

Sagar Mahila Vidyalaya, Sagar

Vs

Pandit Sadashiv Rao Harshe and Others

Civil Appeal No. 203 of 1975

(S. Ranganathan, S. C. Agarwal, N. M. Kasliwal JJ)

12.07.1991

JUDGMENT

KASLIWAL, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh at Jabalpur dated December 12, 1974. This litigation has a long chequered history of more than five decades. The appellant, the Sagar Mahila Vidyalaya is an educational institution founded by a section of the public of District Sagar (M.P.) by giving donations and is duly registered under the Societies Registration Act (Act 21 of 1860). On November 17, 1933 one Govind Rao Harshe had mortgaged some agricultural land and a house known as "Harshewada" to Lakshmi Chand and Duli Chand Modi. The aforesaid mortgagees filed a suit and obtained a preliminary decree for sale on July 14, 1937. A final decree for sale for the realisation of Rs. 5001/13/6 was passed on March 26, 1938. On March 29, 1938 the decree holders applied for execution of the said decree. The execution of the aforesaid decree was stayed and in the meantime C.P. and Berar Relief of Indebtedness Act, 1939 came into force. The judgment debtor Govind Harshe along with his minor sons namely, Sadashiv Rao and Ram Chander Rao applied for settlement of the debts on September 14, 1939 in the Debt Relief Court, Sagar. The execution of the final decree for sale had been stayed by the executing court as per the provisions of the Relief of Indebtedness Act. On September 11, 1940, the Debt Relief Court reduced the amount and granted instalments.

2. The creditors filed revision applications against the aforesaid order of the Debt Relief Court. The revision filed by Lakshmi Chand and Duli Chand was registered as Civil Revision No. 119 of 1940 while that of another creditor Pandey Shankernath was registered as Civil Revision No. 27 of 1941. The Additional District Judge disposed of both the revisions by order dated September 29, 1941. Ex. P-4 is the copy of the order passed in Civil Revision No. 119 of 1940 and its operative part reads as under :

"For the reasons given in paragraph 8 of the order of C.R. No. 27 of 1941, I hold that a condition can be prescribed by the D.R. Court in default of which the order fixing instalments shall cease to have effect and the whole claim shall become recoverable. I, therefore, order that the debtors shall keep the mortgaged property intact by paying its land revenue in time every year and shall keep the house in good repairs, as a condition precedent to the continuance of their right to pay the claim by instalments fixed by the D.R. Court. In default of their paying land revenue of the Malik Makbuza land in time, endangering its sale for its recovery, and in case they deliberately fail to keep the mortgaged house in proper repairs or endanger its existence, this order of instalments shall cease to have effect and the applicant

creditor shall become entitled to recover the whole amount. Parties will bear their own costs of this revision."

3. On November 18, 1941 the decree holders Lakshmi Chand and Duli Chand Modi applied for the revival of the execution proceedings on the ground that the judgment debtor had defaulted in carrying out the directions of the revisional court and as such the order passed by the Debt Relief Court granting instalments had ceased to exist and the whole amount had become payable in lump sum. The decree holders as such prayed for the sale of the house property in dispute. The judgment debtor Govind Rao Harshe did not appear before the executing court in spite of service of notice and allowed the execution case to proceed ex parte against him. On March 31, 1942 the executing court passed an order holding that the non-applicant judgment debtor had committed breach of the condition and as such the decree holders were entitled to recover the amount determined by the Debt Relief Court as due to them at once. It was further held that the decree holders were entitled to execute the decree for recovery of debt amount.

4. The judgment debtor Govind Rao Harshe submitted an application on August 12, 1942 for setting aside the ex parte order dated March 31, 1942. This application was dismissed on November 13, 1942. Civil appeal filed against the said order was also dismissed on April 6, 1943 by the Additional District Judge. In the meantime, the house mortgaged was put to auction and the highest bid of Rs. 5905 was knocked down in favour of one Gopal Rao Mutatkar on August 20, 1942. One-fourth of the auction amount Rs. 1500 was deposited on the spot and the balance three-fourth amounting to Rs. 4405 was deposited on September 4, 1942.

