(1954) 03 GAU CK 0003

In the Gauhati High Court

Prasanna Kachari and Others APPELLANT

Vs

Dewan Garjan Ali RESPONDENT

Date of Decision : 30-03-1954

Acts Referred:
Limitation Act, 1963 — Section 18, 29, 9

Citation : AIR 1954 Guw 56(1)

Hon'ble Judges : Sarjoo Prosad, C.J;Deka, J

Bench : Full Bench

Judgement

Deka J.

1. This is an application u/s 31, Assam Land and Revenue Regulation (which is numbered as a revenue appeal) for setting aside the sale with respect to 14B. 4 K and 9 Lechas of land covered by periodic patta No. 7 of village Barsapara, Mouza Beltola on the ground of hardship and injustice. The sale took place on 27-10-49 for arrears of revenue for the years 1353, 1354 and 1355 B. S. the annual revenue with the local rates amounting to Rs. 12/2/- and the total sum due being Rs. 37/6/- only. The appellants'' case was that the land originally belonged to their father Bhubaneswar Kachari but after he was dead, there was no registration of their names with respect to the patta and no attempt was made to realise the defaulted revenue from them by attachment of moveables as provided u/s 69, Land and Revenue Regulation. There was a further allegation that no sale proclamation was served on the locality and the petitioners were kept out of knowledge of the revenue sale.

They further alleged that they paid the land revenue for these years, that is, from 1353 B. S. to 1355 B. S. as well as for the year 1357 B. S. the last payment being made on 29-10-1951 to the Mauzadar concerned. But when they wanted to pay the land revenue for the year 1358 B. S. on 7-1-1952 they knew for the first time that the land had been already sold to the present respondent for a sum of Rs. 40/- only in October, 1949. They after taking certified copy of the relevant papers made this application on 14-2-52 for setting aside the sale on the ground of hardship as well as for irregularity or illegality in conducting or publishing the sale. In paragraph 7 of the said petition the appellants alleged that the auction-purchaser in collusion with the Mouzadar''s clerk purchased the patta land with a view to deprive the minors of the same and fraudulently kept them from the knowledge of their right of making an application u/s 81 till 7-1-52.

In support of this contention, they gave two instances of this auction-purchaser purchasing two other properties of considerable value at nominal price on the same day which sales, however, were set aside by this Court on appeal by the patta-holders concerned. The appellants alleged that the valuation of the land which measured about 15 bighas will in no case be less than Rs. 3,000/- and that it was the only source of their maintenance. The appellants'' case was that they were all minors and their interest was looked after by their paternal aunt who has made this petition on their behalf. The matter as usual was sent to the Deputy Commissioner for enquiry and report and the learned Deputy Commissioner has forwarded a report to this Court recommending setting aside the sale on the ground that the Mouzadar as well as the peons had been negligent in the discharge of their duties and there was neither proper service of notice on the appellants for realisation of the arrear of revenue, nor was any attempt made to realise the revenue by attachment of moveables which in the opinion of the officer conducting enquiry would have given better result.

It is further stated in that report that the land was sold for a very nominal value and the price of the land in the locality was very much higher. The appellants, it appears from the record, summoned the Mouzadar and called for relevant papers to show the payment of revenue as alleged by them but neither the Mouzadar nor any of his employees appeared nor were the papers called for produced in Court. The facts as they are found would surely induce this Court to set aside the sale on the ground of hardship as well as injustice.

2. The only point for consideration therefore is whether the application which had been filed more than two years after the sale took place could be entertained and relief given u/s 31, Land and Revenue Regulation, which provides that such an application should be made within one year of the sale becoming final u/s 30 of the Regulation. Section 80 of the Regulation provides that a sale on which the purchase money has been paid as directed in Section 78, and against which no application u/s 78A or Section 79 has been preferred shall subject to the provision of Sections 81 and 82 be final at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days. According to this provision, the sale would be final on or about 26-12-1949 and the application u/s 81 would be competent if only filed on or about 2-1-1951 at the latest.

The appellants'' case is that the limitation has been extended by virtue of Section 18, Limitation Act, as there was fraud; on the part of the Mouzadar in suppressing the sale notice as well as in not making an attempt to realise the arrear land revenue by sale of moveables and in having the land sold to the opposite party who is also alleged to have participated in the fraud with a view to get undue advantage over the appellants. It appears from the record that the sale was formally confirmed only on 3-12-1951 and the sale certificate issued on 5-12-1951 and before any attempt was made to take delivery of possession, this application u/s 81, Assam Land and Revenue Regulation was made to this Court. The petitioners contended that they had continued in possession of the land and are still enjoying the same but the opposite party contended in course of the enquiry that he was possessing the land and though there is no distinct finding, the presumption is that the appellants continued in possession of the land as Section 85, Land and Revenue Regulation provides that the Deputy Commissioner shall put the purchaser into possession of the property sold after the grant of certificate to the effect that he has purchased the property. This certificate, it appears, was issued on 5-12-1951 and there is nothing on record to show that the opposite party has ever been put in possession of the land. His case therefore that he is possessing the land is not worthy of credence.

