwise improperly or irregularly exercised ; but any person who has suffered any damage by an unauthorised, improper or irregular exercise of any such power shall have the right to claim

damages against the Land Development Bank. Rules 24 and 26 of the Rules occur in Chapter V which deal with the procedure in the sale of mortgaged property. These rules require giving of notice in writing stating therein the amount claimed by the Bank including the expenses incurred by it in the service of the notice and the particulars of the property sought to be sold to all persons referred to in clause (1) of subsection (2) of Section 16 requiring them to pay the amount stated in the notice within one month of service of such notice and notice inviting objection regarding the proposed sale in the event of failure of the payment of the amount due.

8. It is not disputed that the property in dispute was sold in the exercise of power of sale under Section 16 of the Act referred to in Section 19 of the Act. The lack of due service of notice which is foundation of the decree of the lower appellate court cannot effect the title of the defendant-appellant auction-purchasers in view of the express provisions of Section 19 of the Act forbidding challenge to the title of the purchaser for want of due notice of sale. The intention of the Legislature embodied in Section 19 of the Act, apparently and clearly, is to protect the interest of the stranger auction purchaser against the consequences of failure to comply the procedure prescribed by sub sections (2) and (3) of Section 16 of the Act and by Rules 23 to 29 contained in Chapter V of the Rules. If the interest of an auction-purchaser, who is a stranger to the recovery proceedings, is not protected, it will lead to chaotic results. No auction-purchaser would be sure of the deal and would be exposed to perennial danger of having the sale in his favour set aside on the ground of some irregularity to which he was not a party. It is to safeguard him against this danger that Section 19 has been enacted. Lack of service of notice upon the plaintiff-respondent No. 1, even if it is taken to be correct, cannot justify the grant of relief prayed for by him against the defendant-appellant auction-purchasers in view of the specific statutory bar against the challenge to their title under Section 19 of the Act. The appropriate remedy of the plaintiff-respondent No. 1, at best, may be a claim for damage against the Bank accruing from the alleged improper or irregular exercise of power with regard to sale of the property in dispute or lack of service of notice of the auction proceedings.

9. For the foregoing reasons, the court is clearly of the opinion that the impugned decree and judgment of the lower appellate court cannot be sustained and must perish. The appeal is, therefore, allowed. The decree and judgment of the lower appellate court is set aside. The suit of the plaintiff-respondent No. 1 shall stand dismissed. There will be no order as to costs.