

CASE NO.:
Appeal (civil) 2950 of 2007

PETITIONER:
Punjab National Bank

RESPONDENT:
Sahujain Charitable Society and Ors

DATE OF JUDGMENT: 11/07/2007

BENCH:
C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2950 OF 2007
(Arising out of SLP(C) No.18483 of 2005)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. This appeal arises out of a suit for partition. The appellant before us is the plaintiff in the suit.

3. The suit property consisted of two buildings and the land on which it stood. The plaintiff held 66.94% of the shares therein. In terms of fraction, this came to 83 out of 124 shares. Defendant No. 1 held 8 out of 124. Defendants 2 to 7 each held 4 out of 124. Defendant No. 8 held 8 out of 124 and defendant No. 9 held 1 out of 124 shares. The total extent was said to be 64333 sq. feet. Out of this, the plaintiff - bank was in possession of an extent of 14930 sq. feet. On 22.6.1977, a preliminary decree for partition was passed. It was declared that the plaintiff was entitled to 83 out of 124 shares and that the same be allotted to the plaintiff. It also directed that other sharers be allotted their respective shares. The preliminary decree became final. It is necessary only to notice that respondent No. 1 before us was not a party to the preliminary decree and no share was allotted to it. But, it appears that subsequently, respondent No. 1 purchased the shares of defendants 1 to 4 and 9 and respondent No. 5 acquired 8 out of 124 shares taking an assignment from defendant No. 8. Thus, both respondents 1 and 5 before us who were impleaded in the final decree proceedings, were assignees from sharers, subsequent to the preliminary decree.

4. A commission was issued for actual effecting of division pursuant to the preliminary decree. The Commissioner assisted by a surveyor for valuation of the property, found that a partition by metes and bounds could not conveniently be made. The buildings were valued at Rs. 25,00,000/- At this stage, defendant No. 8 owning 8 out of 124 shares, moved an application for sale of the property. It is somewhat surprising that the plaintiff - bank which held upward of a moiety of shares, did not seek to enforce its rights to buy the rights of the other sharers in terms of Section 3 of the Partition Act.

The court, on that application by defendant No. 8, took note of the report of the Commissioner that it was not convenient to divide the properties by metes and bounds and directed by order dated 21.7.1987, that the property be sold in public auction. The sharers were given liberty to participate in the sale and to set off the purchase price to the extent of their shares. It appears that this order was not implemented. It is difficult to understand why the matter did not surface before the court for about 12 years and why the court did not ensure that its order was complied with or if the parties were at default to deal with that default in an appropriate manner. What is seen is that respondent No. 5, the assignee from one of the sharers, moved a fresh application for sale of the property. On 1.3.2000, the court noticed the earlier order dated 21.7.1987 and directed the implementation of that order but ordered a fresh valuation, in view of the lapse of time. The joint receivers were discharged. It is unfortunate that the joint receivers were allowed to continue for more than 12 years in such a simple suit for partition which was only awaiting the passing of a final decree after sale of the properties as per order dated 21.7.1987 incurring unnecessary expenditure for the estate. As we see it, the court was called upon to play a more active role in dispensation of justice and should have ensured that this suit for partition filed as early as on 12.5.1975 stood disposed of finally within a reasonable time after the preliminary decree, especially when the issue involved was such a simple one. We are constrained to make these observations because of our unhappiness at the tardiness of the process of court, which is one of the aspects that is held out as a discrediting one for the judiciary. We do hope that the court concerned would ensure that such matters periodically surface before it and they are dealt with in an appropriate manner, but with a little more expedition.

5. The valuer submitted a fresh valuation and suggested that the value would be Rs. 1,06,62,000/-. At this stage, wisdom seems to have dawned on the plaintiff, who purported to make an application under Section 3 of the Partition Act seeking to buy the shares of the other sharers. This petition was rightly dismissed as the prayer was barred by the order for sale already made. An application for review of that order was also dismissed.

