(2017) 08 BOM CK 0034

In the Bombay High Court

Case No : 139 of 2003 WITH SECOND APPEAL NO 213 of 2004

Syed Gurfan s/o Syed Burhan APPELLANT

Vs

Ramdas s/o Narayanrao Pande since deleted, & Ors. RESPONDENT

Date of Decision : 14-08-2017

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876, Section 4(c) -
Maharashtra Land Revenue Code, 1956, — Section 201, Section 212, Section 210, Section 202, Section 208, Section 207

Citation : (2017) 08 BOM CK 0034

Hon'ble Judges : A. S. Chandurkar

Bench : SINGLE BENCH

Advocate : N. A. Vyawahare, V. A. Dhabe

Judgement

1. Since both these appeals raise a challenge to the judgment of the Appellate Court dated 06/01/2003, they are being decided by this common judgment. The appellant is the original defendant No.3 against whom the trial Court has passed a decree declaring that the respondent No.1plaintiff was the owner of the suit property and that the auction sale in favour of the appellant had no legal effect.

2. The facts in brief are that one Shri Kapurchand Sancheti was the owner of Survey No.516/1. He prepared a layout and one plot therefrom was purchased by Shri Shankarrao Takarkhede on 21/11/1978. Said Shri Takarkhede subdivided the plots and the plaintiff purchased area admeasuring 3605 sq. ft. on 25/06/1987. According to the plaintiff he had put a fencing on the plot purchased and he was residing away from the suit property due to his service. The plaintiff learnt that the fencing of the plot has been removed and hence on making enquiry, it was revealed that in proceedings for recovery of land revenue, the portion of the suit property to the extent of 1855 sq. ft was sold in an auction and it was purchased by defendant No.3. This auction took place on 29/03/1992. According to the plaintiff, the prescribed procedure under the Maharashtra Land Revenue Code, 1956 (for short, the Code) while conducting the auction was not

followed. No notice demanding arrears was ever served on the plaintiff. On that count he filed the aforesaid suit for a declaration that he was the owner of the suit property and that the auction sale held on 29/03/1992 and all other subsequent proceedings therein were bad in law. A prayer for possession also came to be made. The defendant Nos.1 and 2 filed their written statement at Exhibit51 and pleaded that the suit was not maintainable as the plaintiff had failed to avail remedy available under the provisions of the Code. It was pleaded that the auction was validly held. In the written statement filed by defendant No.3 at Exhibit23 a similar stand was taken that the suit was not maintainable in view of the fact that the civil Court had no jurisdiction to consider the correctness and validity of the proceedings held under the Code. It was pleaded that the suit property had been purchased for Rs.41,000/and in view of the sanad issued on 07/06/1993, the defendant''s title had become absolute.

3. After the parties led evidence, the trial Court decreed the suit and held the plaintiff to be the owner of the suit property. The auction sale was held to be invalid on the count that the plaintiff was not in arrears of land revenue. Accordingly the defendant No.3 was directed to restore possession of the suit property. Three appeals came to be filed. While the plaintiff was aggrieved by the direction issued by the trial Court to pay the amount of Rs.41,000/to defendant No.3 along with interest and thus filed an appeal, the defendant No.3 challenged the entire decree by filing another appeal. Defendant Nos.1 and 2 also filed an appeal challenging the judgment of the trial Court. The Appellate Court by the impugned judgment dated 06/01/2003 dismissed the appeals filed by the defendants and allowed the appeal filed by the plaintiff. The suit as filed was decreed in its entirety. Being aggrieved, the defendant No.3 has preferred the aforesaid second appeals.

4. The learned counsel for the parties have been heard on the following substantial questions of law :

(i) Whether the title of Ramdas (Respondent No.1Original plaintiff) is proved in the absence of original sale deed dated 25/06/1987 or the certified copy thereof ?

(ii) Whether the title of Shankar Takarkhede (the vendor of Ramdas) is proved merely by filing certified copy of Index No.2 of the sale deed dated 21/11/1978 ?

(iii) Whether the jurisdiction of the civil Court to entertain the suit filed by the plaintiff was impliedly barred in view of the provisions of ChapterXI of the Maharashtra Land Revenue Code, 1966 ?

(iv) Whether the jurisdiction of the civil Court to entertain the suit challenging the auction dated 29th March, 1992 that was held for recovery of land revenue is barred by provisions of Section 4 (c) of the Maharashtra Revenue Jurisdiction Act, 1876 ?

