

(2004) 07 BOM CK 0028
In the Bombay High Court
Case No : Second Appeal No. 36 of 1987

Shamlal Ratanlal Bumb

APPELLANT

Vs

Uttamchand Suganchand Marwadi and Another

RESPONDENT

Date of Decision : 01-07-2004

Acts Referred:

Central Provinces and Berar Relief of Indebtedness Act, 1939 — Section 15(2)
Civil Procedure Code, 1908 (CPC) — Section 11, 9

Citation : (2005) 1 BomCR 870 : (2005) 1 MhLj 971

Hon'ble Judges : Joshi A.H., J

Bench : Single Bench

Advocate : S.R. Deshpande, for the Appellant; A.V. Khare, for the Respondent

Final Decision : Allowed

Judgement

Joshi A.H., J.—This is a second appeal by the original defendant No. 2, who was opposing suit for possession which was dismissed, however, the decree was reversed in the first appeal.

2. The suit was instituted by Uttamchand Suganchand, the adopted son of defendant No. 3 Suganchand Chandanmal, who initiated the proceedings claiming possession of land Survey Nos. 152/1 and 153/2 respectively 11 acres and 9 acres 36 gunthas of village Anjani. The suit as was originally framed, was based on solitary issue of the transaction of sale done by the defendant No. 3 in favour of the defendant No. 2 being null and void being in violation of Section 15(2) of the Central Provinces and Berar Relief of Indebtedness Act, 1939.

The plaint was, however, amended and the question as to want of legal necessity, etc. were also introduced. The defendant No. 3 the plaintiffs father vendor remained ex parte. The defendant Nos. 1 and 2 filed the written statement and in defence to the crux of the matter as to the legality of alienation, pleaded that the defendant No. 3 was indebted and needed money for cultivation of his land, for domestic expenses and, therefore, sold the suit land to the defendant Nos. 1

and 2 for a sum of Rs. 8,000/- under the registered sale deed dated 6-4-1965. They further pleaded that looking to the objection to the legality raised by the plaintiff and defendant No. 3, they had applied to the Collector, Buldhana, who is authority to grant sanction under the C.P. & Berar Relief of Indebtedness Act, in Case No. 508/41.

3. When the suit had to proceed for hearing, the learned trial Judge framed the issues primarily relating to the property being ancestral and the transaction being illegal on account of lack of legal necessity, as well as the C.P. & Berar Relief of Indebtedness Act. The trial Judge held that the alienation was for legal necessity. The trial Court further found that the creditors had not taken any steps till filing of the suit in question, for nullifying the transaction though the transaction was hit by the said Act and the suit was not liable to be decreed. Moreover, the defendant's application for sanction was pending and it was, therefore, necessary to stay the proceedings in view of pendency of application for sanction. However, the said request was declined and suit was not stayed.

4. The unsuccessful plaintiff preferred Regular Civil Appeal No. 62 of 1977, which was heard and allowed by the learned District Judge, Buldhana. The learned District Judge formulated the question for determination which was relevant, are quoted below:

"(2) Whether the suit property belonged to joint family of plaintiff and defendant No. 3?

(3) Whether the sale of the property by the defendant No. 3 to defendant No. 1 was void?"

On both the questions, the learned District Judge held in favour of the plaintiff and, therefore, decreed the suit.

As to question of legal necessity, the learned Appellate Court recorded in paragraph 13 that in absence of pleadings, the defendant Nos. 2 and 3 could not be heard on this ground as well that the evidence of defendant No. 2 was found insufficient and hence Question No. 2 was answered in affirmative i.e. in favour of the plaintiff.

On the question of the transaction being void, referring to various judgments relied upon, it is held that in absence of sanction as contemplated by Section 15(2) of the C.P. & Berar Relief of Indebtedness Act, the transaction was void. The learned Judge further referred that the reported judgment in Rambhau v. Ganpat, 1961 NLJ 91, which ruled that the transaction could be validated whenever sanction of Deputy Commissioner would be obtained, has no application to the present case, as there was nothing on the record to show that even subsequent to the transfer, the permission of Deputy Commissioner for sale was obtained.

5. Aggrieved by the decree passed in appeal, the appellant herein, the defendant No. 2, preferred the second appeal. At the time of admission, this Court had

formulated the substantial question of law as mentioned in para 11 of the appeal memo, which questions are created below for ready reference:

"(i) What is the true extent and scope of Section 15(2) of Relief of Indebtedness Act and whether subsequent permission by the Competent Authority under the Act would validate the sale made without obtaining such permission?

(ii) Would the debt relief scheme still be operative even if the debt of all the creditors was satisfied and what the effect of repayment of debt of the creditors and would under such circumstances the permission for sale be still required under the Act?

