

GANGABAI GOPALDAS MOHATA

v.

FULCHAND AND OTHERS

DECEMBER 19, 1996

[MADAN MOHAN PUNCHI AND K.T. THOMAS, JJ.]

Civil Procedure Code, 1908—Sections 47(3) and 50, order 21, Rules 16, 84 and 85—Person approaching the executing Court claiming to be the representative of the decree-holder's interest in the decree, decree-holder disputes it—The executing Court has to resolve the dispute for proceeding with the execution of the decree—Transferee pendente lite is representative of his transferor within the meaning of sub-section (3) of Section 47—'Representative' under Section 47 has wider meaning than 'legal Representative' used in Section 50.

Maharashtra Municipalities (Sale of Distraigned or Attached Movable and Immovable Property) Rules, 1967—Rules 8(2), (3) and 13—Requirement of making payment within the fixed period is mandatory—Failure to comply with, renders the sale void—These rules follow the same principle as provided by Order 21, Rules 84, 85 CPC.

The Appellant filed a civil suit for recovery of possession of the Nazul Land of Murtiza Municipality from respondents No. 2-5, the lessees. The suit was compromised pursuant to which a compromise decree was passed. As per the terms of compromise decree respondents were to vacate the premises but they did not and the appellant took out execution proceedings against them. In the meantime the Municipality attached the suit property for arrears of Municipal Tax claimed against the appellant and the property was put to public auction. The appellant filed a suit for injunction against the Municipal Committee from proceeding with the sale as no Municipal tax was due from her. The application for interim injunction of the appellant under Order 39 Rule 1 CPC was dismissed on 24.2.1984 with the observation that the Municipal Committee may conduct the sale but it should not be confirmed before fifteen days after the sale and before the expiry of this period if the appellant furnishes the outstanding amount, the sale be not confirmed for one month more. If within that period of one month, the appellant deposits the entire amount, the sale will be cancelled

A and if the said amount is not deposited the sale will be confirmed.

The auction sale took place on 27.2.1984. Respondent No. 1 was the highest bidder and he deposited one fourth of the sale amount on the same day. However, on 12.3.84, the appellant deposited Rs. 50,000 in the Court, which was more than the claim of tax arrears demanded by the Municipal Committee. The appellant filed application for cancellation of the sale but the same was dismissed with the observation that she should file a fresh suit for this purpose. Fresh suit filed by the appellant was dismissed for default on 7.11.1990. The first respondent deposited the balance bid amount with the Municipal Committee on 9.11.1990 and got a sale certificate issued in his favour from the Municipal Committee. On the basis of the sale certificate respondent No. 1 filed an application Under Order 21 Rule 16 before the Execution Court praying that he be substituted as transferee of the decree-holder. The Execution Court rejected the application of the respondent No. 1 but the High Court took a contrary view that the dispute between respondent No. 1 and the decree-holder is not of the kin which the Court could resolve under Section 47 of the CPC. Hence this appeal.

Allowing the appeal, this Court

E HELD : 1. The High Court erred in holding that the dispute between the first respondent and the decree-holder is not the kind of dispute which the execution court should resolve under Section 47 of the Code of Civil Procedure. On the contrary, if a person approaches the executing court claiming that he is the representative of the decree-holder's interest in the decree and the decree-holder disputes it, the executing court has to resolve the dispute for proceeding with the execution of the decree. [463-C-D]

G The view taken by the High Court that the executing court exercising power under Order 21, Rule 16 of the Code has only a limited jurisdiction as the Court can not examine the legality of documents on title, is erroneous and not in consonance with the wide language of Section 47 of the Code. Section 47 of the Code of Civil Procedure is couched in a very wide language. The very object is to avert another suit concerning the decree under execution. Even a transferee pendentalite is representative of his transferor within the meaning of sub-section (3) of Section 47. One who claims to be transferee by operation of law would as well be a representative and if his claim is disputed either by the opposite party or the

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party under whom the claims (decree holder) such dispute must also be resolved, by the executing Court. The word 'representative' used in Section 47 is obviously much wider, than the word 'Legal representative' as used in Section 50 CPC. [462-C-D; 462-F; 463-B-C]