5. Shri N. A. Vyavahare, learned counsel for the appellant in both the appeals submitted that in view of various provisions of the Code, the title of defendant

No.3 after issuance of sanad on 07/06/1993 had become final. The defendant No.3 had become the absolute owner of the suit property having purchased the same in an auction and if at all the plaintiff was aggrieved with the conduct of the auction or the issuance of sanad, he ought to have invoked the remedy provided under the Code. He referred to the provisions of ChapterXI of the Code and submitted that these provisions were in the nature of a complete Code and thus they impliedly barred the jurisdiction of the civil Court. As a result of issuance of the sale certificate, the defendant No.3 under Section 212 of the Code had become the absolute owner of the suit property. In view of Section 217 of the Code, the property vested in defendant No.3 and the civil Court had no jurisdiction to set aside the sale certificate issued to him. In that regard he relied on the decisions in Jayant s/o Vasantrao Dhole vs. Additional Commissioner, Amravati and ors. 2007(1)Mh.L.J. 850 and Sukumar Kumar Patil vs 2015(3) Mh.L.J. 335. It was then submitted that in view of provisions of Section 4(c) of the Maharashtra Revenue Jurisdiction Act, 1876 (for short, the said Act) the jurisdiction of the civil Court to entertain a suit with regard to a claim connected with or arising out of any proceedings for realization of land revenue was barred. The only exception to the exercise of jurisdiction was on account of fraud. According to him as per the pleadings in the plaint, what was alleged was an irregularity in the manner in which the auction proceedings were conducted and the arrears of land revenue were sought to be recovered. In absence of any pleadings with regard to fraud, the jurisdiction of the civil Court was clearly barred.

The plaintiff had failed to prove his title inasmuch as the sale deed dated 25/06/1987 was not brought on record. Only on the basis of the index register the title was sought to be proved. The plaintiff did not examine his vendor and therefore it could not be said that the plaintiff was entitled to succeed on the basis of sale deed dated 25/06/1987. It was therefore submitted that both the Courts erroneously exercised jurisdiction while entertaining the suit and proceeded to grant relief to the plaintiff despite his case not being proved.

6. On the other hand, Shri V. A. Dhabe, the learned counsel for the original plaintiff supported the impugned decree. He referred to the plaint averments to indicate that it had been pleaded as to the manner in which the auction proceedings had been conducted. Though service of notice was attempted on the erstwhile owner Shri Kapurchand Sancheti, he had already sold the suit property on 25/06/1987. The plaintiff was never in arrears of land revenue and without issuing any notice to him, his property was auctioned. Though the plaintiff had purchased 3605 sq. ft of land, what was auctioned was only 1855 sq. ft. It was not evident as to on what basis only a portion of the suit property was auctioned. He submitted that though under provisions of Section 202 of the Code the purchase amount was required to be paid within a period of two months, the same was paid after almost a year on 31/03/1993. He therefore submitted that if it was demonstrated that the entire procedure that was followed while auctioning the suit property was void and against the principles of natural justice, the civil

Court would have jurisdiction to entertain the suit. For said purpose he placed reliance on the decision in Prabhudas Bachhubhai Babaria and ors. vs. Sulbha w/o Wasudeorao Take and ors. 2005(2) Mh.L.J. 1058. It was then submitted that though the plaintiff was the lawful owner of the suit property, the revenue authorities failed to mutate his name in the record and on account of that the plaintiff was required to lose his title. It was not shown that it was the plaintiff who was in arrears of land revenue. In that regard he referred to the decision of learned learned Single Judge in Sumatibai Ranganathrao Kulkarni vs. Rajendra Achutrao Futane and ors. 2009 (1) AIR Bom R 554. He then submitted that title of the plaintiff was duly proved by producing on record the extract of the index register. The same being maintained during the course of business, it was liable to be relied upon. It was thus not necessary to examine the plaintiff''s vendor. He then submitted that both the Courts after due consideration of the entire evidence on record had decreed the suit. The conclusion arrived at was the only conclusion possible and no other view in that regard could be taken. Relying upon the decision in Vishwanath Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal AIR 2012 SC 2586 it was urged that there was no reason whatsoever to interfere with the concurrent findings recorded by both the Courts.

