

(1978) 01 CAL CK 0049
In the Calcutta High Court
Case No : Suit No. 1278 of 1960

Union of India (UOI)

APPELLANT

Vs

Ratanlal Bhawalka and Others

RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 4, 7, 8
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4
Evidence Act, 1872 — Section 100, 101, 102, 103, 104

Citation : AIR 1978 Cal 164 : (1981) 128 ITR 801

Hon'ble Judges : Padma Khastgir, J

Bench : Single Bench

Advocate : Goutam Chakraborty and Probir Majumdar, for the Appellant; Aninda Mitra, for the Respondent

Judgement

Padma Khastgir, J.—This suit has been filed by Union of India against the defendants for a declaration that premises No. 41 Radha-madhab Sana Lane, Calcutta stands charged for payment of a sum of Rupees 11,443.43 and a decree in Form No. 5A of Appendix D under Order 34, Rule 4 of the CPC and other consequential reliefs.

2. The case of the plaintiff Union of India is that defendant No. 1 Ratanlal Bhawalka was assessed for the assessment year 1947-48 for a sum of Rupees 12,943.43 on account of Income Tax and super-tax. For the said assessment a notice of demand, under the Income Tax was duly issued and served on the defendant No. 1. A sum of Rs. 1,500 only was paid by the defendant No. 1. As a result, certificate u/s 46(2) of Indian Income Tax Act was issued for the balance sum of Rs. 11,443.43 whereupon the Certificate Officer duly issued and served upon the defendant No. 1 a notice u/s 7 of the Bengal Public Demand Recovery Act on 23rd May, 1951.

3. For the assessment years 1949-50 and 1950-51 a sum of Rs. 303.25 and Rs. 138.19 respectively became due and payable to the plaintiff by the defendant on

account of Income Tax. Similar notice u/s 29 of the Indian Income Tax Act was issued on the defendant No. 1 and certificate proceedings were started for realisation of the same. The defendant failed and neglected to pay the said sum of rupees to the plaintiff.

4. The defendants Nos. 1 and 2 were the owners of premises No. 41 Radha-madhab Saha Lane. Calcutta, After the issue and due service of the notice u/s 7 of the Bengal Public Demand Recovery Act the defendants Nos. 1 and 2 transferred and/or conveyed at Calcutta on October 1, 1951 the said premises to the defendant No. 3, The defendant No. 8 on her turn on January 19, 1952 conveyed and/or transferred the said premises to the defendant No. 4. The case of the plaintiff is that after the service of the notice under Public Demands Recovery Act a charge is created immediately on the said immovable property for repayment of the dues of the plaintiff. It is further the case of the plaintiff that anybody who has acquired the property after the service of the demand notice has taken the property subject to the charge in favour of the plaintiff. as such the present suit has been filed for enforcing the said charge.

5. The defendants Nos. 1 and 2 have neither filed written statements nor contested the suit at the time of hearing. Defendants Nos. 3 and 4 filed written Statements mainly taking the point that as the defendant No. 3 was a bona fide purchaser for value without any notice being served u/s 7 of the Bengal Public Demands Recovery Act on the defendant No. 1, she is not bound by the said notice or her interest in the said premises is not affected thereby. The defendant No. 3 on her turn has conveyed the said premises to the defendant No. 4 out of love and natural affection and the defendant No. 4 on his turn has accepted the same in good faith without being aware of any right, claim end title of the plaintiff in respect of the said premises. The defendants Nos. 3 and 4 have also taken the point that as the certificate proceeding was filed and served at Howrah. it was not possible for them to take the notice of the same by making necessary searches being made at Calcutta where the property is situate.

6. It is also the case of the defendants Nos. 3 and 4 that the plaintiff has no cause of action against them. After hearing Mr. Gautam Chakraborty, Barrister-at-law with Mr. Probir Majumdar Barrister-at-Law appearing for the plaintiff and Mr. Aninda. Mitna, Barrister-at-Law, appearing for the defendants Nos. 4 and 5, the following issues were raised.

1. Does the plaint disclose any cause of action ?
2. Was the defendant No. 3 bona fide purchaser for value without notice?
3. To what relief, if any, is the plaintiff entitled?

