

Sardara Singh (Dead) By Lrs. and Another

Vs

Sardara Singh (Dead) and Others

Civil Appeal No. 134 of 1976

(V. Ramaswami II, K. Jayachandra Reddy, A. M. Ahmadi JJ)

23.08.1990

JUDGMENT

A. M. AHMADI, J. -

1. The appellants before us are original defendant 2, since deceased through his legal representatives, and defendant 3 of Suit No. 160 of 1966 filed in the Court of Sub-Judge, Ferozepur. The facts leading to this appeal are that one Narain Singh was the Lambardar of Village Hazara Singh Wala in Tehsil and District Ferozepur. As he did not reside in the said village, he was unable to carry out his duties and functions as a Lambardar and hence one Hardit Singh worked as a substitute Lambardar for him. The said Hardit Singh was removed as such on November 8, 1957 and in his place Sardara Singh, son of Dharam Singh, the original plaintiff was appointed as a substitute Lambardar. Narain Singh had undertaken liability for the land revenue which was in arrears. Sardara Singh's case was that he did not actually act as a substitute Lambardar and did not collect any land revenue from the land owners but the Patwari of the village had obtained his thumb impressions on certain documents. According to him the Patwari had collected the land revenue from the land owners but had failed to deposit the same in the Government Treasury. By 1962-63 the arrears of land revenue had risen to Rs. 40,000 or thereabouts. Sardara Singh was prosecuted under Section 409 IPC in respect of the said arrears on the premise that he had collected the said amount from the land owners but had failed to deposit the same in the State Treasury. He, however, came to be acquitted on February 22, 1965. Prior to that, in 1964, he had made representations to authorities for settling the accounts and had asked the defaulters to show him the receipts of payments, if any, made by them. No action was taken on his representations but instead his land was attached and put to auction sale by the revenue authorities on January 18, 1965 for recovering Rs. 11,718 as arrears of land revenue. The auction-purchasers paid 25 per cent of the price offered on the very same day. The remaining 75 per cent which was required to be paid within 15 days was however deposited on March 2, 1965 instead of February 2, 1965. The sale was confirmed on February 21, 1966 and the sale certificate was issued on March 12, 1966. Thereupon the suit in question was filed in August 1966 to restrain the State of Punjab and the auction-purchasers from taking possession of the land admeasuring about 178 kanals and 2 marlas. The case set up by the plaintiff was that he was not a substitute Lambardar; that he had not collected the land revenue from the land owners; that he was not a 'defaulter' within the meaning of Section 3(8) of the Punjab Land Revenue Act, 1887 (hereinafter called 'the Act'); that the auction sale was not conducted in accordance with law and abounded in several illegalities; that even otherwise the sale was void and the issuance of sale certificate was of no consequence whatsoever and that no title in the auctioned land passed to the purchasers thereunder.

2. The suit was contested mainly on the ground that the plaintiff was a 'defaulter' within the meaning

of Section 3(8) of the Act; that the sale was conducted in accordance with law and the auction-purchasers had, on the issuance of the sale certificate, become owners of the auctioned land; that in view of Section 158 of the Act the civil court had no jurisdiction to entertain and try the suit and that the plaintiff was not entitled to any of the reliefs claimed.

