
(1965) 03 CAL CK 0034
In the Calcutta High Court
Case No : Civil Rule No. 3922 of 1961

Sachindra Nath Das

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 66, Order 21 Rule 66(3), Order 21 Rule 90, Order 5 Rule 17
Limitation Act, 1963 — Section 18

Citation : (1966) 1 ILR (Cal) 216

Hon'ble Judges : P. Chatterjee, J;A.C. Gupta, J

Bench : Division Bench

Advocate : Lala Hemanta Kumar and Amar Nath Roy, for the Appellant;A.D. Mukerjee and Rabindra Mitra for Opposite Party No. 1 and Ashutosh Ganguli, for Opposite Party No. 2, for the Respondent

Judgement

Chatterjee, J.—This is a petition u/s 115 of the Code Civil Procedure, against an order by the Court of Appeal below, refusing to set aside a sale under Order 21 Rule 90 of the Code. The trial Court allowed the petition for setting aside the sale. The appeal against that order was allowed by the Court of Appeal below; the present petition for revision is against the aforesaid order of the Court of Appeal below. The Calcutta Corporation got a decree against the Petitioner and that decree was put into execution during the first part of November, 1957. A preliminary decree was passed on June 23, 1952. The final decree was passed on January 11, 1955 and the present execution was filed in 1957. Thereafter, the notice under Order 21 Rule 22 of the Code was directed to be issued on March 22, 1957. One of the points was that the said notice was never served. It is contended by Mr. Lala on behalf of the Petitioner that the notice was alleged to have been served upon a Karmachari i.e. an agent of the Petitioner. But, according to Mr. Lala it has been proved completely satisfactorily that the Petitioner had no agent or Karmachari at that time. The service was also bad under Order 5 Rule 17 of the Code of Civil Procedure. It was urged, further, that

there was no evidence in support of the service and, therefore, there was no service at all of the notice under Order 21 Rule 22. It is next urged by Mr. Lala that the sale proclamation under Order 21 Rule 66 of the Code is to be settled by the Court. It was never settled by the Court at all. The Court never applied its mind to Order 21 Rule 66 at all. There is not even a formal order that the valuation as made by the decree-holder was accepted by the Court. It is urged by Mr. Lala that if the executing Court had taken the slightest amount of trouble, it would have found, at once, that the property within the city of Calcutta, measuring about 7 cottas and odd chhatak, with structures thereon, could, by no imagination, be valued at Rs. 2800. It is suggested that the Court merely acted as an agent of the decree-holder and did not apply its mind; Order 21 Rule 66 empowers the Court not merely to examine the valuation given by the decree-holder but also to examine other persons, under sub-Rule 4, to see whether the valuation, as given by the decree-holder, was correct or not. It is also urged by Mr. Lala that there was no verification as under Order 21 Rule 66 sub-Rule 3.

2. It is urged, therefore, that the Court acted illegally in exercise of its jurisdiction under Order 21 Rule 66 and, therefore, the sale is liable to be set aside. It is next urged by Mr. Lala that even then the notice under Order 21 Rule 66 was not served upon the judgment-debtor. Mr. Lala asked us to examine the return of the notice under Order 21 Rule 22 as also the return of the notice under Order 21 Rule 66 and has urged that both the notices must be under the direction of the same person as the same language has been used. He further says that the notice was alleged to have been served upon the Karmachari of the judgment-debtor but there is no evidence to prove that the judgment-debtor had any Karmachari at that time, on the other hand, according to Mr. Lala, there is a clear evidence that he had no Karmachari at that time. Regarding the sale proclamation, Mr. Lala urges that two witnesses were examined in the trial Court. The trial Court had the opportunity of seeing the demeanour of the witnesses at the time when they deposed. If the trial Court, before which the witnesses were examined and which had the opportunity of noting the demeanour of the witnesses, suspected the truth of the statement of these witnesses, it was not proper for the appeal Court to reject that conclusion, it having no opportunity to note their demeanour. Mr. Lala urges that the appellate Court was wrong in observing as follows:

In the absence of any circumstances showing that the statements made by these witnesses were false or motivated, learned Munsif was not justified in throwing out this testimony on the ground that the service of sale proclamation was not free from doubt.

