

# SUPREME COURT OF INDIA

Palaniammal

Vs.

Kamalakaran

C.A.No.17355 of 2017

(Ashok Bhusha and Navin Sinha,JJ.,)

17.03.2020

## JUDGMENT

**Navin Sinha,J.,**

1. The plaintiffs are in appeal aggrieved by the judgment of reversal by the High Court in a First Appeal preferred by the defendants. The parties shall be referred to by their original suit position for convenience.

2. The plaintiffs are the wife and legal heirs of one Govindasamy who was the first cousin of Ramasamy Naicker. The defendants are the legal heirs of Govindan who was the son-in-law of Ramasamy Naicker. O.S. No.10 of 1988 was preferred by the plaintiffs to set aside the judgement and decree of auction dated 26.09.1955 in favour of Govindan, seeking consequent relief for possession of the suit property along with mesne profits for the last three years. The suit was decreed on contest. Though the auction sale was held as not liable to be set aside but a declaration issued that the auction judgment dated 26.09.1955 made in favour of the defendants' father was wholly by way of trust for the beneficial ownership of Govindasamy. The predecessor of the defendants, Govindan was held to be only an ostensible owner of the suit property purchased in court auction on behalf of Govindasamy entitling the plaintiffs to mesne profits from the date of plaint till delivery of possession.

3. The High Court in a First Appeal preferred by the defendants concluded there had been completely erroneous appreciation of evidence by the trial court. Govindan was held to be a real purchaser at the auction sale and lawful owner of the property who had paid the necessary purchase price to the mortgagee with stipulated interest leading to issuance of sale certificate dated 21.07.1960 pursuant to the auction proceedings dated 13.10.1955. The receipt dated 30.12.1961 and the extracts from the register of encryption with translation dated 13.10.1955 made it apparent that Govindan was the lawful owner of the property and that he did not purchase on behalf of the appellants and neither was there any proof that Govindasamy had in fact funded the auction sale through Govindan.

4. Shri V. Kanagarh, learned senior counsel appearing for the appellants, argued that the High Court erred in not appreciating that the auction sale was invalid and void as the defendant failed to pay the auction price with 7% interest within six months and in

absence of which overbidding had necessarily to follow. The auction was held on 26.09.1955. The deposit challan was dated 26.11.1962. It is apparent that the auction sale had become invalid after six months and no title can pass to the defendants. The court auction was knocked down in favour of one Joseph Antoine. The conclusion that Govindan became the absolute owner of the suit property consequent to the auction and payment of purchase price is completely erroneous. The fiduciary relationship between Govindasamy and Govindan pursuant to which the latter had purchased the property of the former in an auction sale to prevent accrual of third party rights was a bonafide transaction funded by Govindasamy as Govindan had no source of funds. In the suit filed by the cousin of Thangavelu Gounder, the original owner of the property from whom Govindasamy had purchased, it was Govindasamy alone who contested the matter and Govindan was not even the party to the suit. The defendants had failed to prove adverse possession as it was neither hostile to the appellants nor uninterrupted in view of the legal notice issued more than once to handover the property. No regular patta was ever issued in the name of Govindan pursuant to the auction sale. Govindan was only a name lender in the entire transaction.

5. Shri R. Bala, learned senior counsel appearing for the defendants, submitted that the suit was filed on 11.11.1987, after a gap of more than 30 years from the date of the auction sale. The suit property of Govindasamy was put to auction by one Noel Fanovard as he had failed to repay the decree-holder. Govindasamy being indebted to several persons, was financially incapable of funding the auction purchase. The sale certificate was issued in the name of Govindan and patta also issued in his name along with encumbrance certificate, application for electricity connection and electricity bill, all of which conclusively prove that Govindan was the actual purchaser in the auction sale and that Govindasamy had no concern with the same. It is not without reason that after the auction sale dated 26.09.1955, Govindasamy, in his life time till 15.02.1987, did not question the same and it is only after his death that his wife and legal heirs filed the suit in question. Had there been any infirmity in the title of Govindan pursuant to the auction sale or had there been any defect in the auction sale, Govindasamy as the original owner of the suit property would have certainly raised the issue in his life time. In view of the fact that both the Trial Court and the First Appellate Court declined to interfere with the judgment of auction holding it to be valid, this Court may not interfere with the concurrent findings of facts.

