Harnama Singh (dead) Lrs. on record and Others

Vs

Harbhajan Singh

Civil Appeal Nos. 2266-69 of 1979

(M.M. Punchhi, K. Ramaswamy JJ)

22.08.1991

ORDER

1. These appeals by special leave are directed against the common judgment and decree of the Punjab and Haryana High Court passed in L.P.A. Nos. 576-79 of 1975.

2. Three brothers, by means of four sale deeds executed on June 25, 1968, sold some parcels of land to Harbhajan Singh - respondent herein. The fourth brother by the name of Ujagar Singh, whose legal representatives are the appellants herein, filed four suits of pre-emption against the vendee and those were decreed on July 15, 1970, on terms of payment of pre-emption money on or before August 30, 1970. Four appeals were filed by the plaintiff-pre-emptors before the District Judge for the reduction of the pre-emption money. On an application moved by the pre-emptors the time for deposit of the amount fixed under the decree by the trial court was extended till further orders. The appeals finally were rejected under Order 41 Rule 3 of the Code of Civil Procedure as being insufficiently stamped and hence not properly presented. Beforehand, however, the plaintiff-pre-emptors, all the same, deposited the pre-emption amount in the trial court, on their own, on October 26, 1970.

3. After the rejection of their appeals, the pre-emptors sought execution of the pre-emption decrees which attracted objections by the vendee-judgment debtor. The primary objection raised was that the suits stood automatically dismissed for non-deposit of the pre-emption money within the time identically stipulated under the questioned decrees. The plea of the vendee was based on the mandate of Order 20 Rule 14, Civil Procedure Code whereunder the court when decreeing the claim to pre-emption is required to specify in the decree on or before which the pre-emption money shall be paid, if not already paid, and further if it is not so paid, the suit shall stand dismissed with costs. (Whatever is relevant in Order 21 Rule 14 alone has been taken note of). The date specified by the trial court as said before was August 30, 1970 and under the interim orders of the appellate court the time for depositing the said money was extended till further orders. Undeniably the court never passed any further orders in that regard and thus the time for depositing the said money stood extended without any limit. The objection was sustained by the trial/executing court. On appeal to the appellate court at the instance of the pre-emptors, the District Judge took a contrary view permitting the execution to proceed. A learned Single Judge of the High Court in appeal upheld the view of the District Judge, but a Division Bench of the High Court, in letters patent appeals, reversed the District Judge as also the Single Judge upholding the objection by the vendee that there were no decrees which could be executed.

4. We have heard learned counsel for the appellate for he alone was present.

5. There has been a sea change in the law of pre-emption in the States of Punjab and Haryana wherefrom these appeals have arisen. Whereas in Punjab the Punjab Pre-emption Act itself has been repealed, in Haryana it has substantially been chopped down by justicing. This court in Atam Prakash v. State of Haryana [(1986) 2 SCC 249 : (1986) 1 SCR 399] declared ultra vires Section 15(1) of the Punjab Pre-emption Act, as applicable to Haryana, whereunder certain relatives of the vendor had been given the right to pre-empt a sale of immovable property. The view of this Court and the present state of law is not by any means insignificant or irrelevant for judging the present matter and for resolving the controversy in hand. Rather its pervasive thought permeates the mind.

6. Learned counsel for the appellants would have the controversy determined on the anvil of Section 148 of the Code of Civil Procedure, pleading for time to be extended by the Court, as it is extendable when any period is fixed or granted by the court for the doing of any act prescribed or allowed by the court, even though the period originally fixed or granted has already expired. He has brought to our notice that in the main matter when the appeal was rejected by the District Judge as being insufficiently stamped time was asked from the District Judge to make good the deficiency in the stamp duty but that was rejected and though he concedes that the matter was not taken up in revision before the High Court, it is still contended that this Court should exercise its plenary power to extend the time in the interests of justice and have the court fee made good. He also concedes that when the District Judge was asked to extend and specify the time for deposit of the pre-emption money, he had declined to exercise his discretion, so as to regularise payment, when the appellants had by themselves deposited the pre-emption money on October 26, 1970 beforehand, leaving the matter to be agitated before the executing court. Likewise it is contended that this Court can and should specify the time for deposit so as to regularise it in exercise of powers under Section 148 CPC. He also highlights that the mistake herein was that of the court and for both the propositions he takes aid of Jogdhayan v. Bahu Ram [(1983) 1 SCC 26 : (1983) 1 SCR 844] and Jagat Dhish Bhargava v. Jawahar Lal Bhargava [(1961) 1 SCR 918 : AIR 1961 SC 832]. In any event he concedes that for the later wrongful non-exercise of discretion by the District Judge, the matter was not taken in second appeal or revision, as the case may be, before the High Court.

7. We have pondered over the matter. Our view may appear somewhat slanting but we cannot disassociate ourselves from the canvas now spread, showing there is no law of pre-emption permitting a decree to be drawn in terms of Section 15(1) of the Punjab Pre-emption Act. Were we to exercise at all the discretion on the subject aforementioned we would in any event be completing the process of decreeing the suits; the suits which have been held to fall down under Order 20 Rule 14 of the Code of Civil Procedure, tantamounting to their dismissal, and that too on present day when such decrees cannot be passed.

8. The High Court however, took the controversy in a different light. It took the view that the insufficiently stamped appeals before the District Judge were no appeals in the eye of law, as was contended on behalf of the vendee, and the view of the District Judge in not extending time was right as it was rightly considered that the appeals had not been entertained at all, Support was also taken for its view by the High Court from the circumstances of the order of the court extending time ex parte, which conferred no obligation on the vendee to treat the decree operative against him as and when the pre-emptors chose to deposit the pre-emption money. The High Court on this reasoning restored the judgment of the trial/executing court, upholding the objections of the vendee. Where the High Court arrived by following one way, we have been led to arrive by another. The end result, however, is the same that the objections of the vendee must remain sustained and the pre-emptor-appellants must fail in the event, not getting their suits for pre-emption decreed. The appeals must thus inevitably fail and are hereby dismissed. Decretal money deposited by the appellants may

be permitted to be withdrawn by them, if not already withdrawn. No costs for there is no opposition.

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