(1950) 08 BOM CK 0010

In the Bombay High Court

Case No : Second Appeal No. 431 of 1948

Ramkrishna Vaman Pai APPELLANT

Vs

Narayan Vaman Shanbhag RESPONDENT

Date of Decision : 03-08-1950

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 155, 59(1)

Citation : AIR 1951 Bom 267 : (1950) 52 BOMLR 834

Hon'ble Judges : Dixit, J;Bhagwati, J

Bench : Division Bench

Advocate : N.M. Shanbhag, for the Appellant; D.R. Manerikar, for the Respondent

Judgement

Shah, J.—In this second appeal a question of some importance arises which requires to be finally decided by a division bench. The question arises in the following circumstances. Survey No. 23 of the village of Uppinpattan was mortgaged to the Co-operative Credit Society of the village of Uppinpattan by the manager of the joint family to which the appellant belongs. In respect of the mortgage dues an award was made u/s 54, Co-operative Societies Act, 1925, on 24-3-1930, of which the terms were as follows:

"Now, I having summoned the parties and duly considered the matter referred to me, I do hereby order for reasons separately recorded that the defendant mentioned above shall pay to the plaintiff Society the amount of Rs. 750/- as principal and Rs. 187-13-8 as interest and costs of arbitration Ha. 12-8-0, thus in all Rs. 960-5-8 by 30-6-1930. In default the plaintiff do recover the amount with the village officer''s remuneration by execution of the mortgaged lands as shown in the enclosed list; and that interest on the amount so awarded shall run at the rate of 9 p. c. per annum until the debt is satisfied."

This award was made on 24-8-1930. The award was sent to the Collector for execution under the provisions of Section 59, Clause (1) (b), Bombay Co-operative Societies Act and a property other than the mortgaged property being

B. No. 36/2 B of the Uppinpattan village was sold for a sum of Rs. 62. by the collector and was purchased by the defendant. It appears that the mortgaged property was also sold by the Collector. I am informed that the sale with regard to the mortgaged property was set aside subsequently, but no application for setting aside the sale of S. No. 86/2 B was filed. In pursuance of the auction sale, the defendant took possession of the property in June 1933. The plaintiff as one of the members of the joint family which owned S. No. 36/2-B filed the present suit on 2-12-1944, for recovery of possession of the entire property. Admittedly the plaintiff is a junior member of the joint family; he is not the manager, and he does not purport to have filed the suit on the authority of the other members of the joint family expressly given. His interest in the property, as found by the learned appellate Judge, is one eighth. The trial Court decreed the claim of the plaintiff on the ground that the sale was void. The learned appellate Judge was of the opinion that if the sale was void, the plaintiff would have been entitled to one-eighth share in the property and no more. But in the opinion of the appellate Court, the sale was not void. The point of importance that arises in this case is whether the Collector acting under the provisions of Section 59, Clause (1) (b), Bombay Co-operative Societies Act, is entitled to Bell, contrary to the directions given under the award, property other than the property from which the amount of award is directed to be recovered. It is true that a revenue officer acting under the provisions of Sections 152 to 158, Bombay Land Revenue Code, has authority to recover amounts which are recoverable as arrears of land revenue by attachment and sale of any property belonging to the debtor, but when the very authority of the revenue officer is traceable to an order of a tribunal which directs execution against specific property in my view the revenue officer would have no authority to sell property other than the one from which the claim is directed to be satisfied under the directions of the tribunal. As, however, the question is of some importance, and I am informed that there is no authority, either of this Court or of any other Court which decides this question. I refer the case to a Division Bench.

Division Bench Judgment.

2. Bhagwati, J.--This is a second appeal from a judgment of the District Judge of Kanara at Karwar who reversed the decision of the learned Civil Judge, Junior Division at Kumta, decreeing the plaintiff''s claim for possession of the suit laud against the defendant.

3. The plaintiff is one of the coparceners of a joint and undivided Hindu family suing for actual possession of the suit land after setting aside its safe, if necessary, held in execution of the award in arbitration case No. 8 of 1930 of the Co-operative Society of Uppinpattan, past mesne profits, costs and future mesne profits.