5. The judgment debtor Govind Rao submitted an application under Order XXI Rule 90 CPC for setting aside the sale dated August 20, 1942. This application was rejected vide order dated February 6, 1943. Miscellaneous appeal filed against the said order was dismissed by the Second Additional District Judge, Sagar vide order dated December 19, 1943. It may be noted at this stage that in the meantime the sale was confirmed vide order dated April 10, 1943. Sadashiv Rao and Ram Chander Rao, sons of the judgment debtor Govind Rao Harshe who had become adult also moved the executing court on September 28, 1943 that they were also necessary parties to the execution case as they were also parties in the proceedings before the Debt Relief Court and as they were not made parties in the executing court, the order passed by the executing court dated March 31, 1942 was void and without jurisdiction. This application was rejected on December 13, 1943. An appeal filed against this order was dismissed by the Additional District Judge, Sagar by order dated April 24, 1944. The miscellaneous second appeal filed against the appeal order was also dismissed by the High Court by order dated December 15, 1947. In the meantime on January 5, 1944 an application was submitted by Mahila Vidyalaya, Sagar (appellant before us) through its Secretary, Shri G. R. Wakhle for granting the sale certificate to the applicant Mahila Vidyalaya. It was stated in the application that the house in question was auctioned by the court and was purchased by Gopal Rao Mutatkar on August 20, 1942 for Mahila Vidyalaya, Sagar for Rs. 5905 and the auction sale was confirmed by the court on April 10, 1943. It was prayed that the sale certificate be granted to the applicant-purchaser (Mahila Vidyalaya). Stamps of Rs. 90 were supplied with the application. A note was also appended with the application as under :

"That when Gopal Rao son of Madho Rao offered bid in public auction he was a member of the abovementioned institution. But at present he is not a member. Therefore, the following applicant who is the Secretary of this institution makes this application."

The executing court on February 26, 1944 passed an order to the following effect :

"The sale certificate will issue in the name of Mahila Vidyalaya, Sagar through Secretary, G. R. Wakhle."

The sale certificate was then actually issued in favour of Mahila Vidyalaya on April 8, 1944.

6. It is further important to note that four sons of the judgment debtor Govind Rao, namely, Sadashiv Rao, Ram Chander Rao, Sarad Chand (minor) and Ashok Kumar (minor) filed a civil suit in the year 1948 (Civil Suit No. 1-A of 1948) for a declaration that the execution sale was not binding on their interest. It may be noted that initially this suit was filed against Gopal Rao Mutatkar for Mahila Vidyalaya, Sagar as defendant 1(a), Shri G. R. Wakhle, Secretary, Mahila Vidyalaya as defendant 1(b), Lakshmi Chand and Duli Chand as defendants 2 and 3 and Govind Rao Harshe (father of the plaintiffs) as defendant 4. In that suit Gopal Rao Mutatkar and G. R. Wakhle filed their written statements and raised an objection that they were unnecessarily made parties as they had ceased to have any connection with the Mahila Vidyalaya. Ex. P-22 is the copy of the written statement dated March 10, 1948 filed by Gopal Rao Mutatkar in which he admitted that the house under dispute was auctioned on August 20, 1942 and the same was purchased by the Sagar Mahila Vidyalaya, Sagar through him and that defendant 1(b) (G. R. Wakhle) as Secretary of the said Mahila Vidyalaya had made an application for issue of sale certificate and for possession of the house. The Sagar Mahila Vidyalaya, Sagar was a registered institution and the suit should have been filed against the institution itself and not in the name of its office bearers. Shri G. R. Wakhle was the Secretary of the Sagar Mahila Vidyalaya, Sagar in 1942 and 1943. He was no longer its secretary and the present Secretary of the said institution was Mrs. Kamlakar Nagarkar. It was thus prayed that the defendants 1(a) and 1(b) had been unnecessarily joined as parties to the suit and should be discharged. Thereafter, the plaintiffs impleaded Mahila Vidyalaya, Sagar as party. This suit filed by the aforementioned four sons of the judgment debtor was also dismissed on December 27, 1949 and costs were imposed not only on the plaintiffs but also on defendant 4 i.e. Govind Rao Harshe, the judgment debtor. Defendant 4 was also required to pay Rs. 300 to defendants 1, 2 and 3 as compensatory costs. No further appeal was preferred against this judgment and decree.