7. I have heard the learned counsel for the parties at length and with their assistance I have also perused the records of the case. A reference can be made initially to the admitted position on record. Land admeasuring 3605 sq. ft. initially belonged to one Kapurchand Sancheti. On 21/11/1978 this land was purchased by one Shankar Takarkhede. The plaintiff purchased this land from said Shankar Takarkhede. An auction was held by the Tahsildar for recovery of land revenue dues of Kapurchand Sancheti. In those proceedings, the defendant No.3 was the highest bidder and said auction for area admeasuring 1850 sq. ft., his bid for Rs.41,000/was accepted. The defendant No.3 deposited this amount on 31/03/1993 and thereafter on 07/06/1993, the sale certificate in his favour came to be issued. Since this auction was held under the provisions of the Code, it is necessary to refer to certain provisions that have a bearing on the questions raised. Under Section 201 of the Code, the purchaser has to immediately deposit 25% of the amount of his bid and on failure to do so, the property is liable to be auctioned again. Under Section 202 of the Code, the full amount of purchase money has to be paid before the expiry of two months from the date of which the sale of the immovable property has taken place or before the expiry of fifteen days from the date of which the intimation of confirmation of the sale is received by the purchaser. Under Section 207 of the Code, an application can be made to the Collector within a period of thirty days from such sale to set it aside on the ground of some material irregularities or mistake. If no such application as mentioned in Section 207 has been made, on expiry of the period of thirty days, the Collector has to make an order confirming the sale. This is done under Section 208 of the Code. Under Section 210 of the Code, a person owning such property or holding an interest therein by virtue of title acquired before the sale can apply within a period of thirty days from the date of sale to have it set aside.

On such sale being set aside, the purchaser is entitled to receive back his deposit. Under Section 212 of the Code, after the confirmation of the sale, the Collector has to put the purchaser in possession and his name can be entered in land records after granting him a certificate to that effect. Section 201 of the Code bars any suit against the certified purchaser on the ground that the purchase was made on behalf of any other person than the certified purchaser.

Thus from the aforesaid provisions, it can be seen that the manner in which sale of immovable property has to be undertaken is stipulated along with the consequence thereof.

8. It is on the basis of the aforesaid provisions of the Code that it was urged on behalf of the defendant No.3 that the jurisdiction of the civil Court to entertain the suit praying that the auction sale held on 29/03/1992 and all other subsequent proceedings be declared void was under challenge. For said purpose and to consider whether the jurisdiction of the civil Court is impliedly barred to entertain the suit as filed, it is necessary to refer to the observations in paragraph 6 of the judgment of the Honourable Supreme Court in Firm of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh AIR 1964 Supreme Court 322 which reads thus :

" (6) .... In dealing with the question whether Civil Courts'' jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of Civil Courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute."

9. It is thus clear that there is a general presumption of availability of the remedy in the civil Court and mere fact that a special statute provides for certain remedy, that by itself would not necessarily exclude the jurisdiction of the civil Court.

10. The auction proceedings were challenged by the plaintiff as being illegal, null and void on the ground that they were held without following the prescribed procedure and without issuing any notice to the plaintiff. In that regard if the evidence on record in so far as the holding of auction is concerned, DW1 a retired Circle Officer was examined at Exhibit56. He deposed that Survey No.516/1 had been converted for nonagricultural use and as per the records maintained, Shri Kapurchand Sancheti was its owner. There were arrears of nonagricultural cess on said land. As the same were not paid, a report was sent

to the Tahsildar and on that basis the demand notice was issued. As the whereabouts of Shri Kapurchand Sancheti were not known, the notice could not be served on him. Thereafter the demand notice was sent to the office of Tahsildar for further action. On the instructions of the Tahsildar a recovery warrant was issued. Due to lack of information about the whereabouts of Shri Sancheti a report was submitted to the Tahsildar. On that basis the suit property was auctioned. This witness admitted in his cross examination that as the address of Kapurchand Sancheti was not known, the notice could not be served on him. No further inquiry had been made as to title of the owner of the property. Another witness examined was the concerned Tahsildar at Exhibit72. This witness deposed that as per 7/12 extracts at Exhibits73 to 77, the title to the suit property was verified and thereafter the auction was held. In his cross examination this witness admitted that as per entry No.531 the plaintiff had been shown as the owner in the revenue records on the basis of sale deed dated 25/06/1987.

11. The defendant No.3 examined himself at Exhibit81. He deposed that he was the highest bidder in the auction. His bid was for Rs.41,000/. On 07/04/1992, 1/4th amount of Rs.10,000/was paid by him. The balance amount of Rs.31,000/ was paid on 30/03/1993. Possession of the suit property was taken on 07/04/1993 after measuring the same. He referred to the subsequent steps taken by him for making improvements on the said land. In his cross examination he admitted that after making the initial payment of Rs.10,000/, the balance amount was paid after almost eleven months.