6. Now, the plaintiff purported to file an appeal against the order dated 1.3.2000 by which the court directed the sale of the property pursuant to the earlier direction dated 21.7.1987 but on the basis of a fresh valuation. In that appeal, a Division Bench noticed that the parties had agreed to settle the matter if a proper valuation was made and directed yet another valuation to be made. This time, the valuer valued the property at Rs. 1,04,96,000/-, less by about Rs. 2 lakhs from the previous valuation as per the report dated 12.9.2000. The Division Bench thereafter disposed of the appeal by directing that the valuation submitted be accepted and the other sharers execute conveyances in favour of the plaintiff Bank on the plaintiff depositing the amount less its share and making it liable for meeting all Municipal dues. The price payable was later corrected to show the purchase price as Rs. 1,06,42,000/-, higher of the two subsequent valuations. Thus, the property was directed to be taken by the plaintiff for the price of Rs.1,06,42,000/-. The

amount was deposited. The sale was affirmed on 24.6.2005 and the Commission for partition directed to handover possession of the vacant portion on the third floor to the plaintiff, within a week.

7. At this stage, an application was made to recall the earlier orders and to stay the implementation of the orders dated 4.5.2005 and 24.6.2005. On 6.7.2005, respondent No.1 herein, the assignee subsequent to the preliminary decree, offered to purchase the property for Rs.1,25,00,000/- as against Rs.1,06,42,000/- for which it was sold to the plaintiff. The court directed the respondent to deposit Rs.1,25,00,000/- without prejudice. The amount was deposited. On 26.7.2005, respondent No.1 herein offered to purchase the property for Rs.2,00,00,000/-. Counsel for the plaintiff sought time to get instructions from his client. Respondent No.3 who claimed that it had no notice of the earlier order submitted that it could not offer anything more than Rs.1,25,00,000/-. The plaintiff was not willing to make any higher offer but raised the objection that the sale in its favour had been confirmed, it has deposited the price and nothing more remained to be done. The Division Bench of the High Court proceeded to set at naught everything that had happened earlier including its own confirmation of the sale in favour of the plaintiff and asserting that it could not keep its eyes shut to the enhanced price that may be fetched for the property, proceeded to go back upon its earlier orders and directed the property to be sold to respondent No. 1 at Rs. 2 crores and granted time to respondent No. 1 to make the deposit. It is this order of the Division Bench that is challenged by the plaintiff.

8. At the time of moving the Petition for Special Leave to Appeal, in addition to taking the stand that the earlier order confirming the sale in favour of the plaintiff had become final, the plaintiff \026 appellant also offered that it was willing to deposit a sum of Rs. 2,01,00,000/- in spite of the fact that the sale in its favour had been confirmed for a price of Rs. 1,06,42,000/-. This Court while issuing notice on the Petition for Special Leave to Appeal passed the following order on 5.9.2005:

"The learned counsel for the petitioner submits that there was a concluded sale in favour of the petitioner and the order of confirmation was made in the presence of all the parties, and it could not have been undone merely because there was a revised higher offer. The learned counsel further submits that the petitioner is prepared to revise its offer to Rs. 2 crores and 1 lakh, i.e., Rs. 1 lakh higher than the offer of the respondent No. 1 and this offer deserves to be accepted inasmuch as the petitioner is in occupation of the 66% of the property and owns 83/124 moiety of shares in the property, has a confirmed sale in its favour and the remaining 33% share is mainly in occupation of the tenants and partly in occupation of the other co-sharers. The learned counsel further submits that not only law but even the equities substantially lie in favour of the petitioner and the petitioner is revising the offer only to

dislodge the offer made by the respondent No. 1 which in his submission was not available to be accepted. We record this statement and issue notice to the respondents returnable within two weeks. Dasti service in addition is permitted.

Learned counsel for the respondent No.1 present on caveat takes notice.

Liberty to file additional documents.

Stay in the meanwhile."