2. Order 21 Rule 16 encompasses two types of transferees one, transferee by virtue of an instrument of assignment and the other a transferee "by operation of law". Respondent No. 1 claims to be transferee of the decree holder/appellant by virtue of the sale conducted by the Municipal Council. But the legal consequence of the order of the Civil Court dated 24.2.1984 was that, on depositing the tax arrears within the time stipulated in the order, the sale would go off. Merely because the suit was subsequently dismissed, the legal effect of the Court's order dated 24.2.1984 would not become a nullity. Whatever happened during the pendency of the suit, and what all actions taken pursuant to any orders passed by the Court during interregnum would remain a reality unless the Court itself had disturbed or modified them. The sale should have gone off the very day the appellant deposited the amount as per the direction of the Court. Neither the Chief Officer nor even the Municipal Counsel had any authority to bypass the order of the Civil Court by confirming the sale on a later date without even obtaining permission from the Court. [463-E; 464-A]

3.1. Besides, the sale was conducted as per the Maharashtra Municipalities (Sale of Distraigned or Attached Movable and Immovable Property) Rules, 1967. A combined reading of Rule (8)(2)(3) and Rule 13 of the Rules would un-mistakably show that requirement to pay the balance of 75% within fifteen days is mandatory. The consequence of non-payment of the balance amount within the fixed period must peremptorily visit the purchaser. Neither the Chief Officer, nor the Municipal Council has power to release or even condone the delay and accept delayed payment. If any officer had accepted the money after the period fixed under sub Rule 2 the officer has no support of law and no legal effect would flow therefrom and the sale consequently becomes void. Rules relating to Court sale provided in Order 21 Rules 84 and 85 CPC are analogous and non-compliance with Rules 84 and 85 of Order 21 would render the sale void in the eye of law. The same principle would apply to the sale regulation contained in the Maharashtra Rules. [464-G; 465-C]

3.2. Respondent No. 1 did not legally acquire the interests of the decree holder in the property. The sale was conducted on 27.2.1984 and the

A bidder, who made his initial deposit of Rs. 25,000 did not pay the balance within the period of fifteen days i.e. 13.3.1984. Whatever be the excuse, the Respondent No. 1 did not pay the balance amount within fifteen days of sale and the sale would, therefore, stand annulled *ipso-jure* without anything more. He is, therefore, not a transferee by "Operation of Law" as envisaged under order 21 Rule 16 of the CPC.[466-A; 465-D-F; 466-B]

Manilal Mohan Lal Shah v. Sardar Syed Ahmed Sayed Mohammad, [1955] 1 SCR 108, relied on.

Janak Raj v. Gurdial Singh, [1967] 2 SCR 77 and *Sardar Govindrao Mahadik v. Devi Sahai*, [1982] 2 SCR 186, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16835 of 1996.

From the Judgment and Order dated 16.2.95 of the Bombay High Court in R.A. No. 402 of 1981.

Soli J. Sorabjee and Uday Umesh Lalit for the Appellant.

G.L. Sanghi, M.N. Krishnamani, Ms. Indu Verma, (P.H. Parekh) (NP), Jitender Mahapatra, G.B. Lohiya and A.K. Sanghi for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. : Leave granted.

F This appeal is by a decree-holder whose effects to execute the decree have now been stalled at the instance of a third party who claims to be the transferee of the interest of the decree-holder in the decree "by operation of law". The application filed by the said third party who is first respondent herein purportedly under Order 21 Rule 16 of the Code of Civil Procedure (for short "the Code") though repelled by the execution court was allowed by the High Court as per the order challenged in this appeal.

More facts : Appellant Gangabai leased out a portion of her land in Nazul plot No. 2. sheet No. 15/B of Murtizapur Municipality to one Ram Pratap Agrawal (predecessor or respondent Nos. 2 to 5). A civil suit was filed by the appellant in 1970 for recovery of possession of the land from

the lessee. That suit was decreed by the trial court and in appeal filed by respondent Nos. 2 to 5 the suit was compromised pursuant to which a compromise decree was passed. As per the terms of the compromise decree the judgment-debtors (respondent Nos. 2 to 5) were to vacate the premises by 31.12.1990. As they failed to vacate within the said time limit the appellant took out execution proceedings.