3. The trial Judge raised as many as seven issues and on the basis of the findings recorded he dismissed the suit holding that the plaintiff was duly appointed as a substitute Lambardar whose duty it was to collect the land revenue and deposit the same in the State Treasury; he having failed to do so was a defaulter under Section 3(8) of the Act and the State Government was entitled to attach and sell his land to recover the arrears of land revenue due from him. He also came to the conclusion that in the circumstances the sale was perfectly legal and valid and the civil court has no jurisdiction to entertain and try the suit. The original plaintiff preferred an appeal. During the pendency of the appeal he passed away and his legal representatives were brought on record. In the meantime it appears that the auction-purchasers were put in possession of the land in question and hence the plaint was amended and an additional relief for possession was claimed. The appellate court reversed the findings of the trial court holding that the plaintiff was not a defaulter in respect of the amount shown as arrears of land revenue and the sale was fraudulent and illegal. Consequently, it came to the conclusion that issuance of the certificate did not confer any title on the auction-purchasers and as the sale was void the suit was maintainable and the civil court had jurisdiction to entertain and try the same. On these findings the appeal was accepted and the suit was decreed. The auction-purchasers feeling aggrieved by the decision of the first appellate court approached the High Court in second appeal. The learned Single Judge of the High Court came to the conclusion that the decision in *S. Swaroop Singh v. Collector of Hissar* (1970 Punj LJ 313) required reconsideration. He, therefore, referred the entire case to a Division Bench of the High Court. The Division Bench examined three points which may be formulated as under :

"(1) Whether a Lambardar who fails to collect the land revenue and deposit the same in the State Treasury, can be said to be a 'defaulter' within the meaning of Section 3(8) of the Act ? If yes, can the outstanding amount be recovered as arrears of land revenue by the attachment and sale of his immovable property ?

(2) Whether the sale in favour of the purchasers, i.e. the appellants before us, was null and void as they had failed to pay the balance (75 per cent) of the purchase price within the time allowed by Section 88 of the Act ?

(3) If yes, whether the civil court had jurisdiction to entertain any try suit having regard to Section 158 of the Act ?"

The Division Bench of the High Court on an examination of the relevant provisions of the Act and the Rules made thereunder came to the conclusion that the plaintiff was not a defaulter within the meaning of Section 3(8) of the Act. Consequently it concluded that the sale was void and the civil court, therefore, had jurisdiction, notwithstanding Section 158 of the Act. It also held that the failure on the part of the auction-purchasers to deposit the balance (75 per cent) of the sale price within 15 days allowed by Section 88 of the Act rendered the sale void in view of the decision of this Court in *Manilal Mohanlal Shah v. Sardar Sayed Ahmed Sayed Mahmud* ((1955) 1 SCR 108 : AIR 1954 SC 349) and, therefore, the civil court had jurisdiction in the matter. In this view that it took, the appeal was dismissed.