12. From the aforesaid evidence on record it can be gathered that erstwhile owner Shri Kapurchand Sancheti was in arrears of land revenue. The demand notice of the arrears was not served on him. Thereafter a warrant came to be issued but that was also not served on him. Subsequently the auction was held in which the bid of respondent No.3 was accepted. Though the initial payment of Rs.10,000/was immediately paid, the balance amount was deposited after 11 months. Thus, it can be seen that though the defendant No.3 was required to deposit the entire purchase money within a period of two months from the date of sale of the immovable property as required by Section 202 of the Code, this payment was done after almost eleven months. There was also absence of any valid notice to the defaulter. The defaulter was not the owner of the suit property when the auction took place. There was no notice even to the plaintiff who already had acquired the title. These are fatal shortcomings in the process of holding the auction that go to the root of the matter. As held in Firm of Illuri Subbayya Chetty and Sons (supra) merely because certain remedies are provided in the Code itself, that would not exclude the jurisdiction of the civil Court to deal with a case brought before it especially when the action complained of is totally illegal and de hors the provisions of said statute. I therefore find that the jurisdiction of the civil Court was preserved in entertaining the suit of the present nature and its cognizance was not impliedly barred under Chapter XI of the Code.

Substantial question of law No.(iii) stands answered accordingly.

13. In so far as substantial question of law No.(iv) is concerned, once it is found that the suit as filed was maintainable considering the nature of challenge raised to the auction proceedings as being illegal, null and void, the same consideration would weigh even while answering this question in the light of provisions of Section 4(c) of the Maharashtra Revenue Jurisdiction Act, 1876. Though it was urged by the learned counsel for defendant No.3 that the ratio of the decision in Prabhudas Bachhubhai Babaria and ors. (supra) would not apply to the facts of the present case as the aspect of fraud had been pleaded in the aforesaid case, said submission cannot be accepted. Under Section 4(c) of that Act challenge to sale that has taken place on account of arrears of land revenue based on the ground of irregularity, mistake or any other ground except fraud is not maintainable. Even otherwise, where the grievance is in relation to failure to comply with statutory provisions, such cases can be examined by the civil Court. In State of Kerala vs. M/s N. Ramaswami Iyer and Sons AIR 1966 SC 1738 in paragraph 8 the Honourable Supreme Court has held thus :

" It is true that even if the jurisdiction of the Civil Court is excluded, where the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the Civil Courts have jurisdiction to examine those cases."

On this count also, the civil Court had the jurisdiction to entertain the suit. Reference in that regard can also be made to the decision in Husein Miya Dosumiya vs. Chandulal Jethabhai and ors. AIR 1954 Bom 239 wherein the Division Bench has held that if the order complained of has been made not for the purposes of the particular Act or if it is incompetent or ultravires, the same can be challenged before the civil Court as a nullity.

As noted above, if it is demonstrated that the entire process of auction conducted by the Authorities was without any notice to the plaintiff and de hors the provision of statute, the suit challenging the same would be maintainable. Hence substantial question of law No.(iv) is answered by holding that the jurisdiction of the civil Court to entertain the suit as filed was not barred by provisions of Section 4(c) of that Act.

14. In so far as the substantial questions of law at Sr. Nos.(i) and (ii) are concerned, according to defendant No.3 the plaintiff had failed to prove his title to the suit property. Mere filing of the certified copy of IndexII of the earlier sale deed dated 21/11/1978 was not sufficient. In this regard according to the plaintiff, his predecessor had purchased the suit property on 21/11/1978 and thereafter on 25/06/1987 the plaintiff purchased the suit property from Shankar Takarkhede. In the written statement filed on behalf of the defendant No.3, there is general denial of the plaintiff''s ownership. The plaintiff examined himself below Exhibit36. If his crossexamination as conducted by defendant No.3 is seen, it is clear that there is no challenge whatsoever raised to his title or his sale

deed. In fact there is no suggestion whatsoever given to the plaintiff that he did not get any valid title on the basis of sale deed dated 25/06/1987. Thus in the light of the pleadings in the written statement of defendant No.3 and the tenor of the plaintiff''s crossexamination, I do not find that the evidence placed on record by the plaintiff to prove his title was insufficient. As per Index at Exhibit38, sale deeds at Exhibits37 and 39 as well as the mutation entry at Exhibit41, the title of the plaintiff stood duly proved. I find this evidence on record sufficient to answer these questions in favour of the plaintiff. Substantial questions of law Nos.(i) and (ii) stand answered accordingly.

15. As a result of aforesaid discussion, it is found that the first appellate Court rightly held in favour of the plaintiff and decreed the suit filed by him. The second appeals are thus dismissed with no order as to costs. At this stage, learned counsel for the appellant seeks time of twelve weeks to take appropriate steps in the matter.

This request is opposed by the learned counsel for the respondent No.1.

As execution proceedings are yet to be filed, the decree shall be executed after a period of twelve weeks from today. This will not preclude the respondent No.1 from filing such proceedings.