7. The only witness examined on behalf of the plaintiff was Mr. Haro Mohan Biswas who has proved the order sheet and other relevant documents in respect of the assessment and also certificate proceedings. The defendants did not call any witness, Mr. Chakraborty argued that under public Demands Recovery Act as

soon as a notice is served on the assessee a charge is created in respect of the property and no specific provision has been made giving protection to a bona fide purchaser for value. As such by simply proving that the notice under the Bengal Public Demands Recovery Act has been served on the assessee the plaintiff can obtain a mortgage decree in respect of the same and the plaintiff is under no obligation to take any notice of any subsequent transfer.

8. In this case notice was served on May 23, 1951 and a conveyance in respect of the said property was effected on 1st October 1951 in favour of defendant No. 3. The certificate debtor has deliberately violated the provision of law by making a transfer of the said property after due service of the notice. The defendants Nos. 1 and 2 have not disputed regarding the mode of service of the notice u/s 7 of the Public Demands Recovery Act and also of the certificate proceedings. In fact the certificate debtor appeared before the Income Tax Officer and asked for time and for stay of the proceedings on the ground that he has filed an appeal from the original assessment order. Ultimately, the said appeal was dismissed. As such the defendant No. 1 becomes admittedly a certificate debtor. In fact the defendant No. 1 neither challenged nor took any steps to set aside the certificate proceedings and/or challenge the service of the notice under the said Act. After the notice has been duly served under the Public Demands Recovery Act all subsequent transfers become void so far the plaintiffs are concerned.

9. Mr. Mitra appearing on behalf of the defendants Nos. 3 and 4 submitted that as the defendants Nos. 3 and 4 are bona fide purchasers for value and as they had no notice of the certificate proceedings they are not bound by the said provisions. He has further submitted that the certificate proceedings from Howrah were transferred and filed in Alipur in the year 1955, i.e., long after the conveyance that has taken place between the defendants Nos. 1, 2 and 3 in October, 1951. He has further submitted that service of notice u/s 7 is bad and it has not been properly served on the assessee. According to him, Section 8 of the said Act provides that -- "Only from and after the service of any notice there would be a charge on the properties." Therefore, until and unless the service on the original assessee is proved, no charge can be created. He has also challenged the mode of service. Defendants Nos. 3 and 4 have proved the requisition of title which was sent by their Solicitors at the time of purchase of the said property which has been marked as Exhibit "1" in this suit. From the requisition it would appear that they had no notice of the certificate proceedings in respect of the said premises. His contention is that in view of the fact that the property was situate at Calcutta and the certificate proceedings were started and filed originally at Howrah Section 8 of the Public Demands Recovery Act would have no application in this case. He has further submitted that Section 8(b) of the Public Demands Recovery Act does not relate to sale of property but only to mortgages. As such the present suit of the plaintiff is not maintainable. According to him, Section 7 of the said Act provides the mode of service to be effected and there is a prescribed manner as contained in Rule 2 Schedule 2 of the said Act. As according to him, the service was not in accordance with law and

irregular, the provisions regarding restriction on transfer of properties are not applicable.

10. Mr. Chakraborty appearing for the plaintiff has submitted that the defendants Nos. 3 and 4 have nowhere pleaded in the written statement regarding the invalidity or irregular mode of service of notice. As such no issue was raised regarding ineffective service of notice. He has submitted that the defendants Nos. 3 and 4 have admitted u/s 58 of the Evidence Act by not denying the validity of the service of the notice. In fact, the defendants Nos. 3 and 4 have disclosed the order sheet of the certificate proceedings in their own affidavit of documents.

11. From that order sheet it will appear that the defendant No. 1 has been described as a certificate debtor and he has accepted the said position by appearing before the certificate officer and praying for time so that he could appeal from the certificate proceeding. The defendant No. 1 has been served in, accordance with law. Even assuming that he was not properly served, that irregularity has been rectified by the certificate debtor himself by not only waiving his right of challenging the mode of service of notice but also by appearing before the certificate officer and accepting the knowledge of the said service and also by appealing from the said order.