4. The auction-purchasers, feeling aggrieved by the aforesaid decision of the High Court, have, after

obtaining special leave under Article 136 of the Constitution, questioned the decision of the High Court as well as the first appellate court. The three contentions which were urged before the High Court were reiterated before us. In the view that we propose to take on the second and third contentions we do not consider it necessary to examine the correctness or otherwise of the view taken by the two appellate courts on the interpretation of Section 3(8) and the related provisions of the Act and the Rules made thereunder. We may incidentally state that although the State Government has not come in appeal to us we propose to proceed on the assumption that the State Government was entitled to recover the outstanding amount as arrears of land revenue. We think that this appeal can be disposed of on the finding of the appellate courts that the sale was void. As pointed out earlier, the auction sale took place on January 18, 1965. On the same day 25 per cent of the price offered was deposited by the auction-purchasers as required by Section 85 of the Act. That section provides that when the highest bid at the auction has been ascertained the person who made that bid shall, on the requisition of the officer conducting the sale, pay to that officer a deposit of 25 per cent of the amount of his bid and on payment thereof he shall be declared to be the purchaser. Under Section 86, if the highest bidder fails to pay the deposit as required by Section 85, the person conducting the sale is required to put the property forthwith to sale once again. Section 88 posits that after the highest bidder is declared the purchaser on payment of 25 per cent of the amount of his bid, he shall pay the full amount of the purchase money, meaning thereby the balance, before the close of 15th day from the date on which he was declared the purchaser. In the absence of evidence to the contrary we must assume that in ordinary course on payment of the deposit he must have been declared a purchaser. In the present case after 25 per cent of the bid amount was deposited on January 18, 1965 and the declaration was made, the purchasers had to pay the balance money before the close of 15th day i.e. by February 2, 1965 but instead admittedly the balance amount was deposited as late as on March 2, 1965 i.e. after the expiry of 15th days. In the opinion of the High Court this default in payment of the balance amount within the prescribed time rendered the sale void and the same could not be cured by the deposit of the balance money on March 2, 1965. It, therefore, follows that according to the High Court the authorities ought not to have confirmed the sale on February 21, 1966 and ought not to have issued the sale certificate on March 12, 1966 in favour of the auction-purchasers. However, the fact of confirmation of sale and the grant of a sale certificate was of no consequence as the sale had become void on the expiry of 15 days for default of payment as required by Section 88 of the Act. Support to this view was drawn by the High Court from the decision of this Court in Manilal Mohanlal case ((1955) 1 SCR 108 : AIR 1954 SC 349) wherein this court after examining the provisions of Order XXI Rules 84 and 85 of the Code of Civil Procedure, which are analogous to Sections 85, 86 and 88 of the Act, concluded that the failure to pay the balance amount within the prescribed time rendered the auction sale void. That was a case in which in execution of a decree certain properties of the judgment-debtor were auctioned. On an application made under Order XXI Rule 90 of the Code of Civil Procedure for setting aside the same, it was alleged that the sale was rendered a nullity as the auction-purchaser had neither made the initial deposit as required by Rule 84 nor paid the balance of the purchase price as required by Rule 86 of Order XXI of the Code. The sale was set aside on the ground that the provisions of the said rules had not been complied with, in that, the price was not deposited as required by the said provisions and instead a set-off was wrongly claimed and allowed in the absence of the judgment-debtor which the court had no authority or jurisdiction to do. The High Court dismissed the appeal of the auction-purchaser holding that no appeal lay against such an order. The High Court confirmed that the order of set-off was clearly without jurisdiction and the subsequent deposit of the purchase price long after the prescribed period was of no avail. The auction-purchasers thereupon approached this Court. Ghulam Hasan, J. who spoke for the Division Bench referred to the provisions of Rules 84, 85 and 86 of Order XXI and observed as under : (SCR

pp. 113-14)

"The scheme of the rules quoted above may be shortly stated. A decree holder cannot purchase property at the court auction in execution of his own decree without the express permission of the court and that when he does so with such permission, he is entitled to a set-off, but if he does so without such permission, then the court has a discretion to set aside the sale upon the application by the judgment-debtor, or any other person whose interests are affected by the sale (Rule 72). As a matter of pure construction this provision is obviously directory and not mandatory - See : Rai Radha Krishna v. Bisheshar Sahai (40 IA 312). The moment a person is declared to be the purchaser, he is bound to deposit 25 per cent of the purchase money unless he happens to be the decree holder, in which case the court may not require him to do so (Rule 84).

The provision regarding the deposit of 25 per cent, by the purchaser other than the decree holder is mandatory as the language of the rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree holder is entitled to the advantage of a set-off. the provision for payment is, however, mandatory ... (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property ... (Rule 86)."

It is clear from the above observations that this Court came to the conclusion that both the initial deposit and the subsequent payment of the purchase money within the time allowed are mandatory under Rules 84 and 85 of Order XXI CPC and the court is bound to re-sell the property in the event of there being a default. This is how this Court puts it : (SCR p. 115)

"These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules, there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him."