3. The main contention on behalf of the auction-purchaser is that unless it is proved that the auction-purchaser was a party to the faud, the limitation will not cease to run as against him on the ground of fraud as contemplated in Section 18, Limitation Act. Section 29, Limitation Act, provides that the provisions contained in Sections 9 to 18 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law and in the circumstances of the case as the application thereof is not barred by the Land Revenue Regulation, this section (Section 18, Limitation Act) will apply to an application u/s 81, Assam Land and Revenue Regulation.

Section 18, Limitation Act runs as follows:

Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application-

(a) against the person guilty of the fraud of accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

The learned Advocate for the respondent contends that the finding of the learned Magistrate who conducted the enquiry is that there is no evidence to prove that the auction-purchaser was a party to the fraud as alleged and he lays stress on this finding and contends that unless the auction-purchaser is found to be guilty of the fraud or accessory thereto, the limitation against him will run from the date of the sale, becoming final. In support of this contention, he relies on the case, reported in -- Mihirlal Vs. Panchkari Santra and Others, and -- Dhirendra Nath Bhattacharjee and Others Vs. Charu Chandra Mittra and Others, . Dhirendra Nath Bhattacharjee and Others Vs. Charu Chandra Mittra and Others, has no application at all to the facts of this case. In Mihirlal Vs. Panchkari Santra and Others, it was of course held that before any extension, of time can be given u/s 18, Limitation Act in an application for setting aside a sale u/s 174(3), Bengal Tenancy Act, it must be proved that the auction-purchaser was either guilty of the fraud or accessory to the fraud, that prevented the judgment-debtor from knowing of the sale.

Another case relied on by the learned Advocate for the respondent is - Swarnamoyee Dasi Vs. Probodh Chandra Sarkar and Others, and it is contended on the strength of this ruling that in order to constitute fraud, there must be some abuse of confidential position, some intentional imposition, of some deliberate concealment of facts; a designed fraud, by which a party knowing to whom the right belongs, conceals the facts, and circumstances giving that right. That judgment refers to a will case and has no application to the facts of the present'' case. In opposition to this view, the'' learned Advocate for the appellants has contended on the analogy of Order 21 Rule 90, Civil P. C. that if the fraud is proved against the decree-holder, no fraud need be proved against the auction-purchaser since the fraud of the decree-holder continues and the limitation does not start unless it is shown that the judgment-debtor in the meantime knew of the sale.

He relies on a recent decision of the Mysore High Court reported in Kala v. Javaramma AIR 1952 Mys 47 (D). There it was held that even in cases where the purchaser in a court sale is a bona fide purchaser for valuable consideration, limitation for an application to set aside the sale runs u/s 18, Limitation Act from the date on which the applicant came to know of the fraud practised by the decree-holder even though the auction-purchaser was not a party to the fraud practised by the decree-holder. -- Rahimbhoy Habibbhoy v. Charles Agnew Turner 17 Bom 341 (PC) (E) is one of the earliest Privy Council cases where it was held that in order to make limitation operate, when a fraud has been committed by one who has obtained property thereby, it is for him to show that the injured complainant has had clear and definite knowledge of the facts constituting the fraud at a time which is too remote for the suit to be brought.

4. In this case, looking to the particular set of facts and circumstances of the case, we are inclined to hold that the auction-purchaser so manipulated as to purchase the land for a nominal price and if we look to the defects in procedure, we are inclined to think that he was acting in concert with the clerk, if not with the Mouzadar, in bringing the property to sale for a nominal price. The Supreme Court case reported in -- Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari, contains an observation on fraud which I reproduce below:

In the very nature of things, fraud is secret in its origin or inception and in the means adopted for its success. Each circumstance by itself may not mean much, but taking all of them together, they may reveal a fraudulent or dishonest plan.

Here, the circumstances are that the property was sold for a nominal price, there was no service of sale proclamation or attempt to realise the revenue by sale of moveable, that land revenue was received by the mouzadar even after the sale, that no attempt was made to obtain a sale certificate before expiry of nearly two years and that a false case of possession of the disputed land was sought to be made by the auction-purchaser. All this would lead us to believe that the auction-purchaser was an accessory to if not a participant in, the fraud, and the fact of sale was kept out of the knowledge of the appellants till January, 1952 as alleged. In this view Section 18, Limitation Act is applicable to the facts and circumstances of the case and the application is entertained. I have already discussed the merits of the application on facts and this is a hard case where the petitioners should get relief. We accordingly direct that the sale be set aside on usual terms and we make no order as to costs.

Sarjoo Prosad, C.J.

5. I agree.