9. Learned counsel for the plaintiff submitted that the confirmation of sale in favour of the plaintiff on 24.6.2005 became final no one having challenged it in the mode known to law either before this Court or before the same court by way of review. It was therefore submitted that the subsequent order nullifying that sale and directing the sale in favour of respondent No. 1 herein passed by the High Court was one without jurisdiction and was even otherwise a perverse one. Learned counsel further submitted that sharers or assignees from sharers could not go on making fresh offers and encouraging of such fresh offers without reference to prior orders passed by the court would make it a never ending process and in that view it was just and proper for this Court to set aside the order of the High Court now passed and to restore the order dated 24.6.2005. Learned counsel also pointed out that the plaintiff after all, was entitled to 83 out of 124 shares and going by the spirit of Section 3 of the Partition Act, was entitled to purchase the shares of the others though the plaintiff had not taken proper steps in that behalf at the appropriate time. But learned counsel submitted that the spirit of Section 3 of the Partition Act pervades and that would also justify the confirmation of the sale in favour of the plaintiff. Learned counsel also pointed out that there will be no injustice caused to any of the sharers in view of the fact that though the plaintiff was not legally liable to do so, has offered an enhanced price of Rs. 2,01,00,000/- and in the circumstances this Court should accept that enhanced offer and confirm the sale in favour of the plaintiff. It was also emphasised that the plaintiff was in actual possession of a significant portion of the premises and equity was in favour of the sale being confirmed in favour of such an occupant who held the majority of shares. He also submitted that it was time to put an end to this litigation involving a simple issue, filed in the year 1975.

10. On behalf of the respondents, especially respondents 1 and 3, it is contended that the earlier orders would justify the present order for sale in favour of the respondent No.1 and since what was important was the best advantage that may be derived by the various sharers, there was no reason for this Court to interfere with the order of the Division Bench impugned in this appeal. Learned counsel submitted that in the light of the stand adopted by the plaintiff in the High Court it was too late in the day for the plaintiff to raise an argument based on the alleged finality of the confirmation of the earlier sale in its favour. The plaintiff had taken time pursuant to the order of the court dated 26.7.2005 only to tell the High Court whether it was willing to make a higher offer

and by virtue of its conduct, the plaintiff had waived the rights that allegedly accrued in its favour by the confirmation of the sale on 24.6.2005. It was also submitted that in any event, it could be considered that it was a review of the earlier order and there was no reason why in the interests of justice, this Court should interfere. Learned counsel for respondent No. 3 added that it had not been served with notice prior to the earlier order and it was relevant to consider that all the sharers would have an advantage if the properties were sold for Rs.2 crores as against the price of Rs. 1,06,42,000/-. We may also notice that at the conclusion of the hearing, learned counsel for respondent No. 1 offered to purchase the property at Rs. 3 crores leaving out the portion held by the plaintiff \026 Bank in the building to be treated as owned by the plaintiff \026 Bank itself. Learned counsel for the plaintiff \026 Bank after taking instructions has filed an affidavit submitting that the Bank was not in a position to raise its offer above Rs.2,01,00,000/- it had made when the above Petition for Special Leave to Appeal was moved before this Court.

11. Nothing turns on the argument of counsel for respondent No.3 of no proper notice being given to it before the passing of the order dated 24.6.2005, since respondent No.3 was not willing and is not willing to raise any offer to purchase the property for above Rs.1,25,00,000/-. Of course, the claim of lack of notice is seriously repudiated on behalf of the plaintiff. But in the view we are taking on this question, we do not think it necessary to pursue this aspect of notice. Suffice it to say, we see no reason to accept the contentions of respondent No.3 based on this aspect or to re-open the earlier orders based on the plea of want of notice.

12. To recapitulate, there was an order for sale of the property in auction as early as on 21.7.1987 giving permission to the sharers to bid and set off. There was a subsequent order on 1.3.2000 directing a sale based on a fresh valuation. Instead of ensuring that the sale took place, the matter was allowed to linger until the plaintiff sought assignment of the rights of the others by belatedly invoking Section 3 of the Partition Act, which request was rightly declined. It was then that the plaintiff brought up the matter before a Division Bench by way of appeal, obviously belated, challenging the order for sale on fresh valuation and in that appeal, it is seen that the Division Bench ordered yet another valuation on agreement of parties and recorded by it and then proceeded to pass an order confirming the sale in favour of the plaintiff at the value suggested by the new valuer, of course, after correcting the valuation to the higher figure shown by the second valuer. As we see it, the matter should have stopped here. But then the Division Bench purported to entertain an application from an assignee subsequent to the preliminary decree, seeking a fresh sale of the property. It is in that proceeding that the Division Bench has passed the order impugned in the present appeal. We have already indicated that what should have been done was to ensure that the order passed in the year 1987 and reiterated in the year 1999 was strictly complied with and the matter brought to a close in accordance with law. But by adopting the course it did, the matter was allowed to drag on. We are of the view that there is no equity in favour of either of the two subsequent assignees while