12. In the written statement filed on behalf of defendants Nos. 3 and 4 nowhere they had taken the point by challenging the mode of service or irregularity thereto. As such no issue was framed to that effect In fact the defendants Nos. 3 and 4 proceeded on the basis that there had been a certificate proceeding but as they are bona fide purchasers of value and without any knowledge of the certificate proceedings, as, such they are not bound by the pro-visions of the Public Demands Recovery Act. In fact in paragraph 5 of the written statement the defendants Nos. 3 and 4 have admitted that the statements contained in paragraphs 5 and 6 of the plaint are substantially correct. In paragraph 5 of the plaint the plaintiff has pleaded "after service of the said notice u/s 7 of the Bengal Public Demands Recovery Act the defendants Nos. 1 and 2 have conveyed and/or transferred at Calcutta on 1st October, 1951 the said premises No. 41 Radha madhav Sane Lane, Calcutta to the defendant" and in paragraph 6 the defendant has pleaded that there has been a re-conveyance. Nowhere in the written statement they have challenged either the notice u/s 7 of the Public Demands Recovery Act or its mode of service on the defendant No. 1. Mr. Mitra has further taken the point that as the certificate proceeding was started and made effective in Howrah and not in Calcutta as such Section 8 has no application. It is only after the sale of the property that the said certificate proceedings has been transferred to Alipur. According to him Section 8(b) of the Public Demands Recovery Act only relates to mortgages and not to sale of property.

13. Public Demands Recovery Act 1913 consolidates law relating to the recovery of public demands. It is a self-contained Act in itself and provides a complete law

and a complete procedure of execution and as such it is unaffected by the general law of procedure. This is an Act providing for speedy recovery of public demands of the State of West Bengal.

14. u/s 4 of the said Act where a certificate officer is satisfied that any public demand payable is due, he may sign a certificate in a prescribed form stating that the demand is due and shall cause the certificate to be filed in his office. After it is filed u/s 7 of the said Act, he shall cause it to be served upon the certificate debtor in the prescribed manner a notice in the prescribed form and a copy of the certificate. A certificate when duly made and filed in accordance with law has the force and effect of a decree. Non-service of the notice does not affect the validity of the certificate. Notice u/s 7 merely binds the immovable property of the debtor and prevents alienation. Section 8 of the Public Demands Recovery Act provides-- "From and after service of notice any certificate u/s 7 upon a certificate debtor, -- (a) any private transfer or delivery of any immovable property situated in the district in which the certificate is filed, or of any interest in any such property shall be void against any claim enforceable in execution of the certificate and (b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate debtor wherever situated to which every other charge created subsequently, to the service of the said notice shall be postponed." The service of Section 7 notice binds the immovable property, alienation against the claim of the certificate and makes the certificate holder simple mortgagee for all practical purposes. A private transfer is not absolutely void but void against any claim enforceable under this Act. Clause (a) of section gives the jurisdiction to a certificate officer to order sale of property belonging to the certificate debtor but situate within the territorial jurisdiction of the certificate officer. From the language of Sub-clause (b) of Section 8, it is clear that the amount due in respect of the certificate shall be a charge upon the immovable property of the certificate debtor wherever the property is situate. Under Sub-clause (a) of Section 8 of the said Act in case of private transfer or delivery of a property situate in the district in which the certificate is filed shall be void against any claim enforceable in execution of the certificate. The plaintiff has filed the present suit to enforce the charge created u/s 8(b) of the said Act. In the prayer portion the plaintiff has claimed for a declaration that the said premises No. 41 Radha Madhab Sana Lane, Calcutta stands charged for the payment of the sum of Rs. 11,443.43 and also for a decree in form No. 5A or appropriate forms of Appendix D of the CPC under Order 34, Rule 4.

15. In the case of enforcement of charge it does not matter wherever the property is situated. As soon as a certificate is issued and served, on and from the date of the service of the certificate u/s 7, immediately a charge is created on the immovable property of the certificate debtor wherever the property is situated and it is not confined to the district wherefrom the certificate proceedings have been started or served on the certificate debtor. The effect of Section 8 is to give protection to the certificate holder in both types of cases.