6. We have considered the facts and circumstances of the case as also the submissions on behalf of the parties. A brief recapitulation of facts would be necessary for better appreciation of the issues involved. The suit property originally belonged to one Thangavelu Gounder. Govindasamy purchased the suit property from him on 10.12.1936. The plaintiffs are the wife and children of deceased Govindasamy. Defendants nos.1 and 2 are the son and daughter of Late Govindan who was the son-in-law of one Ramasamy Naicker. Govindasamy and Ramasamy Naicker were first cousins. After the death of Ramasamy Naicker, Govindasamy is stated to have become addicted to alcohol leading to his wife requesting Govindan to manage the properties of Govindasamy as well as Ramaswamy Naicker. Schedule 'B' of the suit property was leased out to defendant no.3 during the life time of Govindan who was authorised to collect the rent as the parties were living together. Subsequently Govindasamy started living with his family in the Schedule 'A' suit property, close to Schedule 'B' property.

7. On 05.11.1977, Govindasamy issued notice to the defendants not to collect rent from defendant no.3 and also not to meddle in the suit property to which the defendants replied by relying upon the court auction judgment dated 26.09.1955 contending that Govindan was the rightful owner of the suit property. Govindasamy filed HRCOP no.31 of 1987 against defendant no.3. But when a counter claim was raised by the defendants on basis of title acquired under court auction judgment dated 26.09.1955, Govindasamy withdrew the eviction suit. Govindasamy having died intestate on 15.02.1987, the suit giving rise to the present appeal was instituted only thereafter by his wife and legal heirs. There is no explanation coming forth from the plaintiff why issues were not raised by Govindasamy during his life time.

8. The suit property had been put on auction sale because of a mortgage created by Govindasamy who was heavily indebted to several persons apart from one Noel Fanovard. There was no challenge to the court auction sale by Govindasamy in his life time. The Trial Court has also held the auction sale to be valid. The plaintiffs have not preferred any appeal against the same. The instant suit by the legal heirs of Govindasamy was filed more than 30 years later on 11.11.1987 after his death. The plaintiffs failed to establish or lead any evidence with regard to availability of funds with Govindasamy so as to make an endeavour to purchase his own property in the auction sale through Govindan. If the plaintiffs contended that Govindan was only a front for the auction purchase and the real owner was Govindasamy who had funded the same, the onus lay on them which they completely failed to discharge. On the contrary, the First Appellate Court, after proper appreciation of evidence, has opined that the Trial Court grossly erred in misappreciating the evidence which clearly demonstrated that it was Govindan who had purchased the suit property on 13.10.1955 consequent to which sale certificate had been issued in his favour on 21.07.1960. The triplicate copy of the challan demonstrated deposit by Govindan of Rs.1526.67 on 26.11.1962 including interest accrued thereon from the date of auction till the date of payment. Joseph Antoine was the Advocate of Govindan who had participated in the auction sale on his behalf. Apparently, a false plea was sought to be raised by the plaintiff that the auction purchase by Govindan was on behalf of Govindasamy, funded by the latter. The High Court has further correctly held that the suit itself was not maintainable under Section 66 (1) of the Code of Civil Procedure, 1908 before its deletion on 19.05.1988.

9. There is no occasion for this court to reassess and reappraise the evidence as the First Appellate Court is the final court on findings of facts. In view of the fact that the plaintiffs had failed to prove their case completely, there is no occasion for us to consider any other aspect of the matter and we find no reason to interfere with the order of the First Appellate Court.

10. The appeal is dismissed.