

DR. BHARGAVA AND CO. AND ANR.

v.

SH. SHYAM SUNDER SETH BY L.RS.

JULY 12, 1994

[KULDIP SINGH AND K. RAMASWAMY, JJ.]

Displaced Persons Compensation and Rehabilitation Rules, 1955 : Rule 90 Sub-Rule(15). Auction Sale—Purchase of evacuee property—Title to auction purchaser—When passes—Suit for recovery of immovable property purchased in auction sale—Period of Limitation—Reckoning of.

The respondent's predecessor-in-interest purchased an evacuee property on November 20, 1962 in an auction sale. As he failed to pay the full auction price the sale was cancelled. He filed a writ petition challenging the cancellation in the High Court which quashed the cancellation order. Subsequent to the High Court's judgment he paid the remaining sale price in 1980 and consequently a sale certificate was issued to him on March 31, 1981 confirming the title to the suit property with effect from January 16, 1964. On February 1, 1984 the Respondents' predecessor-in-interest filed a suit for possession of the said property which was contested by the defendants-appellants on the grounds that (i) they had become the owners of the property by adverse possession; and (ii) the suit was barred by limitation. Rejecting both the contentions, the Trial Court decreed the suit. On appeal the High Court upheld the decision of the Trial Court.

In appeal to this Court it was contended on behalf of the appellants that a suit for possession of immovable property can be instituted under Article 65 of the Limitation Act within 12 years from the point when the possession of the defendant became adverse to the plaintiffs and since the appellant's possession became adverse to the respondents on January 16, 1964, from which date the title in the property has been perfected in favour of the respondents, the suit filed in the year 1984 was barred by limitation.

Dismissing the appeal, this Court

HELD : 1. There is no ground to interfere with the conclusions reached by the trial court as upheld by the Division Bench of the High Court. [451-F]

A 2. It is obvious from sub-rule (15) of Rule 90 of the Displaced Persons Compensation and Rehabilitation Rules, 1955 that the title in the property cannot pass to the auction purchaser unless the purchase price has been realised in full. Till the time the full price of the evacuee property is realised from the highest bidder, the question of transferring the property to him or his perfecting the title in the said property does not arise. Therefore, the auction purchaser cannot claim title to the property till the time the full price in respect of the said property is paid which is a condition precedent and sale certificate is issued. [449-C, 451-E]

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C 3. In the present case the full price of the property in dispute was paid in the year 1980 and sale certificate was issued thereafter. As such, the title passed on to the respondent in the said year. Therefore, the suit filed in the year 1984 was clearly within limitation. [451-E]

D *M/s Bombay Salt & Chemical Industries v. L.J. Johnson & Ors.*, AIR (1958) SC 289, referred to.

Bishan Paul v. Mothu Ram, AIR (1965) SC 1994, explained and held inapplicable.

Jaimal Singh v. Gini Devi, 66 Pun.L.R.99 : AIR (1964) Punj. 99, cited.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 910 of 1988.

F From the Judgment and Order dated 21.10.87 of the Delhi High Court in R.F.A. No. 364 of 1985.

Shiv Dayal Srivastava, S. Bagga, Seeraj Bagga and Ms. S. Bagga for the Appellants.

A.P. Mohanty for the Respondents.

G The Judgment of the Court was delivered by

H **KULDIP SINGH, J.** This appeal is sequel to a suit for possession instituted by Shyam Sunder Seth predecessor-in-interest of the respondents in the appeal herein. The suit was decreed by the trial court. Appeal against the judgment and decree of the trial court was dismissed by a

Division Bench of the Delhi High Court. This appeal by way of special leave is against the judgment of the High Court. A

The property in dispute was an evacuee property. Late Shyam Sunder Seth purchased the property in an auction - sale held on November 20, 1962. He failed to pay the full auction price in accordance with the terms of the sale and as such the Deputy Chief Settlement Commissioner cancelled the sale by his order dated May 27, 1977. Shyam Sunder Seth challenged the order of cancellation by way of a writ petition before the Delhi High Court. A learned single Judge of the High Court allowed the writ petition by his judgment dated December 6, 1979 and directed as under :- B C

