

CASE NO.:
Appeal (civil) 882-883 of 2001

PETITIONER:
ANAND PRASAD AGARWALLA

Vs.

RESPONDENT:
TARKESHWAR PRASAD AND ORS.

DATE OF JUDGMENT: 09/05/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :
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These appeals arise out of interlocutory applications filed in two suits. A suit was filed in T.C.No. 2/1996 in the High Court of Calcutta by United Bank of India against Hanuman Foundries Ltd. for fore closure and sale of hypothecated land. Pursuant to a decree passed by the Court, the Court receiver sold on 29.8.1990 the hypothecated property which was subsequently challenged before this Court and the said sale was set aside and the matter was remanded to the High Court for conduct of the sale in accordance with the law by auction after due publication of the sale to enable all the intended bidders to participate in the sale. It was also made clear that if any party has got any right or remedy, the same has to be worked out elsewhere according to law without widening the scope of the suit and not in this suit. Subject to making of these observations the appeal was allowed by this court.

A suit in O.S. No.311 of 1997 was filed (i) for a declaration that the plaintiffs therein are purchasers of the entire land measuring 21.65 acres; (ii) that they were raiyats in respect of the land and (iii) for permanent injunction restraining Hanuman Foundries Ltd., the appellant and other guarantors and the United bank of India from interfering with their possession. In the meanwhile an application was filed in the proceedings arising out of the decree passed in T.C.No.2 of 1996 for a direction of auction of the property measuring 21.65 acres in terms of the order made by this Court in G.A. No. 3178 of 1997. At this stage an application for temporary injunction was filed in suit No.311 of 1997 and that temporary injunction was granted initially. Thereafter the application filed for bringing the property to auction in proceedings arising out of the decree in T.C.No.2 of 1996 and the application for grant of temporary injunction in the other suits were taken up together by the learned Single Judge of the High Court. The learned Single Judge held that the contesting respondents have no manner of right to the land in question and dismissed the application for interim injunction and

allowed the application directing sale of the mortgaged properties. Aggrieved by that order appeals were filed before the Division Bench.

The properties in question had been mortgaged to Bihar State Finance Corporation and a Suit had been filed under the provision of Section 31 of the State Finance Corporation Act, 1951 for recovery of the amount and bringing the property for sale for recovery of monies lent by it. Pursuant to that sale the contesting respondents claim to have purchased the property in question. It appears the same property had been also mortgaged to United Bank of India and suit in T.C.No.2 of 1996 had been filed.

In the appeals, the Division Bench analysed the matter and is of the view that the property which had been brought to sale pursuant to a decree passed in favour of Bihar State Finance Corporation appears prima facie to have been purchased by the respondents. A sale certificate had been issued in this regard which was subsequently amended to include within its fold the entire disputed land and record of rights indicating the possession of the land with the respondents. The Appellate Court felt that serious questions had been raised for consideration in the course of the suit and therefore there was a prima facie case for consideration. Particularly the sale certificate that had been issued indicated that the appellant had purchased the properties in the auction sale. A presumption arose in favour of that possession pursuant to the records of rights. On that basis the Division Bench held that the temporary injunction should be granted subject to certain conditions. Hence these appeals.

In challenging this order, Shri Bhaskar P. Gupta, the learned senior Advocate for the appellant and Shri Dhruv Mehta and Smt. Shoba, the learned counsel for the United Bank of India, submitted that the learned Single Judge had examined the various aspects of the case under which the sale certificate had been issued in favour of the contesting respondents. The learned Single Judge was, prima facie, of the view that it was only a lease hold property in respect of which the sale had been held and it had expired; that the sale certificate stood amended after a long lapse of time and whether such amendment relates back to date of original certificate is suspect; that these contesting respondents acquired lease hold rights only in respect of land measuring 5.36 acres. The claim of contesting respondents as raiyats was also not justified as the said land was in possession of the Court on the date of vesting in West Bengal Government.

It may not be appropriate for any Court to hold mini trial at the stage of grant of temporary injunction. As noticed by the Division Bench that there are two documents which indicated that there was prima facie case to be investigated. Unless the sale certificate is set aside or declared to be a nullity, the same has legal validity and force. It cannot be said that no right could be derived from such certificate. Secondly, when the contesting respondents were in possession as evidenced by the record of rights, it can not be said that such possession is by a trespasser. The claim of the contesting respondents is in their own right. The decisions referred to by the learned counsel for the appellant are in the context of there being no dispute as to ownership of the land and the possession

was admittedly with a stranger and hence temporary injunction is not permissible. Therefore, we are of the view that the Division Bench has very correctly appreciated the matter and come to the conclusion in favour of the respondents. In these circumstances, we dismiss these appeals. We may notice that the time bound directions issued by the Division Bench will have to be adhered to strictly by the parties concerned and the suits should be disposed of at an early date but not later than six months from the date of the communication of this order.

The appeals are accordingly dismissed. There shall be no order as to costs.

JUDIS