Mr. Lala urges that there were circumstances before the learned Munsil because the learned Munsif observed the witnesses when they deposed and the appellate Court was wrong in holding that there was absence of circumstances showing that the statements made by these witnesses were false or motivated. Mr. Lala concludes that the notices under Order 21 Rule 22 and Rule 66 were not served ;

witnesses have been procured to support the story that proclamation of the sale was made by beating of drums. Finally, Mr. Lala referred to the bid sheet. Even though it is alleged that the sale was duly advertised, there was on the first attempt, a solitary bidder; on the second time, the same bidder appeared again and the Court accepted the bid. That clearly shows, according to Mr. Lala, that the sale was never advertised properly; no bidder did come because they apprehended that there must be something wrong when the property worth more than Rs. 40,000 was going to be sold for about Rs. 2800. Mr. Lala, therefore, says that the findings of the appellate Court on the question are wrong. But these are all substantial questions of fact or of law but not relating to jurisdiction. It is clear that the application for setting aside the sale was not made within time. It is clear that Section 18 of the Indian Limitation Act must be requisitioned: otherwise, the application would be barred by limitation. Mr. Lala urges that the Court of appeal below had an impression that no fraud could be committed by a juristic person, namely, Calcutta Corporation. It is urged that because of this misconception of law, the Court found that there was no attempt on the part of the decree-holder to keep from the knowledge of the judgment-debtor of his right to apply for setting aside the sale. According to Mr. Lala, the Calcutta Corporation knew fully well what was the value of the property. The Calcutta Corporation suppressed the true value and disclosed a value which they knew was not the true value. This suppression of the true value of the property by the Corporation cannot be without any purpose. The appellate Court, according to Mr. Lala, should have considered (a) that the Corporation of Calcutta suppressed the true value of the property which was to their knowledge; (b) they wanted to keep the judgment-debtor in the dark by obtaining a false service of the notice under Order 21 Rule 22 and of the notice under Order 21 Rule 66 of the Code ; (c) they did not make any attempt to attract the attention of the Court so far as the valuation of the property on the sale proclamation is concerned; (d) that the valuation by the decree-holder was accepted by the Court without even an enquiry; they did not produce any document about the valuation of the property before the Court; (e) that they suppressed the sale proclamation and misrepresented to the Court that the sale was published by beat of drum. Thereafter, false witnesses were requisitioned to support the story of proclamation of the sale by beat of drum. Mr. Lala says that any one of these actions might have been an accidental omission on the part of the Corporation. But such accidental omission cannot be concluded, as there were a series of actions taken by Corporation the result of which was that the judgment-debtor had no knowledge of the sale, and he was kept from his right to apply for setting aside the sale within the period of limitation. On behalf of the opposite parties, it is urged that the judgment-debtor must have admitted in his answer to question No. 145 that he had knowledge of the sale in September, 1957; the answer is that he came to know about the sale but could not remember the date of his knowledge; it might have been September, 1957. This deposition was recorded on January 17, 1960. It was observed by the Pleader Commissioner that the witness became unwell and requested him to stop the proceeding. It was,

therefore, adjourned to the next date. We may observe that the witness deposed that his age was about 80 years and that he was suffering from various diseases and he could not even move with ease. In such circumstances if the Commissioner adjourned further examination we do not find anything wrong in it. The next date was February 7, 1960 and, while his deposition was read over to him, the witness at once said-"I stated September by an error, that must be November". Mr. Mukherjee says this is a clear evidence that the Petitioner had knowledge about the sale in September, 1957. The sale itself took place on September 10, 1957. It is urged by Mr. Lala that he had known that sale took place in September, 1957, nothing prevented him to file at once an application for setting aside the sale. The Petitioner was asked as to why he did not pay the Corporation taxes if they became due. His answer was that he did not know what was the amount to be paid after the appeal, and hence he did not deposit. We may point out here that the execution was started at least more than one year after the date of final decree. Mr. Lala urges that the delay in applying was with a purpose. The trial Court has believed the statement that he did not know about the sale in 1957. The appellate Court has reversed that finding. This is, it is urged by the opposite parties, a question of fact which we were not competent to decide u/s 115 of the Code. Hence the first question is whether the petition u/s 115 of the CPC is maintainable if there is an error on the question of limitation. We have been referred to a decision between Jaychandlal v. Kamalaksha Choudhury L.R. 76 IndAp 131 (142-3) : 53 C.W.N. 562. The Judicial Committee observed as follows:

