
(2004) 08 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 208 of 1987

Punjab Wakf Board

APPELLANT

Vs

Raghbir Singh (Dead) through LRs.

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (2005) 139 PLR 603 : (2004) 4 RCR(Civil) 793

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

Bench : Single Bench

Advocate : Arun Palli, for the Appellant; Parveen Kumar and Vikas Negi, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The short question raised in this appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code") is as to when defendant-respondent No. 1, Raghbir Singh had acquired ownership right in respect of the suit property. Would it be when the auction was confirmed by the Rehabilitation Department in his favour or when the sale certificate was issued ? The plaintiff-Punjab Wakf Board has filed the instant appeal against the defendant-respondents u/s 100 of the Code by raising the argument that before the title could be transferred to defendant-respondent No. 1, the suit property came to be vested in it.

Brief Facts:

2. One Amir Ali was owner of the suit property who had rented the same to defendant-respondent No. 2-Sansar Chand before the historical exodus of 1947. The aforementioned Amir Ali is said to have deserted the property and went away to Pakistan. The suit property came to be vested in the Central Government as an evacuee property. Defendant-respondent No. 1, Raghbir Singh purchased the suit property in an open auction held by the Rehabilitation

Department under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for brevity, "1954 Act") and the rules framed thereunder, namely, the Displaced Persons (Compensation and Rehabilitation) Rules 1955 (for brevity, "1955 Rules"). Defendant-respondent No. 1 was a successful auction purchaser and the auction was confirmed in his favour on 10.9.1969 vide Ex.DW-8/2 which is a copy of the letter received by defendant-respondent No. 1 from a Competent Authority who confirmed the bid in his favour. Thereafter, he deposited the entire sale consideration on 29.9.1969 vide receipt Ex.DW-8/3 and the sale certificate was issued to him much later on 9.2.1975. The plaintiff-appellant filed Civil Suit No. 645 of 1982 on 8.10.1982 for permanent injunction against defendant-respondent No. 1 restraining him from interfering in its possession through Sansar Chand, defendant-respondent No.2. It has been alleged that defendant-respondent No. 2 was inducted as a tenant by the plaintiff-appellant. The plaintiff-appellant has also placed reliance on a suit filed by it against the State of Punjab and Union of India in the year 1971 being Civil Suit No. 20 of 1971. The suit was decreed by the Civil Judge, Hoshiarpur on 11.9.1975 and the decree was affirmed by the learned Additional District Judge vide his judgment and decree dated 18.4.1979. The aforementioned judgments of both the courts have been exhibited as Ex.PY and Ex.PY/1 respectively. It is alleged that defendant-respondent No. 1 is neither the owner nor holding any right in the suit property and he is also bound by the judgment and decree Ex.PY and Ex.PY/1. In the alternative, it has been asserted that the suit property include shops which is a Wakf property being part of Masjid Samchey Khan and could not have been transferred to defendant-respondent No. 1 by the State of Punjab or Union of India.

3. Raghubir Singh, defendant-respondent No. 1 contested the suit asserting and that the property in dispute did not ever vest in the Punjab Wakf Board and, therefore, it cannot be considered to be Wakf property. He has maintained that the shops could not be rented by the plaintiff-appellant to Sansar Chand, defendant-respondent No. 2. He has also asserted that shops in dispute belonged to the Central Government which were sold to defendant-respondent No. 1 in an open auction on 4.7.1969 for a sum of Rs. 1 1,500/and the sale was confirmed on 10.9.1969 vide Ex.DW-8/2. The sale certificate has also been issued in favour of defendant-respondent No. 1 on 11.2.1975. With regard to the judgment and decree dated 11.9.1975 passed by the Civil Judge, Hoshiarpur, Ex. PY and confirmed by the Additional District Judge, Hoshiarpur on 18.4.1979, Ex.PY/1, the stand taken is that defendant-respondent No. 1 was not party to those proceedings and therefore, the judgment and decree would not be binding on his interest.

4. Defendant-respondent No. 2 has supported the case of the plaintiff-appellant by admitting all the averments made by the plaintiff-appellant.

5. The learned Civil Judge dismissed the suit by holding that the property belonged to Amir Ali and the judgment Ex.PY dated 11.9.1975 is not binding on

Raghubir Singh, defendant-respondent No. 1 because he was not a party to that litigation. He also filed an application under Order 22 Rule 10 of the Code. Vide Order dated 17.5.1976, Ex.DW6/8, his application was dismissed leaving it open to him to avail any other remedy in accordance with law.