What happened in the meanwhile is the cause for this appeal. Murtizapur Municipal Council (hereinafter referred to as 'the Municipal Council') attached the right of the appellant in the very same property for arrears of municipal tax claimed from the appellant. The Municipal Council put the property to public auction. Appellant then filed a civil suit for injunction against the Municipal Council from proceeding with the sale on a contention that the tax arrears against the Municipal Council were not really due from her. On an application filed by the appellant in the suit under Order 39 Rule 1 of the Code, an order was passed on 24.2.1984 dismissing the application with the following observations :

"I may observe that the sale of the buildings on the plaintiff might be held by the defendant but it should not be confirmed before 16 days after the sale if before expiry of period the plaintiff furnishes a security before this court to the extent of the amount due against her, then the sale be not confirmed of one month more. If within the period of such one month the plaintiff deposits the entire amount in the court, *the sale will be cancelled. If the said amount is not deposited, then the sale may be confirmed. With these observations dismissed the application.*

(emphasis supplied)

Municipal Council thereupon conducted the public sale on 27.1.1984 in which the present first respondent - Fulchand was the highest bidder. He deposited 1/4th of the bid amount on the same day. However, Appellant deposited an amount of Rs. 50,000 in court on 12.3.1984 which is more than the arrears of tax amount claimed by the Municipal Council. Normally, by operation of the order dated 24.2.1984 of the civil court the sale should have remained cancelled by the aforesaid deposit. But the scope for dispute arose between the appellant and the first respondent on account of what happened subsequent thereto. Appellant filed an application for

A cancellation of sale which was dismissed by the court with the observation that it is open to him to file a fresh suit for that purpose. Though the appellant filed a fresh suit the same was dismissed for default on 7.11.1990.

B First respondent deposited balance of the bid amount i.e. 3/4th of the bid amount, with the Municipal Council on 9.11.1990. The Chief Officer of the Municipal Council thereupon issued a Sale Certificate in favour of first respondent, it was on the strength of the said Sale Certificate that first respondent moved the present application under Order 21 Rule 16 of the Code.

C Execution court took the view that the Sale Certificate issued by the Municipal Council was not in accordance with law and hence first respondent cannot be substituted as transferee of the decree-holder. But a Single Judge of the Bombay High Court (Nagpur Bench) took a contrary view that the dispute between first respondent and the decree-holder is not the kind of dispute which execution court could resolve under Section 47 of the Code. Learned Single Judge observed that the court exercising power under order 21 Rule 16 of the Code has only a limited jurisdiction as the court cannot examine the legality of the documents of title. Learned Judge expressed that the executing court has committed a patent illegality in assuming jurisdiction under Section 47 of the Code and recording the finding that the sale certificate was illegal and the reasoning adopted by the executing court is totally erroneous.

F Section 47 of the Code is couched in a very wide language. The vary object is to avert another suit concerning the decree under execution. Sub-section (1) of Section 47 of the Code states that -

G "(i) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution discharge or satisfaction of the decree, shall be determined on the Court executing the decree and not by a separate suit."

H Perhaps sub-section (i) would not have made it clear that dispute between a party to the suit and another claiming to be his representative could have been resolved in execution proceedings. But that doubt to longer subsists in view of sub-section (3) which reads :

"(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court." A

Even a transferee pendente lite is representative of his transferor within the meaning of sub-section (3) of Section 47. One who claims to be transferee by operation of law would as well be a representative and if his claim to be a representative is disputed either by the opposite party or by the party under whom he claims, such dispute must also be resolved by the executing court itself. The word "representative" used in Section 47 is obviously much wider than the words "illegal representative" as used in Section 50 of the Code. B C

If a person approaches the execution courts claiming that he is the representative of decree-holder's interest in the decree and the decree-holder disputes it, the execution court has to resolve the dispute for proceeding with the execution of the decree. The view of the learned Single Judge of the High Court of Bombay that the court has only a limited jurisdiction is therefore not in consonance with the wide language employed in Section 47 of the Code. D

Order 21 Rule 16 encompasses two types of transferees - one, a transferee by virtue of an instrument of assignments and the other a transferee "by operation of law". In this case, first respondent claims to be transferee of the decree-holder's interest by virtue of the sale conducted by the Municipal Council. But the legal, consequence of the order of the Civil Court dated 24.2.1984 was that, on depositing the tax appears within the time stipulated in the order, the sale would go off. Merely because the suit was subsequently dismissed the legal effect of the court's direction contained in the interlocutory order dated 24.2.1984 would not become a nullity, whatever happened during the pendency of the suit and what all actions taken pursuant to any orders passed by the court during the interregnum would remain a reality unless the court itself had disturbed or modified them. E F G

Would first respondent have got the rights or the appellant by bidding in a sale which was conditioned by the court through the order dated 24.2.1984. The sale should have gone off the very day if the plaintiff in that suit had deposited the amount as per directions of the court. Neither the Chief Officer nor even the Municipal Council had the authority H

A to bypass the order of the civil part by confirming the sale on a later day without even obtaining permission from the court.

