
(1938) 07 CAL CK 0020

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1344 of 1936

Ram Sankar Bandopadhyaya and Another

APPELLANT

Vs

Jogendra Nath Parikha and Others

RESPONDENT

Date of Decision : 11-07-1938

Acts Referred:

Citation : (1938) 07 CAL CK 0020

Final Decision : Dismissed

Judgement

Sen, J.—This appeal is by the Defendants Nos. 1 and 2 and it arises out of a suit for a declaration of the Plaintiffs' title to certain landed property and for recovery of possession thereof by evicting Defendants. The Plaintiffs' case, briefly, is as follows: There is an occupancy holding bearing a rental of Rs. 5-13 which belonged in equal shares to Purno Bango, Bhusan and Ram. Bango Bhusan. The Plaintiffs purchased a certain portion of the lands of this holding from Ram Bango Bhusan. This portion consisted of some arable land measuring 1 bigha and 6 kathas and a 2 annas share in a tank which is C.S. Plot 681. The Plaintiffs paid 1-8 as rent for the land they purchased. One Aghore Nath Mukherjee had also purchased some lands of this jama of Rs. 5-13 and he paid Rs. 1-10 as rent for the portion he had purchased. The Plaintiffs were in possession of the lands purchased by them but they were dispossessed by the Defendants who claimed to have acquired title to the lands by virtue of their purchase at a sale in execution of a certificate issued under the Public Demands Recovery Act against one Motibala, daughter of Purno Bango Bhusan. The Plaintiffs' case is that their title was not affected by this certificate sale and they accordingly prayed for a declaration of their title to the lands and for recovery of possession thereof. The Defendants Nos. 1 and 2 who are the principal Defendants resisted the claim broadly on three grounds. First, they said that the Plaintiffs' purchase was a fraudulent and fictitious one and that they acquired no title thereby: Secondly, they said that even if the Plaintiffs acquired title by the purchase, that title has been extinguished by the certificate sale. Thirdly, they asserted that the provisions of the Public Demands Recovery Act barred the present suit. The suit

was dismissed by the trial Court. The Plaintiffs appealed. The Lower Appellate Court has held that the Plaintiffs had failed to establish their title by purchase to the arable lands but that they had established their title to a 2 annas share in the tank which is C.S. plot 681. It held further that in the circumstances of this case the sale under the certificate did not pass the holding but operated as a money sale whereby only the right, title and interest of the certificate debtor passed and that the Plaintiff's interest was not affected by the sale. On these findings, the Plaintiffs' title to a 2 annas share in the tank was declared and they were given joint possession thereof with the Defendants. The objection that the suit was barred by the provisions of the Public Demands Recovery Act was not accepted by the trial Court and apparently it was not pressed by the Defendants in the appeal before the Subordinate Judge.

2. The Defendants Nos. 1 and 2 now appeal. The Plaintiffs file cross-objections but they do not press them. The finding that the Plaintiffs acquired title to a 2 annas share in the tank by their purchase from Ram Bango Bhusan is now accepted by both parties. The Appellants' contention in this Court is twofold. First, they say that this title has been extinguished by the certificate sale and secondly, that this suit is barred by the provisions of the Public Demands Recovery Act. These are the only two points argued, the other grounds of appeal have been abandoned.

3. On the first question, I am in entire agreement with the learned Subordinate Judge that by the certificate sale only the interest of the certificate debtor Moti Bala passed and that the interest of the Plaintiffs remained unaffected thereby. It is clear from the ordersheet of the certificate proceedings (Ex. 4) and the sale certificate (Ex. H) that an entire holding was not sold but only a portion thereof. It is admitted that the certificate sale related to the lands of a holding bearing a rental of Rs. 5-13 recorded in Khatian No. 345. It is also admitted that all the lands of this holding were not sold. It is stated expressly in Ex. H that " the property is sold excluding the share of Aghore Nath Mukhopadhya in plots Nos. 919, 921 and 923." In Ex. 4 and Ex. G there is a similar remark. Aghore Nath Mukhopadhya was not a party to the certificate proceedings. Thus the entire holding of Rs. 5-13 recorded in Khatian No. 345 has not been sold but only a part thereof. Now under sec. 20 (1) of the Public Demands Recovery Act what passes at a sale in execution of a certificate is the right, title and interest of the certificate debtor. Sub-sec. (3) of sec. 20 says that in areas in which Chapter XIV of the Bengal Tenancy Act is in force where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, the tenure or holding shall subject to the provisions of sec. 22 of the Bengal Tenancy Act pass to the purchaser. It is clear therefore that unless the Appellants can show that a holding was sold all that they would be entitled to get by virtue of their purchase would be the right, title and interest of Moti Bala. As has been pointed out the holding of Rs. 5-13 was obviously not sold, Aghore's interest having been expressly excluded. The Appellants contend that the holding of Rs. 5-13 has been split up into two holdings, one bearing a rental of Rs. 1-10 and the other

bearing a rental of Rs. 4-3. The learned Subordinate Judge states that there is no evidence to establish this splitting up of this holding into two holdings. The fact that a portion of the rent of Rs. 5-13 is paid by Aghore Mukhopadhyaya separately does not necessarily connote a division of the tenancy into two tenancies. To effect a valid sub-division certain formalities have to be observed and certain steps have to be taken. They are mentioned in sec. 88 of the Bengal Tenancy Act. There is no evidence to establish that the provisions of this section has been complied with. I hold therefore that a portion of the holding bearing a rental of Rs. 5-13 has been sold to the Defendants. That being so, sec. 20 (2) can have no application. By their purchase the Defendants have acquired "only the right, title and interest of MotiBala. The Plaintiffs" rights were not in any way affected by this sale and their title to a 2 annas share in the tank remained unimpaired.

4. Then remains the question whether this suit is barred by any of the provisions of the Public Demands Recovery Act. Learned Advocate for the Appellants relies on secs. 36 and 37 of that Act. In my opinion, these sections do not assist him at all. Sec. 36 deals with a case where a certificate sale is sought to be set aside on the ground that a notice under sec. 7 of that Act has not been served. Although there was an allegation made that the sale was void as no notice had been served, the present suit was not by any means confined to that question and the relief sought is not the setting aside of the sale but a declaration that the sale was not binding on the Plaintiffs so far as the land purchased by them was concerned. Sec. 37 states that all questions arising between the certificate holder and certificate debtor or their representative relating to the discharge or execution of the certificate shall be decided not by-suit but by order of the certificate officer. The Plaintiffs are neither certificate debtors nor are they the representatives of the certificate debtors; further, the suit is not for any of the purposes mentioned in the section. It is for a declaration that the Plaintiff's interest has not been sold in execution of the certificate. In my opinion, the suit is not barred by any provision of the law. The decree of the learned Subordinate Judge must be upheld and this appeal must be dismissed with costs. The cross-objection not having been pressed is dismissed. There will be no order for the costs of the cross-objection.