It is clear from this decision that the requirement of deposit contained in Sections 85, 86 and 88 of the Act, which are substantially the same as Order XXI Rules 84 and 85 of the Code, are mandatory and failure to comply with either of them renders the sale non-est. Once the effect of non-payment of the amount is to render the sale the property as the purchaser forfeits all claim to the property for default of payment. Where there is no sale in the eye of law, there can be no question of applying for setting aside the sale on the ground of material irregularity under Section 91 of the Act which is analogous to Order XXI Rule 90 of the Code. Non-payment of the balance amount had the effect of rendering the entire sale null and void. There can be no doubt that no right, title or interest passed to the auction-purchasers under the sale certificate of March 12, 1966. In fact, technically speaking, in such cases, it may not be necessary to have the sale set aside as in the eye of law there is no sale whatsoever. The owner of the land was, however, required to file a suit as there was an imminent threat to dispossess him on the strength of the sale certificate of March 12, 1966. To protect his possession he was compelled to file the suit. Unfortunately, during the pendency of his appeal he was dispossessed and, therefore, he was required to amend the plaint and claim possession also. The suit was, therefore, clearly de hors the provisions of the Act and hence ordinarily the civil court was

entitled to hear and decide the same. But it was contended on behalf of the auction-purchasers that the jurisdiction of the civil court was ousted by the specific provisions contained in clauses (xiv) and (xv) of sub-section (2) of Section 158 of the Act. In order to appreciate this contention we may refer to the said provision :

"158 (2) : A Civil Court shall not exercise jurisdiction over any of the following matters, namely :

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(xiv) any claim connected with, or arising out of, the collection by the government, or the enforcement by the government of any process for the recovery of land revenue, or any sum recoverable as an arrear of land revenue;

(xv) any claim to set aside, on any ground than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrear of land revenue."

In the present case the suit was instituted for a permanent injunction to restrain the defendants from taking possession of the land sold in public auction on the strength of the sale certificate issued on March 12, 1966. The validity of this document was challenged on the ground that the sale was void since the auction-purchasers had failed to deposit the balance of the sale price within the time allowed by Section 88 of the Act. As the sale was void, the subsequent acts of confirmation of the sale on February 21, 1966 and issuance of sale certificate on March 12, 1966 by the concerned authorities were of no avail to the auction-purchasers. The owner of the land, therefore, contended that the auction-purchasers were not entitled to possession under the sale certificate which was wrongly issued by the concerned authorities after the sale had become void in the eye of law. In order to protect his possession the land owner was, therefore, entitled to sue the auction-purchasers who were seeking to dispossess him on the strength of a document which had not efficacy in law. This is not a case of the land owner seeking to set aside the sale under Section 91 of the Act, since it was not necessary for him to apply for setting aside the sale as there existed to sale. It was, therefore, open to the land owner to approach the civil court to protect his possession as the same was threatened. Such a suit, therefore, does not attract the provisions of Section 158(2) on which reliance is placed. The High Court, therefore, rightly observed as under :

"As his property had been sold by the revenue authorities without jurisdiction he had the right to file the suit in the civil court and which had the jurisdiction to decide the matter. It is an established principle of law that if the act of the parties under any Act is without jurisdiction, then the jurisdiction of the civil court is not excluded."

We respectfully agree with the above observation. Once it is held that the sale was rendered null and void on the failure of the auction-purchasers to comply with the requirements of Section 88 of the Act, it was the imperative duty of the authorities to put the property to re-sale for the law did not confer any discretion in the concerned authorities to extend the time for the payment of the balance amount. Once the mandatory requirement of Section 88 of the Act was not complied with, the only course open to the concerned authorities was to put the property to re-sale. It, therefore, did not have any jurisdiction to accept the balance money after the expiry of the period prescribed by Section 88 of the Act. Therefore, the action of the concerned authority in accepting the balance money on March 2, 1965 long after the period prescribed by Section 88 of the Act had expired was an act without jurisdiction and of no avail. So also the confirmation of sale on February 21, 1966 was

without jurisdiction and must be ignored. If that is the true position in law, there can be no doubt that there was no sale in the eye of the law in favour of the appellants herein and, therefore, the threatened action of the appellants to dispossess the land owner was clearly de hors the Act and could validly be challenged in a civil court. We, therefore, do not find any infirmity in the view which found favour with the High Court.

5. In the result we see no merit in this appeal. The appeal is dismissed but in the facts and circumstances of the case we leave it to the parties to bear their own costs.

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