(iii) Was the Appellate Court right in holding that there was not legal necessity without giving any reasons to disagreeing with the findings given by the trial Court. If the transaction is dated 6th April, 1965 on what date would 12 years be completed and is the suit filed on 6th May, 1977 within limitation. At any rate was the Appellate Court right in applying Article 109 of the Limitation Act to the present case?"

6. In the present appeal, the appellant had filed two applications, namely Civil Application No. 516 of 1987 for additional evidence, and Civil Application No. 3523 of 2003 for amendment of the written statement. Both the civil applications were ordered to be heard along with final hearing of the appeal.

7. By the Civil Application No. 516 of 1987, the appellant is claiming reliance upon a copy of judgment dated 21-5-1985, decided by the Competent Authority Sub-Divisional Officer, Mehkar who had recommended sanction to the sale deed executed by Suganchand in favour of Ramlal Ratanlal i.e. the present appellant by the sale deed dated 6-4-1965. This suggests that the proceedings for sanction were pending before the Collector, Buldhana between Ramlal Ratanlal and Uttamchand Suganchand.

In the process of hearing of the appeal, the Civil Application No. 516 of 1987 was allowed by this Court by order dated 19-7-2004.

8. By the Civil Application No. 3523 of 2003, amendment was sought in the plaint as para 9-A for incorporated therein the question of legal necessity. This application for amendment has been granted on 19-7-2004.

9. At the hearing of the appeal, the learned Advocate for the appellant made following submissions:

(i) C.P. & Berar Relief of Indebtedness Act is a complete Code, and the entire machinery created thereunder excludes the jurisdiction of the Civil Court as well by necessary implication, inasmuch as even the decrees already passed are subject to adjustment, etc. by the Debt Relief Court and the forum prescribed therein.

(ii) Section 15(2) contemplates the sanction. The language employed in the section is that the transaction shall be void "unless made with sanction. The

sanction contemplated u/s 15(2) of the Act, does not essentially connote prior sanction.

(iii) Subsequent sanction or ex post facto sanction is an accepted phenomenon as can be considered to have been ruled by the Revenue Tribunal in the Division Bench judgment dated 10-5-1961 which is reported at Note No. 91, that the ex post facto sanction was obtained which would validate the transaction which is otherwise void.

(iv) He also relied upon an unreported judgment in Writ Petition No. 1875 of 1979, Namdeo Shamrao v. Bandhu Mahepat and Ors., of this Court which is delivered by Justice M.P. Kanade, referring to the provisions of Bombay Inferior Village Wastan Abolition Act, holding that post facto sanction could be obtained.

10. In opposition, the learned Advocate appearing for the respondents placed reliance on following judgments:

- (i) 1976 M.L.J. 49, Vyankati v. Suganchand;
- (ii) 1965 M.L.J. 694, Laxmibai v. Ramrao Mhatarji,
- (iii) 1948 N.L.J. 167, Kisanlal v. Zunki,
- (iv) 1950 N.L.J. 598 , Pratapmal Raghunath v. Laxman and Ors.,
- (v) Pitamber Govinda Bhavsar Vs. Abdul Gafur Abdul Rajak and Others, ,
- (vi) 1951 N.L.J. 173 , Aba Ananda v. Kanhu Bhoyar,
- (vii) Sri Tarsem Singh Vs. Sri Sukhminder Singh, ,
- (viii) Ramdayal Vs. Manaklal, ,

These judgments had laid down in coherence that the transaction would be hit Section 15(2) of the C.P. & Berar Relief of Indebtedness Act and would be void. The law being absolutely unambiguous, it would not be really necessary to discuss each of the judgments. The last amongst the above judgments relied upon by the learned Advocate, is on the point of alienation by co-parcener.

11. A Writ Petition No. 369/1988 filed by the present respondent- Uttamchand son of Suganchand-original plaintiff is pending and papers thereof are kept with present second appeal. By this writ petition, present respondent No. 1 has approached this Court challenging the order passed by the Debt Relief Court dealing in Revenue Case No. D.C.A.-1/ Anjani BK/84-85 passed on 8th February, 1988 refusing to stay the proceedings pending before him on account of pendency of Second Appeal No. 36 of 1987 and consequent order passed by Commissioner refusing to interfere as the Collector's order was interlocutory.

12. It shall be pertinent to note that as has revealed from the additional evidence that has been permitted, is that the Sub-Divisional Officer, Mehkar has recommended to the Collector the validation by granting sanction of the sale

deed dated 6-4-1965, by his order dated 21-5-1985. This recommendation was made by him when Regular Civil Appeal No. 147 of 1984 was pending before the District Court. The District Court had specifically recorded that "There was nothing on record to show that even subsequent to transfer, permission of Deputy Commissioner for the sale was obtained".