First of all the certificate creditor is protected under Sub-clause (a) of Section 8 in respect of properties situate within the district where the certificate is filed as after the service of the notice u/s 7, private transfer or delivery of immovable property situate in the district would be void so far as the claim of the certificate debtor is concerned, and the certificate creditor is also protected by Sub-clause (b) of Section 8 as soon as the notice is served u/s 7 of the Act the amount due under a certificate shall be a charge upon the immovable property of the certificate debtor wherever situated. Both the sub-clauses are not disjunctive but they are conjunctive. Whether the certificate debtor wishes to sell, mortgage or do nothing in respect of the property as soon as the notice is served the property is charged and the right of the certificate creditor is protected.

16. The relief claimed in this suit is not u/s 8(a) of the Public Demands Recovery Act as in that case the plaintiff would have prayed for a declaration that the sale effected by the defendants Nos. 1 and 2 in favour of the defendants Nos. 3 and 4 be declared void, ineffective and not binding on the plaintiff and would have applied for setting aside the said sale but the present suit has been filed for enforcement of the charge as created u/s 8(b) of the Public Demands Recovery Act. It is a charge created by operation of law.

17. Regarding Mr. Mitter's point that his clients are bona fide purchasers of a value as such their interest should be protected, there is no provision in the Act itself which gives relief or protection to a purchaser for value who has purchased for value without notice of the service u/s 7 of the said Act. As soon as a notice is served on the certificate debtor the provision of Section 8 comes into operation automatically. As such whether the purchaser has purchased the property subsequent to the service of the notice u/s 7 whether without notice or not becomes immaterial. Moreover in this case save and except the requisition of title the formal proof of which was dispensed with by consent of the parties there is no evidence on the part of the defendants Nos. 3 and 4 that they are bona fide purchasers for value. The requisition on title has no evidentiary value in view of the fact that only formal proof of that document has been dispensed with but the contents of the same have not been admitted by the plaintiff.

18. The only duty that lies on the part of the plaintiff is to see that the certificate notice has been filed and served upon the certificate debtor. As soon as that is done, the certificate creditor has nothing further to do as his claim is well secure by creation of charge over the property u/s 8(b) and further his right is reinforced over and above the mortgage created u/s 8(b) of having any sale or transfer effected by the certificate debtor, declared void and inoperative so far as the certificate debtor's claim is concerned. His right is not affected after the service of notice u/s 7 by any bona fide purchase by a third party. The only onus on the plaintiff is to prove that a certificate notice was filed and in effect served on the certificate debtor and thereafter he can enforce his charge. That exactly what has been done by the plaintiff in this suit. In this present suit the notice was served on 23rd May 1951 and the conveyance effected by the defendants

Nos. 1 and 2 in favour of the defendant No. 3 was on 1st October 1951 and the conveyance by defendant No. 3 in favour of the defendant No. 4 was made subsequently. In fact there has been a substantial compliance of the mode of service as envisaged under the said Act. Moreover considering the fact that the certificate debtor himself has not challenged the mode of service, on the contrary pursuant to the service of the said notice he appeared before the certificate officer and prayed for time and stay of the proceedings on the ground that he was going to file an appeal therefrom would clearly show that the certificate debtor must have been served with the notice and he was satisfied with the mode of service otherwise he would have challenged the service of notice on him. Moreover the defendants Nos. 3 and 4 in their written statement have nowhere challenged the mode of service, on the contrary they have admitted that averments in the plaint regarding the filing and service of certificate proceedings are substantially correct. The defendant No. 3 must have been put to this difficulty by the defendants Nos. 1 and 2 by not disclosing the correct facts at the time of sale of the said property for that I have all the sympathy for them. Be that as it may the plaintiff's right cannot in any way be affected by the said sale. As such I am of the opinion that the plaintiff is entitled, to enforce the charge as prayed for in the plaint. I answer the issues in the manner following:--

I answer issue No. 1 in the affirmative, in view of the fact that the defendants Nos. 3 and 4 have laid no evidence So far as issue No. 2 is concerned, I answer the same in the negative. Even assuming I answered No. 2 in the positive that would not have made any difference in this case in view of the law and facts as discussed above.

19-20. I pass a decree in favour of the plaintiff in terms of prayers (c), (d) and (h).

21. There will be a stay of the operation of the order for a week.