(2005) 03 BOM CK 0087

In the Bombay High Court

Case No : Second Appeal No. 339 of 1988

Prabhudas Bachhubhai Babaria and Others APPELLANT

Vs

Sulbha Take and Others RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 4
Maharashtra Land Revenue Code, 1966 — Section 149, 210(1), 218(1), 218(2)

Citation : (2005) 5 BomCR 425 : (2005) 2 MhLj 1058

Hon'ble Judges : K.J. Rohee, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; S.V. Sohoni, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Rohee, J.—This second appeal has been preferred by original defendant Nos. 1 and 4 against the order passed by the 4th Additional District Judge, Akola dismissing Regular Civil Appeal No. 334 of 1984 against the judgment and decree passed by the Joint Civil Judge, Junior Division, Akola in Regular Civil Suit No. 28 of 1982 declaring that the auction held by the revenue authorities was void, it does not bind the plaintiffs and directing the defendants therein to deliver possession of the suit plot to plaintiff No. 1.

2. In order to appreciate the controversy it is necessary to state a few facts :

An open plot bearing No. 35 in survey No. 13/1 of Umari-Umarkhed, Tahsil and District - Akola, admeasuring 5000 sq.ft. was owned by respondent No. 3 (hereinafter referred to as defendant No. 2). Respondent No. 2 (hereinafter referred to as plaintiff No. 2) purchased the said plot from defendant No. 2 by registered sale deed dated 17-7-1967 for a consideration of Rs. 5,000/- and plaintiff No. 2 was placed in possession thereof. On 9-11-1973 the said plot was auctioned by the revenue authorities for Rs. 1,350/- for recovery of arrears of Ground Rent of Rs. 420/- for the period from 1967-68 to 1972-73. The said plot was purchased by appellant No. 1 (hereinafter referred to as defendant No. 1). A sale certificate was also issued in his favour by the revenue authorities and possession was delivered to him. Plaintiff No. 1 purchased the said plot from plaintiff No. 2 by registered sale deed dated 14-5-1976 for Rs. 4,000/-. It appears that defendant No. 1 (the auction purchaser) sold the said plot to defendant No. 4. On 15-1-1982 plaintiff No. 1 instituted Regular Civil Suit No. 28 of 1982 for a declaration that the auction sale dated 9-11-1973 was void ab initio and was not binding on her; defendant Nos. 1 and 4 do not get any right, title and interest in the said plot and for possession of the said plot on the ground that no notice of the auction sale was ever given to her or to plaintiff No. 2 (who was initially joined as defendant No. 3 but was subsequently transposed as plaintiff No. 2) and that defendant No. 2 (the original plot-owner) played a fraud by misleading the revenue authorities that it had sold the plot to one C.R. Jaiswal. The suit was contested by respondent No. 1. According to respondent No. 1 the revenue authorities were necessary party to the suit and in their absence the suit was liable to be dismissed for non-joinder of necessary party. It was also contended by defendant No. 1 that the Civil Court has no jurisdiction to entertain the suit because the appeal preferred by plaintiff No. 1 was dismissed by the revenue authorities.

3. After considering the oral and documentary evidence adduced by the parties, the trial Court held that defendant No. 2 played a fraud on the plaintiff and revenue authorities by moving the revenue authorities to put the plot to auction. The trial Court further held that the auction held by the revenue authorities was void ab initio; that State Government was not necessary party to the suit and that the Civil Court has jurisdiction to entertain the suit and to grant relief. The trial Court decreed the suit in favour of the plaintiffs. The Appellate Court confirmed the judgment and decree passed by the trial Court. Hence this appeal.

4. In the present appeal only two legal points were canvassed on behalf of the appellants. Firstly that the Civil Court has no jurisdiction to entertain the suit and secondly that the suit was liable to be dismissed for non-joinder of State Government as a necessary party. Both these issues are interrelated and hence they are dealt with together.