The plaintiff''s uncle one Dasa who was the manager of the joint family mortgaged certain joint family properties to the Uppinpattan Cooperative Society. The Society went to arbitration in order to recover the monies due by the joint family to it, and an award was made by the arbitrator on 24-3-1930, in the terms following:

"Now, I having summoned the parties and duly considered the matter referred to me. I do hereby order for reasons separately recorded that the defendant mentioned above shall pay to the plaintiff Society the amount of Rs. 750 as principal and Rs. 187-13-8 as interest and costs of arbitration. Rs. 12-8-0, thus in all Ra. 950-5 8 by 30- 6-1930. In default the plaintiff do recover the amount with the village officer''s remuneration by execution on the mortgaged lands as shown in the enclosed list; and that interest on the amount so awarded shall run at the rate of 9 p. c. per annum until the debt is satisfied."

This award was sent to the Collector for execution under the provisions of Section 59 (1) (b), Bombay Co-operative Societies Act, and in execution not only the properties which were the subject-matter of the mortgage but also another property being S. No. 36, pot hissa No. 2B, of the Uppinpattan village was sold by the Collector, The latter property was sold for a sum of Rs. 62 and was purchased by the defendant. The sale was confirmed on 15-11-1932, and the defendant got possession of the property on 10-1-1933. On 2-12-1941, the plaintiff filed this suit against the defendant for the reliefs hereinbefore set out.

4. Two questions have been agitated before us by Mr. N. M. Shanbhag on behalf of the appellant and they are:- (i) that the Collector had no jurisdiction to sell any other property except the properties which were shown in the order as having been mortgaged by the joint family to the society and (2) that the plaintiff even though he was one of the members of the joint family was entitled to maintain the suit against the defendant, the defendant being a mere trespasser became the sale effected by the Collector was void ab inttio.

5. In support of his first contention, Mr. Shanbhag referred us to the terms of the award itself which stated that the plaintiff society was to recover the amount specified with the village officer''s remuneration by execution on the mortgaged lands as shown in the enclosed list. He therefore, urged that the ambit of the jurisdiction of the Collector, even though he was executing the award under the terms of Section 59 (1) (b), Bombay Co-operative Societies Act was circumscribed by the terms of the award and that the Collector had, therefore, no jurisdiction to sell any other property except those which were shown in the enclosed list. He urged that even though the terms of Section 59 (1) (b), Bombay Co-operative Societies Act empowered the Collector to execute the award according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, those powers themselves had to be read as circumscribed by the terms of the award which was sent to the Collector for execution and that the general terms in which this power was vested in the Collector u/s 59 (1) (b), Bombay Co-operative Societies Act would not operate to invest the Collector with jurisdiction to sell any other property except those which were comprised in the award. It was conceded, of course, that if the powers of the Collector were themselves not circumscribed and the Collector had

jurisdiction to act according to the law and under the rules for the time being in force for the recovery of arrears of land revenue without being trammeled by the terms of the award, then certainly under the provisions of Sections 150 and 155, Bombay Land Revenue Code, he had the jurisdiction and the power to sell the property S. No. 36, pot hissa No. 2B, of the Uppinpattan village which he did in execution of the award.

6. The whole thing, therefore, here turns upon the construction of the award. On looking at the terms of the award, it is clear that in the first instance the award specifies the amount which is to be paid by the joint family to the society. In fact the arbitrator thereby orders that the joint family do pay to the plaintiff Society the amount aggregating to Rs. 950-58 by 80-6-1930. In default, however, of the payment of the amount by that date, the arbitrator orders that the plaintiff do recover the amount with the village officer''s remuneration by execution on the mortgaged lands as shown in the enclosed list. That is a mode prescribed in the first instance for the recovery of the amount awarded by him to be due by the joint family to the society. The award thus far is in the general terms of a mortgage decree. It is an order for payment of the amount due at the foot of the mortgage. There is also an order entitling the plaintiff to recover the amount which has been thus declared to be due by the realization of the mortgage security. It, however, does not mean that the only remedy of the party in whose favour the award is made is to sell the mortgaged property and he is not thereby precluded from having any further remedies which he may have got in the matter of the realization of the amount which has been declared in the first instance to be due by the debtor to him. All other remedies which would be open for the realization of the monies which had thus been declared to be due by the debtor to the mortgagee are available to him, and this fact is certainly made clear when one goes to the last part of the award which says that "the interest on the amount so awarded shall run at the rate of 9 per cent, per annum until the debt is satisfied." What is contemplated, therefore, under the terms of this award is the satisfaction of the debt. The satisfaction of the debt may not necessarily be made by realizing the mortgage security. On the realization of the mortgage security, the amount which may be realized by the creditor may fall short of the amount which is declared to be due by the debtor to him and therefore it is stated in the terms of the award itself that the amount is to carry interest at the particular rate until the debt is satisfied. The debt can be satisfied not only by the realization of the mortgage security but it can also be satisfied by executing the decree against the debtor personally in the event of a deficit arising on the sale of the mortgaged property. This remedy is not negatived by the terms of the award. Even in the case of a mortgage decree it may happen that the mortgagee may have to approach the Court and ask for a personal decree against the debtor in the event of a deficiency arising on the sale. That stage, however, is not contemplated by the terms of the award. The award entitles the mortgagee to execute the decree as a whole and realize the mortgage security in so for as it may be sufficient to satisfy the mortgagee''s