13. While the second appeal was filed, the case was still pending before the Collector where the matter as to the sanction was pending. After admission of second appeal, the original plaintiff who wanted to throttle the legal proceedings, moved the Collector by filing application dated 4th January, 1988, which is Annexure-A to the Writ Petition No. 369 of 1988. By this application, he has represented that in view of pendency of Second Appeal No. 36 of 1987, as the issue relating to Section 15(2) of the Act was now pending before the High Court, the proceedings before the Collector should be stayed. The request for stay was refused by the Collector by order dated 8-2-1988 as well in revision, the said order was not interfered by the Additional Commissioner, Amravati. Against the grievance of refusal of the Divisional Commissioner to stay the proceedings before the Collector, the original plaintiff has filed Writ Petition No. 369 of 1988 and this Court was pleased to grant stay in terms of prayer Clause (b). This Court has thereby stayed the proceedings before the Collector.

14. Now the situation that emerges is as follows:

(i) The Appellate Court was having clear position of law in mind that would a sanction be granted even subsequently, the transaction would be valid.

(ii) No such permission was produced and hence the suit has to face the fate of dismissal.

(iii) Proceedings for permission were already initiated soon and were in progress before the Competent Authority, initiated after the suit was filed.

(iv) Proceedings before the Collector were progressing solely while the appeal before the District Judge proceeded.

(v) The Civil Judge has already held by passing order below Exh. 39 and later on Exh. 88, that Civil Court would not stay its hands and would proceed with the suit pending proceedings for sanction.

(vi) This civil litigation initiated by the plaintiff is permitted to progress while the defendants' statutory remedy available to him before the Competent Authority under C.P. & Berar Relief of Indebtedness Act has been initially delayed and thereafter throttled with aid and assistance of this Court.

15. In the aforesaid situation, the question arises is as to what shall be the fate of second appeal? As a matter of fact, the plaintiff has, by his own act, prevented the hearing of statutory remedy, decision whereupon operates as jurisdictional issue upon which the decision in civil suit is going to depend.

16. Though the C.P. & Berar Relief of Indebtedness Act, 1939 does not create any

express term a bar of trial of issue, however, since the scheme of the said Act creates an overriding provision on all other acts, issues, triable by authorities created by the said enactment by necessary implication, operate as bar on civil proceedings. Moreover, once the power of sanction is exercised by the Competent Authority under the said Act, it by itself decide the right as to whether the particular transaction would be void or otherwise and such finding shall operate as bindings not only on the parties but also on Civil Court, subject always to judicial review if any restored to by parties. The judgment/decision of authority under C.P. & Berar Relief of Indebtedness Act shall even operate as res judicata.

17. It is in this background, though there is no specific challenge before this Court to the order passed below Exh. 39 and Exh. 88 of the trial Court, it is in the interests of justice, necessary that the proceedings which are progressing in an unguided rather misguided manner, need to be set on the right track. It, therefore, follows that further proceedings of Regular Civil Suit No. 62 of 1977 were liable to be stayed, however, since decided and appeal arising therefrom had to be or were liable to be stayed, which too has been decided. The questions which were formulated, therefore, require to be added by one more substantial question of law as follows:

"When a statute creates a bar by necessary implication and provides for validation of transaction which are declared invalid and the language of Section 15(2) admits even post facto sanction, was the trial Court right in refusing to stay the suit when such jurisdictional fact was already a matter of jurisdiction reserved with a forum specially constituted?"

18. After hearing the parties on this point, the conclusion that inevitably follows is that the courts below committed act of haste and error of law and jurisdiction in exhibiting inordinate hurry. The courts could have, on the other hand, put the parties to the terms for proceedings pending before the authorities under the C. P. & Berar Relief of Indebtedness Act, 1939 and ought to have waited for the findings thereon.

19. In the result, the question of law framed at the time of final hearing, is liable to be answered in favour of the appellant and in the ends of justice, it is necessary that the judgment and decree passed by the first Appellate Court is set aside. The appeal is allowed with costs and it is remanded to the District Court for hearing and disposal as per law after receiving the findings from the Competent Authority under the C.P. & Berar Relief of Indebtedness Act and, therefore, what follows that hearing of appeal shall be done only after getting the decision from the authority under the C.P. & Berar Relief of Indebtedness Act, 1939.

20. The petitioner in Writ Petition No. 369 of 1988 shall move this Court (the Bench) assigned with the writ petition work, and pray for the Writ Petition No. 369 of 1988 listed and disposed off. Thereafter the matter pending before the

Collector will have to be decided and depending upon its decision, the civil proceedings ought to reach a decisive stage and shall be heard and decided as per law.