"The petitioner, as is apparent from the record has made payments of more than Rs. 56,000. He is ready and willing to pay the remainder in cash. For the reasons stated above, the orders dated 22.7.75, 27.5.77 and 4.11.77 passed by the Settlement Commissioner, Chief Settlement Commissioner and the Central Government are quashed. However, as the conduct of the petitioner with regard to making payments has been very far from exemplary, he is not entitled to costs." D

Thereafter, Shyam Sunder Seth paid the remaining sale-price in respect of the suit property to the competent authority. The said payment was made in the year 1980. Thereafter, a sale certificate was issued to Shyam Sunder Seth on March 31, 1981. The sale certificate confirmed the title of Shyam Sunder Seth to the suit property with effect from January 16, 1964. The present suit for possession was filed by Shyam Sunder Seth on February 1, 1984. The suit was contested, *inter alia*, on the ground that the defendants-appellants were in actual physical possession of the property continuously for more than 12 years and, as such, they had become the owners of the property by adverse possession. It was also contended that the suit was barred by limitation. The trial court rejected all the contentions raised by the defendants-appellants and decreed the suit. Before the High Court, the appellants reiterated the contentions raised before the trial court but primarily concentrated on the points that the appellants had perfected their title to the property by adverse possession and that the suit was barred by limitation. The High Court upheld the findings of the trial court on both the issues. The High Court rejected the first contention on E F G H

A the following reasoning:—

"These documents show that the appellants were not the trespassers but the appellants came into possession of the suit property as a licensee or sub-tenants through the lawful occupants under the Custodian. Thus, the possession of the appellants was permissive. It is settled law that the appellants whose possession was permissive cannot claim title on the basis of adverse possession unless they show specific overt act and assertion on their part that they disclaimed the title of the true owner. They must allege and prove that as to when and under what circumstances, their possession became adverse. This requires a definite overt act and assertion on the part of the appellants. This has neither been pleaded nor proved by the appellants. We are of the view that the appellants have not made out a case of adverse possession.

D We find that there is nothing on record to show any hostility on the part of the appellants against the title of the true owner. Accordingly, we hold that the possession of the appellants in respect of the property in suit was not adverse till the sale certificate Ext. PW-1/1 dated March 31, 1981 was issued in favour of the respondent."

E We see no ground to interfere with the above quoted findings of the High Court and we uphold the same.

F Mr. Shiv Dayal, learned senior advocate appearing for the appellants, vehemently contended before us that the title in the property having been passed to the respondents with effect from January 16, 1964, the suit filed on February 1, 1984 was hopelessly time barred. According to him a suit for possession of immovable property can be instituted under Article 65 of the Limitation Act within 12 years from the point when the possession of the defendant became adverse to the plaintiffs. The precise argument is that the possession of the appellant became adverse to the respondents on January 16, 1964 from which date the title in the property has been perfected in favour of the respondents and as such the suit filed in the year 1984 was barred by limitation. We do not agree with the learned counsel. Sub-rule (15) of Rule 90 of the Displaced Persons Compensation and Rehabilitation Rules, 1955 (the Rules) to the extent it is relevant is reproduced hereunder:—

"(15) When the purchase price has been realised in full from the auction purchaser, the managing officer shall issue to him a sale certificate in the form specified in Appendix XXII or XXIII, as the case may be. A certified copy of the sale certificate shall be sent by him to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property to which the certificate relates is situated....."

It is obvious from the rule reproduced above that the title in the property cannot pass to the auction purchaser unless the purchase price has been realised in full. Till the time the full price of the evacuee property sold at auction is realised from the highest bidder, the question of transferring the property to him or his perfecting the title in the said property does not arise. This Court in *M/s. Bombay Salt & Chemical Industries v. L.J. Johnson & Ors.*, AIR (1958) SC 289, dealt rule 90 and other relevant rules and held as under:-