7. The Sagar Mahila Vidyalaya, Sagar in the capacity of auction-purchaser then applied for the delivery of possession. The possession was delivered to Mahila Vidyalaya on March 24, 1951. At the time of delivery of possession some portion of the house was in the occupation of Smt. Radha Bai, widowed sister of the judgment debtor, Govind Rao Harshe and other portions were in the occupation of the tenants. The Secretary of the Mahila Vidyalaya agreed to the request of the tenants including Smt. Radha Bai that they will not be ousted as they were willing to execute rent notes. Thereafter, Mahila Vidyalaya being in need of more occupation moved the Rent Controller for permission to sever notices on the tenants to vacate the premises. The permission was granted by the Rent Controller on March 10, 1953 after service of the notices, all the tenants except Mst. Radha Bai vacated the premises and handed over possession to Mahila Vidyalaya. The Mahila Vidyalaya then instituted a suit (Civil Suit No. 100-A of 1954) against Mst. Radha Bai and also Govind Rao Harshe who had started to live with his family in the portion occupied by Mst. Radha Bai as her licensee. The trial court dismissed the suit for ejection but passed a decree for arrears of rent against Mst. Radha Bai alone. The appeal filed by the Mahila Vidyalaya was allowed by the Additional District Judge by judgment dated October 27, 1957. Against this decision, Govind Rao Harshe alone preferred an appeal in the High Court and Mst. Radha Bai was impleaded as respondent 2. The High Court by its judgment dated April 29, 1960 dismissed the second appeal filed by Govind Rao Harshe. The Mahila Vidyalaya then filed an execution application for

ejection of the occupants and the same is still pending as a result of stay order passed in a subsequent suit filed by Govind Rao Harshe, which is not the subject matter of the present appeal before us.

8. In the above background, we should, now state the facts of Suit No. 133 of 1960 filed in the Court of Civil Judge, Class I, Sagar on November 26, 1960 by Govind Rao Harshe, which has culminated in the present appeal. Govind Rao Harshe filed the suit against Mahila Vidyalaya for a declaration, possession and permanent injunction. Plaintiff Govind Rao Harshe died on December 14, 1967 during the pendency of the suit and all the respondents in the present appeal were substituted in his place as his legal representatives. The suit was dismissed by the trial court on December 13, 1968. On an appeal the District Judge, Sagar allowed the appeal and decreed the suit in favour of the present respondents granting the declaration, delivery of possession of the house together with a mandatory injunction directing demolition of some new constructions made by the Mahila Vidyalaya. Aggrieved against the judgment of the first appellate court, the defendant Mahila Vidyalaya filed a second appeal before the High Court. The High Court by order dated December 12, 1974 dismissed the appeal. The defendant Mahila Vidyalaya in the above circumstances have come in appeal by the grant of special leave.

9. The High Court held that as Gopal Rao Mutatkar was the auction purchaser, no sale certificate could be issued by the executing court in favour of the appellant Mahila Vidyalaya. It was held that bid in the auction was made by Gopal Rao for himself and not on behalf of Mahila Vidyalaya. The deposit of the auction money was also made in his own name and the order dated April 10, 1943 confirming the sale was also made in his name. The High Court affirmed the finding of the first appellate court that Gopal Rao Mutatkar did not purchase the property in the auction acting on behalf of the appellant and the first appellate court rightly held that Gopal Rao Mutatkar was the auction purchaser and the sale was confirmed in his name and he deposited full sale amount in his own name. The High Court also held that Gopal Rao Mutatkar could only transfer his proprietary right by sale or a gift which he did not do. In the circumstances, there was no transfer of the proprietary rights in favour of the appellant Vidyalaya and if that was so, no certificate could be issued in favour of the Mahila Vidyalaya. The act of the executing court was clearly without jurisdiction and the sale certificate being void and inoperative conferred no right or title upon the appellant Mahila Vidyalaya over the suit property. The High Court further held that suit filed on November 26, 1960 being within 12 years from March 24, 1951 was within time. The plaintiff Govind Rao Harshe was never ousted by Gopal Rao Mutatkar who was the auction purchaser. He was dispossessed by a person who had no title. There was, therefore, no question of filing a suit for setting aside the sale. It was further held that the plaintiff in this case was not required to file a suit for getting the sale set aside when he was pleading that the sale itself was void. A void sale could be ignored by a true owner and it did not affect his title. The High Court thus took the view that the suit for possession on the basis of title was governed by Article 144 of the Limitation Act, 1908. In either case, whether Article 142 or 144 of the Limitation Act, 1908 is applied, the suit is within time.