That apart, here the sale was conducted by the Municipal Council on 27.2.1984 as per "the Maharashtra Municipalities (Sale of Distressed or Attached Movable and Immovable Property) Rules 1967" framed under the Maharashtra Municipalities Act, 1965. Rules 8(2) of the said Rules says that if the sale pertains to immovable property the person who is declared to be the purchaser shall deposit 25 per cent of sale price, immediately after his bid is accepted, to the officer conducting the sale. Regarding payment of the balance sale amount the Rule stipulates that the purchaser shall pay the balance, within 15 days from the date of sale of the property, to the office of the Council. If the last day be a Sunday or a public holiday, then payment shall be made on the first working day immediately after such day.

D Sub-rule (3) provides the consequence of failure to pay the balance amount within the aforesaid period of 15 days, his deposit shall be forfeited to the Council and the property shall be re-sold at his risk. The purchaser shall forfeit claims to the said prices realised on resale and if such results in any loss to the Council, he shall be liable for such loss." The only power which the statute has conferred on the Chief Officer regarding confirmation of the sale has been stated in Rule 12((i) quoted below :

F 13. The Chief Officer to confirm the same.- It no objection is raised within twenty-one days from the date on which the sale of immovable property is held, or even when any objections are so raised and the Chief Officer is satisfied that there is no valid ground to set aside the sale *and if full payment is made as required by these rules*, the Chief Officer shall confirm the sale by granting a certificate as required by sub-section (2) of Section 156 in Form "C".

(Emphasis Supplied)

G A reading of Rule 8(2) in association with sub-rule (3) and Rule 13 would unmistakably show that the requirement to pay the balance 75 per cent within 15 days is mandatory. The consequence of non-payment of the balance amount within the fixed period must peremptorily visit the purchaser. Neither the Chief Officer nor even the Municipal Council has H power to relax or even concerns the delay and accept a delayed payment,

if any officer accepted the money after the period fixed under sub-rule (2) the action of the Officer has no support of law and no legal effect would flow therefrom. The sale consequently becomes void.

Rules relating to court a sale provided in Order 21 Rules 84 & 85 are analogous. They require the purchaser to make deposit of 1/4th of the purchase money immediately after sale and the balance shall be deposited within 15 days. This court held in *Manilal Mohanlal Shah & Ors. v. Sardar Sayed Ahmed Sayed Mohammed & Another*, [1966] 1 SCR 108, that non compliance with Rules 84 & 85 of Order 21 would render the sale void in the eye of law. The contention in the said case, that non compliance with the aforesaid rule only render the sale irregular, was repelled by this Court. The same principle would apply to the sale regulations contained in the above quoted Maharashtra Rules.

Here the sale was conducted on 27.2.1984. The bidder who made his initial deposit of Rs. 25,000 did not pay the balance within the period of 15 days i.e. 13.3.1984. Instead the payment was made only on 9.11.1990 which was 6 years 6 months and 12 days after the sale. The excess advanced by the first respondent was that the amount could not be paid on account of pendency of the civil suit filed by the appellant. On the other hand appellant contends that first respondent did not make the payment as he too was pretty sure that the sale of 27.2.1984 stood cancelled by the operation of the conditions imposed by the courts, whatever is the excess the fact remains that first respondent did not pay the balance sale amount within 15 days of sale. The sale of 27.2.1984 would, therefore, stand annulled *ipso jure* without anything more.

Learned counsel for the first respondent relied on two decision of this Court to support his contention that stranger auction purchaser must be protected against the attempts of judgment-debtor or decree-holder to epp him out even if there were latches on the part of those persons in conducting the sale. See : *Janak Raj v. Gurdial Singh and Another*, [1967] 2 SCR 77 and *Sardar Govindrao Mahadid & Another v. Devi Sahai & Others*, [1982] 2 SCR 186. Neither of these two decisions has any usefulness in this case, it has been observed in *Janak Raj's* case (supra) that if the sale had been validly held and if no application to set aside the sale was made or if the application was made and the same was dismissed, the court has no choice but to confirm the sale. The difference here is that the sale was not

A validly made at all as the failure on the part of the purchaser in depositing the balance sale price within the time limits has rendered the sale a *non-est*.

B The conclusion is that first respondent did not legally acquire the interest of the decree-holder in the property. He is, therefore, not a transferee by operation of law as envisaged under Order 21 Rule 16 of the Code. His application for substitution is hence liable to be dismissed.

C In the result, we allow this appeal and set aside the impugned order of the learned Single Judge of the High Court of Bombay (Nagpur Bench) and also dismiss the application filed by the first respondent for substitution under Order 21 Rule 16 of the Code.

H.K.

Appeal allowed.