5. Mr. R.L. Khapre, the learned counsel for the appellants, submitted that both the courts below erred in holding that the Civil Court has jurisdiction to entertain the suit and that the State Government was not a necessary party. In this respect, Mr. Khapre invited attention to Section 4 of the Bombay Revenue Jurisdiction Act, 1876 which provides for bar of certain suits. Sub-section (c) of Section 4 of the Act provides that no Civil Court shall exercise jurisdiction as to claims to set aside sales for arrears of land revenue on account of irregularity, mistake or any other ground. Mr. Khapre submitted that this section clearly shows that the suit was not tenable because the plaintiffs contended that there was irregularity in conducting the auction sale inasmuch as no notice was ever given to them by the revenue authorities.

6. It is true that the auction has been challenged by the plaintiffs on the ground that no notice of the auction was ever given to them. However, in addition to that they also contended that fraud was played by the original plot owner (defendant No. 2) by informing the revenue authorities that they had sold the plot to one C. R. Jaiswal when in fact, defendant No. 2 had sold it to plaintiff No. 2. The courts below have considered this aspect in details in their judgments and found that the documents on record show that the revenue authorities were misled by defendant No. 2 and that the revenue authorities tried to serve notice of auction to C.R. Jaiswal, who was never traced.

7. The fallacy of the submission made on behalf of the appellants can be seen from the fact that Clause (c) of Section 4 of Bombay Revenue Jurisdiction Act, 1876 provides that no Civil Court shall exercise jurisdiction as to claims to set aside sales for arrears of land revenue on account of irregularity mistake or any other ground except fraud. The exception saves the jurisdiction of the Civil Court to entertain a suit in respect of auction held by the revenue authorities. Hence the suit was perfectly tenable.

8. Plaintiff No. 2, who had purchased the suit for valuable consideration under a registered sale deed could not have been deprived of the property by auctioning the same for recovery of arrears of Ground Rent unless he was informed about the arrears and an opportunity was given to him to make payment of the arrears. The principles of natural justice require that such a notice should have been given to plaintiff No. 2. In the absence of such notice the auction sale is rendered void ab initio.

9. Mr. Khapre submitted that the remedy of plaintiff No. 2 was u/s 210(1) of the Maharashtra Land Revenue Code, 1966 to apply to the Collector to have the sale set aside within thirty days from the date of sale on depositing the amount mentioned therein. Plaintiff No. 2 obviously has not moved the Collector u/s 210(1) of the Maharashtra Land Revenue Code, 1966. He could have preferred a claim to the Collector under Sub-section (1) of Section 218 challenging the auction and in case of rejection of his claim, he could have instituted a suit to establish his right to the plot within one year from the date of the order under Sub-section (2) of Section 218 of the Code. It was urged that plaintiff No. 2 having been failed to do so, the suit itself was not tenable and was liable to be dismissed.

10. In support of his submission. Mr. Khapre relied on the following cases :

i) Shrimant Dattajirao Bahirojirao Ghorpade Vs. Shrimant Vijayasinhrao and Another, ii) Babu Khan and Others Vs. Nazim Khan (dead) by Lrs. and Others, .

In my opinion the cases cited by Mr. Khapre do not help him.

11. The argument mentioned above appears to be very convincing on its face value, but on a careful consideration, it would be seen that it has no merit. It may be noted that according to the plaintiffs no notice about the alleged arrears

of Ground Rent was given to them as well as no notice about the intended auction was ever given to them. It may be noted that as back as on 17-7-1967 plaintiff No. 2 had purchased the suit plot from defendant No. 2 by registered sale deed. Under second proviso to Section 149 of the Maharashtra Land Revenue Code, 1966 plaintiff No. 2 was exempted from the obligation to report about the sale by him to the Talathi. It was for the revenue authorities to take note of the said sale and to modify the revenue record accordingly. However the documents on record clearly show that the revenue authorities failed to take note of the said sale and simply relied on the misrepresentation made by defendant No. 2 that it sold the plot to C. R. Jaiswal. That is why the revenue authorities tried to serve notice on C. R. Jaiswal who could not be traced. The plaintiffs must have come to know about the auction when they were dispossessed by the auction purchaser.

12. It may be noted that the plaintiffs have grievance about their dispossession by the auction purchaser. It is true that it would have been better if the State Government had been made a party to the suit it being a proper party. But in the absence of non-joinder of the State Government it cannot be said that the suit is liable to be dismissed for non-joinder of necessary party. I find that both the courts below have properly considered these aspects and no illegality can be found in the impugned judgments. Hence the order.

13. The appeal is dismissed with costs.