10. We have heard learned counsel for the parties and have thoroughly perused the records. In our view the High Court completely misdirected itself and wrongly ignored the earlier decisions between the parties and we are, therefore, inclined to allow this appeal.

11. The admitted facts of the case are that the house in question was auctioned in the execution of a decree for sale obtained by the mortgagees Lakshmi Chand and Duli Chand Modi. Gopal Rao Mutatkar took part in the auction bid and it was knocked down in his favour of August 20, 1942.

The sale was confirmed by an order of the executing court dated April 10, 1943. Govind Rao the judgment debtor submitted an application for setting aside the sale under Order XXI Rule 90 CPS but remained unsuccessful. The steps taken by his adult sons Sadashiv Rao and Ram Chander Rao for impleading them as parties also proved futile. It is an admitted position that an application was submitted by the Mahila Vidyalaya through its Secretary as early as January 5, 1944 for issue of a sale certificate in its name as the house was purchased in the auction for the Vidyalaya by Gopal Rao Mutatkar as a member of the institution. The court on February 26, 1944 ordered that the sale certificate be issued to Mahila Vidyalaya. The necessary stamps for the sale certificate were supplied by the Mahila Vidyalaya and the sale certificate was actually issued in the name of the Mahila Vidyalaya on April 8, 1944. It is important to note that no finger was raised nor any steps were taken by the judgment debtor or his sons objecting the issue of sale certificate in favour of Mahila Vidyalaya. A suit was brought in the year 1948 by the four sons of the judgment debtor Govind Rao Harshe. The two adult sons were those who already remained unsuccessful in challenging the order of the court dated March 31, 1942 and two sons Sarat Chand and Ashok Kumar were those who were born in the meantime. This suit filed in 1948 was for a declaration that the execution sale was not binding on their interests. It is worthwhile to note that this suit was initially filed against Gopal Rao Mutatkar and G. R. Wakhle but subsequently the plaintiffs impleaded the Mahila Vidyalaya in view of an objection raised by Gopal Rao Mutatkar and G. R. Wakhle that the house in question was actually purchased by Mahila Vidyalaya and the sale certificate was also issued in the name of Mahila Vidyalaya. The suit was dismissed on December 27, 1949 and had become final as no appeal was preferred against the dismissal of the suit. It may be further noted that application for delivery of possession to auction purchaser was filed by Mahila Vidyalaya on September 22, 1948 and the symbolic possession was also delivered on March 24, 1951. As Mahila Vidyalaya was in need of more building, it moved the Rent Controller for permission to serve notices on the tenants. The said permission was granted on March 10, 1953 and all the tenants except Mst. Radha Bai who was the widowed sister of Govind Rao Harshe, handed over the possession to Mahila Vidyalaya. The Mahila Vidyalaya thereafter instituted Civil Suit No. 100-A of 1954 against Mst. Radha Bai and Govind Harshe for ejection and rent. The trial court dismissed the suit for ejection but passed a decree for arrears of rent against Mst. Radha Bai alone. The appeal filed by the Mahila Vidyalaya was allowed by the Additional District Judge, Sagar on October 27, 1957 and the prayer for ejection was also allowed. Against this decision, Govind Rao Harshe alone preferred a second appeal in the High Court and the same was dismissed by order dated April 29, 1960. In this litigation Govind Rao Harshe was held to be a licensee of his sister Mst. Radha Bai.