The case between Babu Ram v. Munnalal ILR (1927) All. 454 and Hari Bhikaji v. Naro Vishvanath ILR (1885) 9 Bom. 432 may be mentioned as cases in which the Subordinate Court by its own erroneous decision (erroneous, that is, in the view of the High Court) in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess, and the High Court held wrongly, their lordships think, that it had no power to interfere in revision to prevent such a result.

Therefore, according to the Judicial Committee, the High Court is competent to interfere if there is a wrong decision on a question of limitation. So far as the case before us is concerned, the argument is that the Court below wrongly decided the question of limitation, and thereby failed to exercise jurisdiction vested in it by law. The aforesaid decision of the Judicial Committee has been considered by the Supreme Court in Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, . If the Court below erroneously decides a question of limitation on a point which makes the proceedings non-maintainable, the High Court has power to interfere u/s 115 of the Code of Civil Procedure. We believe the Judicial Committee referred to Clause (b) of Section 115 as the next sentence of the judgment of the Judicial Committee would show. If the Court below has misdirected itself on the question of limitation in a manner that the said Court could make no further enquiry on merits, this Court has the power to interfere.

The appellate Court found as follows.:

It is neither alleged nor proved that any of the officers or employees of the decree-holder corporation bore any enmity or ill feeling against the Petitioner and thus fraudulently managed to put the property to sale in collusion with the auction-purchaser. There is absolutely no allegation of any fraud or collusion against the auction-purchaser nor there is any evidence against him. So, on the judgment-debtor's own showing, the so-called suppression of processes might at best amount to mere non-service of processes.

3. The appellate Court, as it appears to us, holds that the Corporation is incapable of committing any fraud or being an accessory thereto and it is for the judgment-debtor to prove that a particular officer acted in fraud or collusion. The case here is that the Corporation suppressed the true value of the property, disclosed a value which was, to their own knowledge, false and, thus, the valuation in the sale proclamation, according to the knowledge of the Corporation, was a false statement. The Corporation never drew the attention of the Court on the question of settling the proclamation of the sale. The description of the property was not complete. Thereafter, the Corporation asked the Court to accept service of notices as good service which may be proved to be no service. Finally, it is urged that the Corporation procured false witnesses to depose that the sale was proclaimed by beat of drums. If all these acts were done by the Corporation, it may be difficult to say, they did not do anything fraudulent within the meaning of Section 18 of the Indian Limitation Act. Section 18 of the Indian Limitation Act makes no exception so far as juristic persons are concerned. The Court misguided itself to think that juristic persons can never come within the mischief of Section 18 unless and until it is proved that a particular officer or such a person acted in fraud. Undoubtedly, the Corporation must have acted through its officer but it is within the special knowledge of the Corporation as to which of its officers acted in the aforesaid manner. We do not say that the Corporation, in the circumstances of this case, committed an act of fraud; nor do we say that, in the circumstances of this case, the Corporation did not commit any act of fraud within the meaning of Section 18 of the Indian Limitation Act. All that we say is that the Corporation is not by law excused in any manner, and the law makes no exception so far as juristic persons are concerned. They are as much liable for their acts and defaults and omissions as any other person. The appellate Court had not appreciated the question of limitation and thus found that the application, being barred by time, could not be entertained. We, therefore, set aside the judgment of Court of appeal below directing the appeal Court below to hear the appeal. We may also remind the appeal Court of the observation of the Judicial Committee and of this Court, that the appellate Court should not lightly interfere with the findings of the trial Court on the question of believing or disbelieving witnesses, because the trial Court had better opportunities in that matter as witnesses deposed before it. With these observations we make the rule absolute, set aside the judgment of the appellate Court, direct the lower appellate Court to consider all questions of fact and law

involved, and to decide in accordance with law. There will be no order for cost.

Gupta, J.

I agree.