6. On appeal, the findings recorded by the Civil Judge were affirmed. After referring to sub-section (1) of Section 2 of the Wakf Act, 1954 and the judgment of this Court in the case of Punjab Wakf Board v. Panchayat Commissioner, Patiala Division 1973 RLR 647, the learned Additional District Judge held that the property, which has been subject matter of suit cannot by any stretch of imagination be considered as wakf property because no evidence was produced on record to show that it was ever dedicated by its owner, profession Islam, for religious and charitable purposes. It has been found that the shops were owned by one Amir Ali. Relying on the statement made by Kuldeep Singh, DW-5, an official of the office of the Deputy Commissioner, the learned Additional District Judge held that the property was entered in the owner- ship of Amir Ali as Muslim evacuee which vested in the Government as such. The learned Additional District judge has also concluded after referring to Notification Ex.P1/EX, that the nature of the property was not wakf property. With regard to the judgment Ex.PY dated 11.9.1975 and Ex.PY/1 dated 18.4.1979, the learned Additional District Judge observed as under:-

"The suit by the Punjab Wakf Board was instituted in the year 1971 and was decided on 11.9.1975. In this suit, respondent Raghubir Singh was not a party, although the Punjab State and Union of India, from whom Raghubir Singh had acquired his title to the suit property, were admittedly parties. The possession was sought, as owner of properties including the present suit property bearing No. 1821-1822 of Unit No.B.II.S.27. Learned counsel for the appellant urges that this judgment was binding upon respondent Raghubir Singh, as he was transferee from Punjab State and Union of India and had stepped into their shoes. In spite of apparent plausibility of this contention, it has to be stated that respondent Raghubir Singh has stepped into the shoes of the Punjab State and Union of India qua the suit property, much earlier to the institution of the suit by the Wakf Board against the Punjab State; Union of India. The result was that when the present suit No. 20 of 1971 was instituted by the Wakf Board, against Punjab State etc. the latter had been left with no right title or interest in the suit property. Reference can be made to the case Kishan Lal v. Bansilal (1962) 64 P.L.R. 55, where it was held that once the sale certificate is granted, the title to the auction purchaser dated back to the date of the confirmation of the sale."

7. The learned Appellate Court also placed reliance on a judgment of the Supreme Court in Bishan Paul Vs. Mothu Ram, and in view taken by this Court in the case of Hari Kishan Lal v. Bansilal (1962) 64 P.L.R. 55.

8. Mr. Arun Palli, learned counsel for the plaintiff-appellant has advanced various arguments to persuade me to take a view other than the one taken by the learned Additional District Judge. According to the learned counsel, Civil Suit No.

20 of 1971 was instituted which resulted in the passing of judgment and decree on 11.9.1975 and that the Civil Suit having been filed in 1971 is prior in time when sale certificate dated 9.2.1975 was issued. The learned counsel has maintained that in the judgment of the Supreme Court in Bishan Paul's case (supra) on which reliance has been placed by the learned Additional District Judge, four stages have been carved out which were the salient features of that case and it was on account of those four stages that the Supreme Court took the view that the sale title would be conferred on the date when auction is confirmed. The learned counsel has argued that the auction is required to be confirmed and then possession should also be delivered. Apart from the aforementioned two stages, the tenant on the property should be directed to attorn to the new owner and the sale certificate which might be issued relates back to the date of auction. The learned counsel has argued that although the auction was confirmed in favour of defendant-respondent No. 1, neither the possession was delivered nor the tenant was attorned to the new owner. In support of his submission, the learned counsel has placed reliance on a judgment of Division Bench of Delhi High Court in the case of Dr. Bhargava & Company and Anr. v. Sh. Shyam Sunder Seth AIR 1988 Del 349 and argued that an auction purchaser becomes owner of the property only from the date when sale certificate is issued in his favour and not earlier to that date though the sale certificate may take effect from the date his bid was accepted. The learned counsel has emphasised that the principles of *lis pendens* would be attracted if the suit has been filed before issuance of sale certificate and he has placed reliance on a judgment of the Supreme Court in the case of Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others, and also on another of this Court in Hari Kishan Lal v. Bansilal and Ors. (1962) 64 P.L.R. 55. He has also referred a judgment of Madhya Pradesh High Court in the case of B.K. Pradhan Vs. Kalawati Devi,

9. The learned counsel has then argued that although a judgment in respect of the same property passed between different parties may not operate as *res judicata* when the property is subject matter of dispute in another litigation and between some other parties, yet it can be cited as a precedent. According to the learned counsel, both the Courts below have committed error in law by refusing to consider the judgments Ex.PY and Ex.PY/1 showing that the plaintiff-appellant is the owner of the suit land. For the aforementioned proposition, the learned counsel has placed reliance on a judgment of the Privy Council in the case of AIR 1934 157 (Privy Council); Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, and Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, .