12. The above narration of events which remain undisputed go to show that the house in question was sold in the execution of a final decree for sale and the bid was knocked down in the name of Gopal Rao Mutatkar as far back as August 20, 1942. The entire sale money was deposited and the sale was confirmed under Order XXI Rule 92 CPC by order dated April 10, 1943. It is no doubt correct that the final bid in the sale was knocked down in the name of Gopal Rao Mutatkar and the sale was also confirmed in his name but the sale certificate was admittedly issued in the name of the Mahila Vidyalaya. In this regard an application was filed on behalf of Mahila Vidyalaya on January 5, 1944 and the executing court had passed an order on February 26, 1944 that the sale certificate will issue in the name of Mahila Vidyalaya. In the application filed by Mahila Vidyalaya it was clearly stated that the house in question was auctioned by the court and was purchased by Gopal Rao Mutatkar on August 20, 1942 for Mahila Vidyalaya. This stand taken by Mahila Vidyalaya was accepted and the executing court passed a specific order on February 26, 1944 for issue of a sale certificate in the name of Mahila Vidyalaya. The sale certificate was thereafter, actually issued in the

name of Mahila Vidyalaya on April 8, 1944. Steps for executing the decree and for obtaining actual possession was also taken by the Mahila Vidyalaya. Govind Rao Harshe was a party to the execution proceedings and till the filing of the present suit on November 26, 1960, no objection was raised as regards the sale certificate being wrongly issued in favour of Mahila Vidyalaya. Not only that in a suit for declaration filed in 1948 by the four sons of Govind Rao Harshe, Gopal Rao Mutatkar in his written statement filed on March 10, 1948 had taken a clear stand that the house in question was actually purchased by Mahila Vidyalaya and the sale certificate was also issued in the name of Mahila Vidyalaya and as such he was wrongly impleaded as defendant in the suit. On such stand taken by Gopal Rao Mutatkar, the plaintiffs had subsequently impleaded Mahila Vidyalaya as the defendant. In this suit also no objection was raised on behalf of the plaintiffs, who were sons of Govind Rao Harshe, that no sale certificate could have been issued in the name of Mahila Vidyalaya nor any title could have passed to Mahila Vidyalaya and as such there was no question of impleading Mahila Vidyalaya as defendant and the suit for declaration should continue against Gopal Rao Mutatkar.

13. The High Court in the impugned order considered that as Gopal Rao Mutatkar was the auction purchaser, no sale certificate could be issued by the executing court in favour of the appellant Mahila Vidyalaya. The High Court in arriving at the aforesaid conclusion also took the view that there was nothing on record to show that till the sale was confirmed it was ever made known that Gopal Rao Mutatkar was purchasing the property for and on behalf of the Mahila Vidyalaya. The order dated April 10, 1943 relating to confirmation of sale was also made in the name of Gopal Rao Mutatkar. The High Court further took the view that Gopal Rao Mutatkar could only transfer his proprietary rights by sale or a gift and the same being not done, there was no transfer of the proprietary rights in favour of the appellant Mahila Vidyalaya. It was thus held that the act of the executing court was clearly without jurisdiction and the sale certificate being void and inoperative conferred no right or title on the appellant Mahila Vidyalaya over the suit property. We do not subscribe to the above view taken by the High Court in the facts and circumstances of the present case. The sale certificate is issued under Order XXI Rule 94 CPC. The sale certificate is granted by specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. An application was submitted on January 5, 1944 on behalf of Mahila Vidyalaya that it was the real purchaser and the bid in the auction was made by Gopal Rao Mutatkar on its behalf as he was a member of the institution. This application was accepted by the executing court by a specific order dated February 26, 1944 and it was directed that the sale certificate shall be issued in favour of the applicant Mahila Vidyalaya. The executing court had jurisdiction to allow or reject such application and it cannot be said that the act of the executing court was clearly without jurisdiction and the sale certificate as well as the entire execution proceedings were void and inoperative. In case Govind Rao Harshe had any grievance he ought to have challenged the order dated February 26, 1944 in the proper forum and had no right to challenge the same after 16 years by filing the present suit on November 26, 1960. We are not going into the propriety of such order but the same cannot be said to be void on account of being without jurisdiction as held by the High Court.