considering the belated request of one of them for sale of the property afresh. It is true that pursuant to the order for sale by public auction, the property should have been sold. But, the Division Bench chose the method of directing a fresh valuation to be made and then accepting the offer of the plaintiff to purchase and then to pass an order confirming the sale in favour of the plaintiff at the enhanced valuation. This was obviously done on consent as is recorded in that order. It is in that context that respondent No.3 came up with a plea of no notice, which we have discountenanced, in view of its failure to put up any tenable higher offer. At that stage, it does not appear that any of the other sharers including respondent No.1 herein, raised any objection or made any higher offer. It is also difficult to accept its contention of want of notice on the materials available. After all, the parties were being represented by counsel before the court and any responsible counsel taking care of the interests of his client, would have certainly informed the client about the posting of the case and the passing of the order by the court. The belated offer of respondent No.1 to purchase the property for a higher price, does not appear to be bona fide especially since respondent No.1 is an assignee from some of the sharers after the preliminary decree and apparently is not in possession of any significant portion of the property. We are satisfied that there is no equity in favour of the respondent No. 1 and the High Court was in error in relying on its conscience being troubled for setting at naught its own earlier order confirming the sale in favour of the plaintiff, passed with the consent of parties as recorded by it. We are of the view that the impugned order is not justified.

13. For that matter, our conscience also need not be troubled by what we are doing, because the plaintiff has offered that it will take the property, for an enhanced price of Rs. 2,01,00,000/-, more than what has now been accepted by the Division Bench of the High Court. We are therefore of the view that considering the larger share held by the plaintiff and considering the area held in its possession, it would be just and proper to accept the offer of the plaintiff and restore the order dt.24.6.2005 to sell the suit property to the plaintiff earlier made by the Division Bench of the High Court.

14. Learned Senior Counsel for the respondent No. 1 spent considerable time on arguing the question of finality of earlier orders and their binding nature and so on. Those arguments, in our view, are double edged, they may help respondent No. 1 and they may also go against respondent No. 1. But, it is not necessary for us to discuss those decisions in detail on the facts and in the circumstances of the case. We are satisfied that taking note of the original holders of shares, the contents of the preliminary decree, the conduct of the sharers during the protracted proceedings in the High Court, it would be just and proper to confirm the sale in favour of the plaintiff Bank for a price of Rs. 2,01,00,000/- subject to the plaintiff being in a position to set off the share of purchase price due to its share and on deposit of the balance purchase price, or making up the balance purchase price due to the other sharers.

15. After all, our jurisdiction under Article 142 of the Constitution of India to do complete justice to the

parties, in any event would enable us to make such a direction on the facts and in the circumstances of the case. We think that justice in the present litigation would be done by permitting the plaintiff, the larger shareholder in possession of a significant portion of the property, to purchase the rights of the other sharers rather than permitting an assignee from some of the sharers subsequent to the preliminary decree to purchase the property merely because it is in a position to offer a higher price and has come forward with a belated higher offer.

16. In the result, the appeal is allowed. The decision of the High Court is set aside and the plaintiff \026 Bank is declared as the purchaser of the property for Rs. 2,01,00,000/-. The plaintiff \026 Bank is permitted to set off its share of the value and is directed to deposit the value of the other sharers on the basis of the purchase price now fixed by us. Whatever the amounts the plaintiff \026 Bank had deposited already in the High Court, will be given credit to and the plaintiff \026 Bank will be liable to deposit only the balance amount, if any, remaining towards the shares of the purchase price of the other sharers. The amount would be made up in four months. The direction to the other sharers to execute sale deeds in favour of the plaintiff contained in the order dated 24.6.2005 will stand affirmed. A final decree on the above terms will be drawn up by the High Court in accordance with the relevant rules. In the circumstances, the parties are directed to bear their respective costs.