claim, and in so far as there is a deficit arising on the sale, the mortgagee would be entitled to proceed personally in execution of the decree against the debtor.

7. If this is the true construction of the terms of the award, it follows that on the award being sent to the Collector for execution in terms of Section 59 (1) (b), Bombay Co-operative Societies Act there was no fetter imposed upon the powers of the Collector to execute this award according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. The Collector was at perfect liberty after selling the mortgaged properties, in the first instance, to proceed against the defendant for recovery of the deficit as though he was recovering arrears of land revenue. If that was so, he had u/s 155, Bombay Land Revenue Code, the power to cause the right, title and interest of the debtor in any immovable property other than the lands which were mortgaged to the society to be sold.

8. Under these circumstances we have come to the conclusion that the sale of S. No. 35, pot hissa No. 2B, of the Uppinpattan village which was effected by the Collector was well within his jurisdiction and that the sale was binding on the joint family. It is unfortunate that this property was sold only for a paltry sum of Rs. 62. That, however, is not a grievance which is capable of being redressed by the Court. There is nothing urged against the genuineness of the sale effected by the Collector, and in the absence of any ground impeaching the sale, the sale must be held to be binding on the joint family. The first contention urged by Mr. Shanbhag, therefore, fails.

8a. In view of this conclusion, which we have reached, it is absolutely unnecessary for us to go into the other interesting contention which has been raised by Mr. Shanbhag as to whether the plaintiff being one of the co-owners of the suit property could file a suit of the nature mentioned above against the defendant. The sale having been held by us to be binding upon the joint family, the plaintiff as a member of the joint family would also be bound by it and no suit could be filed by the joint family, let alone the plaintiff, to set the same aside.

9. The result, therefore, is that the appeal fails and must be dismissed with costs.

10. Dixit, J. --I agree.

11. In the referring judgment Shah J. seems to take the view that the revenue officer would have no authority to sell property other than the one from which the claim is directed to be satisfied under the directions of the tribunal. There is something to be said in favour of this view. On the other hand, the powers of the Collector under the Bombay Land Revenue Code are very wide. If an executing Court were executing this order, there was no difficulty in saying that the executing Court would have no authority to go behind the order and to sell property other than the properly mortgaged. In this case what was sold was not merely the mortgaged property but also the property which is in suit. Section 56, Bombay Land Revenue Code, shows that arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every

part thereof. The position, therefore, under the Land Revenue Code is that a charge is created upon a specific holding. Section 150 prescribes several processes for the recovery of arrears of land revenue and one of the processes is enacted in Section 155. That section provides that the Collector may also cause the right, title and interest of the defaulter in any immovable property other than the land on which the arrear is due to be sold. This section, therefore, shows that not merely the property upon which a charge is created by Section 56can be sold but also any other property of the defaulter can be sold. In this case the sale was effected not merely of the suit property but also of the mortgaged property. It is true that upon an application made by the debtor the gale of the mortgaged property was set aside. But that makes no difference in the situation. In my opinion, the powers conferred upon the revenue officer are very wide. That being so, it seems to me that the sale in this case is valid.