14. The High Court while dealing with the question of limitation held that the plaintiff in this case was not required to file a suit for getting the sale set aside when he is pleading that the sale itself is void. A void sale could be ignored by a true owner and it did not affect his title. The High Court in our view was totally wrong in holding that it was a case of void sale. It may be noted that Govind Rao Harshe had already taken steps for getting the sale set aside by moving a petition under Order XXI Rule 90 CPC and his sons had filed a suit for declaration but all those proceedings finally terminated against them. Even if for argument's sake the objection now raised in the present suit is

considered, it is only in respect of the sale certificate being wrongly issued in favour of Mahila Vidyalaya. So far as the sale in favour of Gopal Rao Mutatkar is concerned, there is no illegality and the sale was rightly confirmed in his favour under Order XXI Rule 92 CPC by order dated April 10, 1943. It may be noted that once an order was made under Order XXI Rule 92 confirming the sale, the title of the auction purchaser related back to the date of sale as provided under Section 65 CPC. The title in the property thereafter vests in the auction purchaser and not in the judgment debtor. The issue of sale certificate under Order XXI Rule 94 CPC in favour of the auction purchaser though mandatory but the granting of certificate is a ministerial act and not judicial. Thus looking into the matter from his angle also it is clear that no right or title remained with Govind Rao Harshe after confirmation of sale in favour of Gopal Rao Mutatkar which related back to the date of sale i.e. August 20, 1942. Thus there is no question of holding that it was a case of void sale which could be ignored by a true owner and it did not affect his title. Govind Rao Harshe and as such the respondents who are his legal representatives were not entitled to take the stand that they were true owner as the sale itself was void and they were not required to file a suit of getting the sale set aside. With the risk of repetition it is held that it was not a case of the sale being void and in any case so far as issue of sale certificate in favour of Mahila Vidyalaya is concerned, the same was determined by a judicial order dated February 26, 1944 and the executing court was competent to pass such order, such order cannot be held to be void on the ground of being without jurisdiction as determined by the High Court and it was necessary to challenge the said order within limitation. Even if the residuary Article 120 of the Limitation Act, 1908 is applied, it should have been challenged within 6 years and as such the present suit filed on November 26, 1960 was hopelessly barred by time.

15. The High Court was clearly in error in taking the view that Govind Rao Harshe was the true owner and the appellant Mahila Vidyalaya was a trespasser. Even if it may be considered for a moment that sale certificate could not have been issued in favour of the appellant Mahila Vidyalaya still in the facts of this case it cannot be held that Mahila Vidyalaya was a trespasser and G. R. Harshe was the true owner at the time of filing of the present suit. The sale of the property in question was perfectly valid and as soon as the sale was confirmed in favour of Gopal Rao Mutatkar under Order XXI Rule 92 CPC. Govind Rao Harshe had no right or title in the property and Gopal Rao Mutatkar became the owner of the property. The admitted position which is borne out from the records is that Gopal Rao Mutatkar never claimed any right in the property nor took proceedings for obtaining possession by executing the decree. On the other hand, he took a clear stand in his written statement filed on March 10, 1948 that he had bid in the auction on behalf of Mahila Vidyalaya and the sale certificate was rightly issued in favour of the Mahila Vidyalaya. That apart, after the issue of sale certificate in favour of Mahila Vidyalaya it alone was entitled to obtain possession under Order XXI Rule 95 CPC. The appellant Mahila Vidyalaya had filed execution application and possession was given to it on March 24, 1951. Not only that Mahila Vidyalaya got an order for serving notice of ejectment on the tenants from the Rent Controller and all the tenants except Mst. Radha Bai surrendered possession in favour of Mahila Vidyalaya. Not only that a suit for ejectment filed against Mst. Radha Bai and Govind Rao Harshe was also decreed in favour of the appellant Mahila Vidyalaya. In execution of the decree for ejectment Mahila Vidyalaya was trying to obtain possession. Thus by no stretch of imagination can it be said that Mahila Vidyalaya was a trespasser in the facts and circumstances mentioned above. The High Court in our view did not consider the case in a proper perspective and took a wholly erroneous view in holding that the appellant was a trespasser and Govind Rao Harshe could have filed a suit for possession. The plaintiff Govind Rao Harshe himself had come forward with a plea that the execution proceedings and sale was null and void and unless he was able to succeed in this regard, which he did not in the present case, no decree

for possession could at all have been passed in his favour.

16. Thus, we allow the appeal, set aside the judgment and decree of the High Court dated December 12, 1974 and dismiss the suit with costs.

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