10. Mr. Parveen Kumar and Mr. Vikas Negi, learned counsel for respondent No. 1 have argued that there is no room to re-open the issue because Civil Suit No. 20 of 1971 was filed in 1971 and the auction was confirmed on 10.9.1969 vide Ex.DW-8/2 which is a copy of the letter issued by the Competent Authority. The learned counsel has further referred to Ex.DW-8/3, a receipt showing the deposit of the entire sale consideration on 29.9.1969. Commenting on the judgment of

the Supreme Court in the case of Bishan Paul (supra) he submitted that these terms were laid down for passing of a valid title to the purchaser from the date of confirmation of auction. Therefore, the question of *lis pendens* would not arise because the earlier civil suit was filed much later than acquiring of proprietary right by defendant-respondent No. 1. Therefore, the learned counsel prays that the appeal be dismissed.

11. After hearing learned counsel for the parties and perusing the record, I am of the considered view that this appeal is devoid of any merit and is liable to be dismissed. Both the Courts below have concurrently found that auction in respect of the suit property took place on 4.7.1969. Raghbir Singh defendant-respondent was the highest bidder and it attained finality in his favour on 10.9.1969 when he received Ex.DW-8/2 a letter of confirmation from the competent authority. On 29.9.1969 vide receipt Ex.DW-8/3, he deposited the entire sale consideration. The sale certificate was issued in his favour on 9.2.1975 (Ex.DW.6). Although the sale certificate was issued on 9.2.1975 during the pendency of Civil Suit No. 20 of 1971 filed by the plaintiff-appellant against the Punjab State/Union of India, yet it cannot be concluded that the proprietary rights of Raghbir Singh were intercepted on account of principle of *lis pendens*. The judgment of the Supreme Court in Bishan Paul's case (supra) is squarely applicable inasmuch as it has been held that the title in the property passes to the vendee when the sale is confirmed and not when the sale certificate is issued. The sale in the present case was confirmed on 10.9.1969, and, therefore, no title, right or interest was left in the suit property in so far as the Union of India/State of Punjab is concerned. Therefore, the principle of *lis pendens* envisaged by Section 52 of the Transfer of Property Act, 1882 (for brevity "1882 Act") could not be attracted to the facts of the present case.

12. The question with regard to passing of title came up for consideration before the Supreme Court in Bishan Paul's case (supra). The Supreme Court after detailed analysis of 1954 Act and 1955 Rules came to the conclusion that no guidance is available therein to determine the date of passing of title in the auction purchase of an evacuee property. It concluded that the general principles envisaged by Section 60 of the Code were to be applicable in such like auctions in the absence of provisions in the special statute like 1954 Act or 1955 Rules. The view of their Lordships is reflected in paragraph 16 which reads as under:-

"It seems to us that the matter must be considered on general principles. In this case the highest bid was of the respondent and he paid the full price before the sale in his favour was confirmed. The sale certificate, though issued later, mentioned the date of the confirmation of the sale in his favour. The tenant was asked to attorn to the purchaser from the date of confirmation of sale and thus possession was also delivered on that day. Title, therefore, was not in abeyance till the certificate was issued but. passed on the confirmation of sale. The intention behind the rules appears to be that title shall pass when the full price is realised and this is not clear from the new form of the certificate reproduced in

Jaimal's case 66 PLR 99: AIR 1964 P & H 99. No doubt till the price is paid in full there is no claim to the property, but it seems somewhat strange that a person who has paid the price in full and in whose favour the sale is also confirmed and who is placed in possession should only acquire title to the property from the date on which a certificate is issued to him. There may conceivably be a great deal of time spent before the certificate is granted. In this case the tenant was told to attorn from October 3, 1956 because nothing remained to be done except the ministerial acts of issuing the certificate and getting it registered. Therefore, so far as title was concerned, it must be deemed to have passed and the certificate must relate back to the date when the sale became absolute."

The Supreme Court observed that the Bombay Salt and Chemical Industries case on which reliance has been placed by learned counsel for the appellant did not decide the question concerning the date on which an auction purchaser would acquire proprietary rights. It also approved the observations made by this Court in Roshan Lal Goswami Vs. Gobind Raj and Others, and continued to observe as under;-

"... It was only when the decision in the Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others, , was given that he changed his stand. The rulings on which he relies also erroneously accepted the decision of this Court in the Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others, , to have decided the point when title commences. As has been rightly pointed out in Jaimal's case 66 PLR 99: AIR 1964 P & H 99, the point was at large. In our judgment, the landlord in the present case could maintain the proceedings for ejectment. We agree generally with the observations of Tekchand, J. In Roshan Lal Goswami Vs. Gobind Raj and Others, that the landlord's right to bring a suit for ejectment need not necessarily depend on the issuance of the certificate. In this case the landlord had paid the full price, his bid was approved and he had received a certificate mentioning the date of confirmation. In our judgment, he obtained title on the date of confirmation of the sale and could demand rent from that date as indeed he was informed and he himself understood to be the true state of affairs."