It is clear from the rules and the conditions of sale set out above that the declaration that a person was the highest bidder at the auction does not amount to a complete sale and transfer of the property to him. The fact that the bid has to be approved by the Settlement Commissioner shows that till such approval which the Commissioner is not bound to give, the auction purchaser has no right at all. It would further appear that even the approval of the bid by the Settlement Commissioner does not amount to a transfer of property for the purchaser has yet to pay the balance of the purchase money and the rules provide that if he fails to do that he shall not have any claim to the property. The correct position is that on the approval of the bid by the Settlement Commissioner, a binding contract for the sale of the property to the auction-purchaser comes into existence. Then the provision as to the sale certificate would indicate that only upon the issue of it a transfer of the property takes place. Condition of sale No.7 in this case, furthermore, expressly stipulated that upon the payment of the purchase price in full the ownership would be transferred and a sale certificate issued. It is for the appellants to show that the property had been transferred. They have not stated that the sale certificate was issued, nor that the balance of the purchase money had been paid."

A This Court in *Bishan Paul v. Mothu Ram*, AIR (1965)SC 1994, on the interpretation of rules 90 and 92 of the rules observed as under:-

B "The passing of title thus presupposes the payment of price in full and the question is at what stage this takes place. Obviously, there are several distinct stages in the sale of property. These are: (a) the fall of the hammer and the declaration of the highest bid; (b) the approval of the highest bid by the Settlement Commissioner or officer appointed by him; (c) payment of the full price after approval of the highest bid; (d) grant of certificate; and (e) registration of the certificate.

C The first and the last in this series, namely, the fall of the hammer and the registration of the certificate are not critical dates for this purpose and they have not been suggested as the starting point of title. It is also clear that till payment of full price title is in abeyance for the rules themselves say that if the price is not paid the auction purchaser has no claim to the property."

D Applying the above quoted interpretation of the facts of that case this Court further observed as under:-

E "It seems to us that the matter must be considered on general principles. In this case the highest bid was of the respondent and he paid the full price before the sale in his favour was confirmed. The sale certificate, though issued later, mentioned the date of the confirmation of the sale in his favour. The tenant was asked to attorn to the purchaser from the date of confirmation of sale and thus possession was also delivered on that day. Title, therefore, was not in abeyance till the certificate was issued but passed on the confirmation sale. The intention behind the rules appears to be that title shall pass when the full price is realised and this is now clear from the new form of the certificate reproduced in *Jaimal's* case 66 Pun. L.R. 99: (AIR 1964 Punj. 99). No doubt till the price is paid in full there is no claim to the property, but it seems somewhat strange that a person who has paid the price in full and in whose favour the sale is also confirmed and who is placed in possession should only acquire title to the property from the date on which a certificate is issued to him. There may conceivably be a great deal of time spent before the certificate is

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granted. In this case the tenant was told to attorn from October 3, 1956 because nothing remained to be done except the ministerial acts of issuing the certificate and getting it registered. Therefore, so far as title was concerned, it must be deemed to have passed and the certificate must relate back to the date when the sale became absolute."

Mr. Shiv Dayal relying upon *Bishan Paul's* case (supra) vehemently contended that so far as the title, in this case, was concerned it must be deemed to have passed with effect from January 16, 1964 - the date mentioned in the sale certificate - and the certificate must relate back to the said date. There is obvious fallacy in the argument. In *Bishan Paul's* case (supra) the sale had become absolute much earlier to the date of issue of the sale certificate as the full price had been paid by the highest bidder before the confirmation of the sale. In the present case, it is not disputed that the full price of the suit property was paid in the year 1980. It is not necessary for us to go into the question as to whether the title in the property passes to the auction purchaser from the date of the sale certificate or from the date mentioned in the certificate. It all depends on the facts of each case. We are, however, firmly of the view that the auction purchaser cannot claim title to the property till the time the full price in respect of the said property is paid which is a condition precedent and sale certificate is issued. It is not disputed that in the present case the full price of the property in dispute was paid in the year 1980 and sale certificate was issued thereafter. As such, the title passed on to the respondent in the said year. The suit was filed in the year 1984 and, as such, was clearly within limitation.

"For the reasons recorded above, we see no ground to interfere with the conclusions reached by the trial court as upheld by the Division Bench of the High Court. The appeal is, therefore, dismissed with costs. We quantify the costs as Rs.20,000.

T.N.A.

Appeal dismissed.