

Nalini Dasi alias Nabanalini Dassi

Vs

Kritish Chandra Hazra and Others

Civil Appeal No. 901 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

23.09.1965

JUDGMENT

WANCHOO J. –

This appeal by special leave raises a question as to the interpretation of s. 37-A of the Bengal Agricultural Debtors Act, No. VII of 1936 [hereinafter referred to as the Act.] The respondents brought a suit in the court of the Second Munsif, Burdwan for a declaration that they were entitled to the property in dispute, for confirmation of their possession thereof and for a permanent injunction restraining the appellant from interfering with their possession. In the alternative they prayed for delivery of possession to them of the property in dispute in case it was found that they were not in possession. The case of the respondents was that the property in dispute belonged to one Jatindra Mohan Hajra, who was the father of three of the respondents. He mortgaged the property to Kali Krishna Chandra who was a defendant in the suit. Kali Krishna Chandra obtained a mortgage decree in the court of the Subordinate Judge Burdwan and in execution of the said decree got the mortgaged property sold, purcha

The suit was resisted by the appellant on a number of grounds. In the present appeal, however, learned counsel for the appellant has raised only two grounds before us, namely-[i] that the Debt settlement Board [hereinafter referred to as the Board] had no jurisdiction in the matter as the decree in the mortgage-suit was for more than Rs. 5000 and [ii] that s. 37-A of the Act did not apply to a bona fide purchaser for value from the auction purchaser. We shall confine ourselves therefore to these two point only.

The Munsif who tried the suit held that s. 37-A was available against a bona fide transferee for value also. But the question of jurisdiction of the Board on the ground that the amount involved was more than Rs. 5000 was not raised before the Munsif and so there is no finding on that aspect of the matter in the Munsif's judgment. Holding that s. 37-A applied to bona fide transferee for value also, the Munsif decreed the suit.

Then there was an appeal by the appellant which was decided by the Subordinate Judge. It was in that appeal that it was urged for the first time that the Board had no jurisdiction inasmuch as the amount involved was over Rs. 5000. That objection was however over-ruled by the Subordinate Judge on the ground that the amount involved was only Rs. 4044/8/-. But the subordinate Judge seems to have held that a non a fide transferee for value cannot be affected by the provisions of S. 37-A. he therefore allowed the appeal and dismissed the suit.

Then followed an appeal to the High Court. The High Court considered the two question, which we

have set out above. On the question of jurisdiction the High Court held that the amount of debt involved was only Rs. 4044/8/- and therefore the Board had jurisdiction. On the question whether bona fide transferee for value were bound, the High Court severed the view taken by the Subordinate Judge and held that such transferees were also covered by s. 37-A. It therefore allowed the appeal and restored the decree of the Munsif but ordered parties to bear their own costs throughout. In the present appeal by special leave, the appellant raises the same two points before us.

We shall first consider the question of the jurisdiction of the Board. It is urged in this connection that the very application made by the respondent under s. 37-A shows that the amount of decretal dues was Rs. 5,841/- and therefore the Board had no jurisdiction. We are of opinion that this point as to jurisdiction should have been raised at the earliest possible stage in the Munsif's court and as it was not so raised it should not have been permitted to be raised for the first time in the subordinate Judge's court in appeal. Rules 144, framed under the Act. Which relates to jurisdiction of the Board, provides that the maximum amount of the sum total of all debts due from a debtor which can be dealt with under the provisions of Act shall be Rs. 5,000. There is however a proviso to this rule to the effect that with the previous sanction in writing of the Collector, a Board may deal with an application if the sum total of all debts due from the debtors exceeds Rs. 5,000 but does not exceed Rs. 25,000. It is un

This brings us to the principal argument urged in this case that s. 37-A does not apply to bona fide transferees for value. Now the Act was an ameliorative measure for the relief of indebtedness of agricultural debtors and the preamble of the act shows that it was passed because it was expedient to provide for the relief of indebtedness of agricultural debtors. For that purpose it established Boards and also provided for reduction of the amount due under certain circumstances by ss. 18 and 22 thereof. It also made other provisions with respect to recovery of amounts due within a period of 15 to 20 years under ss. 19 and 22 by installments and made consequential provision where the installment was not paid. Section 37-A was introduced in the Act in 1942 and provided for certain reliefs to an agricultural debtor where any immovable property of such person had been sold after August 12, 1935 in execution of a decree of a civil court or a certificate under the Bengal public Demands Recovery Act, 1913, under certa

" The debtor may present a copy of the award made under sub-section [5] to the Civil Court or Certificate-officer at whose order the property was sold, and such court or Certificate-officer shall thereupon direct that the sale be set aside, that the debtor together with any person who was in possession of the property sold or any part thereof at the time of delivery of possession of such property to the decree holder as an under raiyat of the debtor and who has been ejected therefrom by reason of such sale be restored to possession of the property with effect from the first day of Baisakh next following or the first day of Kartic next following, whichever is earlier, and that any person who was in possession of the property or part thereof as an under raiyat of the debtor at the time of delivery of possession of such property to the decree holder shall be ejected therefrom with effect from that date".

Decree-holder is defined in s. 37-A [12] as under:

"In this section the expression decree-holder includes the certificate- holder and any person to whom any interest in the decree or certificate is transferred by assignment in writing or by operation of law."

The contention on behalf of the appellant is that sub-s. [4] of s. 37- A speaks only of the applicant before the Board, the decree holder and the landlord of the applicant in respect of the property sold in the case where the decree-holder is not such landlord and therefore a bona fide transferee for value from the auction-purchaser cannot be ejected under s. 37-A [8] and it is only the decree-holder who can be ejected thereunder if he is still in possession of the Property. Now if we read the words of s. 37-A [8] that provision clearly lays down that any person who is in possession of the property [except an under raiyat under certain conditions] shall be ejected therefrom with effect from that date. The words any person used in S. 37-A [8] are of very wide import and would include even a bona fide transferee for value of the property sold. If the arguments for the appellant were to be accepted, the benefit of s. 37-A [8] would only be given in a case where the property sold in execution is purchases by the

We may in this connection refer to sub-s. (1) (c) of s. 37-A, which would show what the intention, of the legislature was in spite of the clumsy drafting of s. 37-A[8]. Clause [c] lays down one of the conditions which has to be satisfied before an application under s. 37-A [1] can be made. It reads thus:-

" [c] if the property sold was in the possession of the decree-holder on or after the twentieth day of December 1939 or was alienated by the decree holder before that date in any manner otherwise than by :

(i) a bona fide gift a heba whether by registered, or

(ii) any other bona fide gift by registered instrument, or

(iii) bona fide lease for valuable consideration whether by registered instruments, or not, or

(iv) any other bona fide transfer for valuable consideration [excepting a mortgage] by registered instrument.

This provision would suggest that an application under s. 37-A [1] can be made if the property was in possession of the decree holder on or after December 20, 1939. In this case that condition was fulfilled and therefore the application under s. 37-A [1] would lie. Further the latter part of cl. [c] shows that only certain alienations by the decree holder were excepted for the purpose of deciding whether an application under s. 37-A [1] could be made. These exceptions require firstly that the alienation by the decree holder should have been made before December 20, 1939. Further even so far as alienations before December 20, 1939 were concerned, exceptions were only of the four kinds mentioned above. These include bona fide transfers for valuable consideration exceptions were only of the found kinds mentioned above. These include bona fide transfers for valuable consideration [excepting a mortgage] before December 20, 1939. So an application could be made even where there was an alienation by the decree holde

The appeal therefore fails and is hereby dismissed. In the circumstances we order parties to bear their own costs.

Appeal dismissed.

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