13. The aforementioned view of the Supreme Court again fell for consideration in Dr. Bhargava & Company's AIR 1988 Del 349 case (supra). Referring to Rule 90(15) of 1955 Rules, their Lordships of the Supreme Court held that the title in the property cannot pass to the auction purchaser unless the auction price has been realised in full. The question of transferring the property to an auction purchaser or permitting him perfecting his title in the property would not arise till the time, the full price of the evacuee property sold at the auction is realised.

14. It is further appropriate to mention that in the case of Prem Kishnan v. Krishanchand Chelaram, C.A. No. 1533 of 1966, decided on 2.9.1969, it has been held that the title in the auctioned property passed to the auction purchaser on the approval of their bid by the Settlement Commissioner and payment of the price of the auctioned property. It further held that the title did not remain in

abeyance till the issuance of sale certificate. A similar view has been expressed by the Supreme Court in *Gurbax Singh v. Financial Commissioner* 1991 Spp.(1) S.C.C. 167. Observing that the intention beyond Rules 90(15) and 92 of 1955 Rules is that the title must pass to the auction purchaser when the full price is realised, their Lordships observed as under:-

"In *Bishan Paul v. Mothun Ram* it has been held that Rules 90 and 92 show that there are distinct stages in the auction sale of property in the compensation pool, namely, (1) the fall of the hammer and the declaration of the highest bid, (2) the approval of the highest bid by the Settlement Commissioner or Officer appointed by him, (3) payment of the full price after this approval, (4) grant of certificate, and (5) registration of the certificate. This is the intention behind the Rules. The new form of the sale certificate requires a mention that the purchaser had been declared the purchaser of the said property with effect from the certificate date. The title, however, would not be in abeyance till the certificate was issued but would be based on the confirmation of the sale. The intention behind the Rules appears to be that title shall pass when the full price is realised and this is now clear from the new form of the certificate, and title must be deemed to have passed and the certificate must relate back to the date when the sale became absolute. The appellant, therefore, must be held to have obtained title to the land on the date of confirmation of the sale. That is why the sale certificate in the instant case was expressly stated to be with effect from September 15, 1969."

15. When the principles of aforesaid judgments are applied to the facts of the present case, it is evident that the auction was confirmed in favour of Raghbir Singh defendant- respondent No. 1 on 10.9.1969 and applying the principles laid down in *Bishan Paul's* case (supra) he became full-fledged owner of the suit property on that date. Therefore, nothing remains to be transferred to the plaintiff-appellant by the time Civil Suit No. 20 of 1971 was filed because Raghbir Singh defendant-respondent 1 had already acquired the proprietary right in the suit property on 10.9.1969 when he became its full fledged owner. Moreover, the sale certificate itself reveals that it is to take effect from the date of confirmation although it has been issued on 9.2.1975. For the period from 10.9.1969 till 9.2.1975, the proprietary right of the auction purchaser cannot be kept in abeyance. The principles of *lis pendens* as envisaged by Section 65 of 1882 Act would not apply because no suit was pending either on 10.9.1969 when the auction was confirmed in favour of defendant-respondent 1 or on 29.6.1969 when the entire sale consideration was paid. The position would remain the same even if the judgments *Exs. PY* and *PY/1* are admitted in evidence on the basis of the law laid down by the Privy Council in *AIR 1934 157 (Privy Council)* case (supra) and the judgment of the Supreme Court in *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*, case names"s case (supra). Therefore, this appeal is liable to be dismissed.

16. The argument of the learned counsel that there was no allotment in favour of

defendant-respondent No. 1, inasmuch as, no direction was issued to tenant-respondent No. 2 to pay rent to him would not require any serious consideration because there is no evidence on record showing the tenant-respondent No. 2 was paying rent to Union of India or the Punjab Government. Once the possession is with tenant-respondent No. 2, by operation of law, defendant No. 1 would become owner and would also be entitled to collect rents from him. In law the possession is that of defendant-respondent 2. Therefore, on that account the ratio of judgment of the Supreme Court in Bishan Paul Vs. Mothu Ram, case (supra) cannot be made inapplicable to the facts of the present case merely on the basis of a tenuous distinction drawn by the learned counsel. I do not find any ground to conclude that the earlier view of the Supreme Court in Bombay Salt and Chemical Industries Vs. L.J. Johnson and Others, case (supra) would govern the issue as it has been considered in detail by the Supreme Court in Bishan Paul's case, (supra) and Dr. Bhargava & Company's AIR 1988 Del 349 case (supra). There is no legal infirmity in the view taken by the Courts below.

For the reasons stated above, this appeal fails and the same is dismissed.