

Bali Ram Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-26-1999

Reported in : 1999(3)AWC2533

Judge : A.K. Yog, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 65, 73(2) and (3) - Order 21, Rules 52, 52(1), 54(2), 58, 58(1), 59, 66, 67, 89, 90, 90(1) and (3) and 92; Uttar Pradesh Zamindari Abolition Act - Sections 333; Ministerial Act

Appeal No. : C.M.W.P. No. 9717 of 1983

Appellant : Bali Ram

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Anil Sharma and ;S.C. Budhwar, Adv.

Judgement :

A.K. Yog, J.

1. Bali Ram (Petitioner) has challenged orders dated November 12, 1982 and July 20, 1983 (Annexures-5 and 6 to the writ petition) passed by the Sub-Divisional Officer, Najibabad, District Bijnor and the Additional Commissioner,

(Administration), Moradabad Division, Moradabad (Respondent Nos. 2 and 3) respectively. Consequently, the objection of the petitioner for releasing certain property attached vide order dated 6.2.82 passed by Sub-Divisional Officer, Nazibabad has been rejected.

2. Briefly stated, one Amrit Singh filed Suit No. 187 of 1976 in the Court of Civil Judge, Bijnor, against Qadir Hussain for recovery of certain amount due under a promissory note. This suit was decreed on March 9, 1977. In Execution Case No. 35 of 1981, executing court got attached 1/3rd share of plot No. 109 (Total Area-5 Bigha 6 Biswas 19 Biswansis) situate in village Daryapur, Tehsil Najibabad, district Bijnor.

3. Amin submitted report of attachment dated January 16, 1981 (Annexure-1 to the writ petition). The executing court, placed the attached property to auction sale. On April 16, 1982, one Bali Ram (the present petitioner) purchased the same. Civil Court confirmed this auction sale on May 25, 1982. Sale certificate was duly issued by the civil Judge vide sale certificate dated July 2, 1982 (Annexure-2 to the writ petition) was issued.

4. It appears that there were certain dues towards sale tax and purchase tax against Qadir Hussain and some others who carried on business of manufacturing Khandsari in the name style of 'Abdul Qadir Hussain.' In view of these dues, concerned authorities appear to have taken steps for realising the same. Consequently, Sub-Divisional Officer, Nazibabad (respondent No. 2) issued an order dated 6.2.82 and attached the property belonging to the said Abdul Qadir Hussain. Copy of attachment order dated 6.2.82 passed by Sub-Divisional Officer has not been brought on record by either of the parties.

5. In pursuance of the aforesaid attachment order dated 6.2.82, property was put to auction by the Revenue Authorities on the date fixed for auction, i.e., March 26, 1982. Petitioner and other persons present participated in the said auction on March 26, 1982 and submitted a written application requesting the authorities to specify and identify the property which was subject-matter of auction. Auction was postponed to June, 1982.

6. Before the adjourned date of auction (namely i.e. 1.6.82), petitioner filed objection dated 31.5.82 (Annexure-4 to the writ petition) and for the first time, he referred to the execution Case No. 35 of 1980 and to the attachment as well as auction sale conducted by the civil court.

7. The petitioner in his said objections (Annexure 4 to the writ petition) contended and prayed that objections be allowed and properly be released from attachment on the ground that he had already purchased the said property in execution proceedings referred to above and that Abdul Qadir, aforesaid, had no right in the said property.

8. The said objection under Order XXI, Rule 58, C.P.C., filed by the petitioner on 31.5.82 (Annexure-4 to the writ petition) has been rejected by Sub-Divisional Officer Najibabad vide impugned order dated November 12. 1982 (Annexure-5 to the writ petition). Feeling aggrieved, Bali Ram (Petitioner) filed Revision No. 13 of 1982-83, under Section 333 U. P. Zamindari Abolition Act and it was dismissed vide impugned order dated July 20, 1983 (Annexure-6 to the writ petition). Respondent Nos. 2 and 3 (S.D.O. and Additional Commissioner, decided against Bali Ram on the ground that front the record according to them, it was established that Bali Ram, who purports to have purchased the property in question in an auction sale conducted by civil court in execution proceedings, was fully aware that Abdul Qadir Hussain (J.D.) was liable to pay Government dues which resulted in the attachment of the property in question and hence the Auction Purchaser (Bali Ram) became liable to discharge the said liability since he had acquired the property belonging to the judgment-debtor. According to these authorities. auction purchaser acquired liability as well along with property purchased in auction. The authorities took the view that since the auction purchaser (Bali Ram) was aware of the Government dues and order of second attachment passed by the Sub-Divisional Officer, Najibabad, it was his duty to Inform the civil court. Since Bali Ram withheld those relevant facts from the executing court, he was not entitled to seek reauction of second attachment order dated 6.2.82 passed by Sub-Divisional Officer, Najibabad.

9. Heard learned counsel for the parties.

10. Before proceeding with the controversy of the present case, it is necessary to peruse provisions of Order XXI, Rules 52 (i), 54 (2), Rule 58, Rule 59, Rule 66, Rule 67, Rule 89, Rule 90 (1), (3) as per Allahabad Amendment and Rule 92, Code of Civil Procedure. Provisions referred to above show that in case a property has been put up for auction sale, any person, who still claims to have a charge, can make a claim by raising said issue against such person who is liable to discharge the same. A reading of the aforesaid provisions goes to show Government is not remediless.

11. In the instant case, there is one conspicuous circumstance. Petitioner, Bali Ram, had filed objection on 31.5.82 (Annexure-4 to the writ petition) Dakhalnama of the said property is dated 20.7.82 (Annexure 3 to the writ petition). Thus, respondent No. 2 had about seven weeks to file claim before the executing court. During these seven weeks, respondent No. 2 ought to have approached the executing court and submitted its claim, under Order XXI, Rule 58 (1). It has not been done and there is no explanation whatsoever for its failure. No explanation has come forth in the present proceedings and no illegality or irregularity has been pointed out in the proceedings relating to the attachment and consequential auction sale.

12. Learned counsel for the respondent has submitted what is mentioned in paras 13, 15 and 16 of the counter-affidavit and both are precisely the same as contained in the impugned order.

13. On behalf of the petitioner, reliance has been placed on the case Union of India v. M/s. Somasundram Mills (P.) Ltd., and another : [1985]152ITR420(SC) .

'.....However, if the State had already effected an attachment of the property which was sold even before its sale, the State would be entitled to recover the sale proceeds from whoever has received the amount from the Court by filing a suit. Section 73(3) read with 73 (2) C.P.C. contemplates such a relief being granted in a suit. The High Court relied on the decision of the Madras High Court in Manickam Chettiar v. Income-Tax Officer, Madurai : [1938]6ITR180(Mad) as supporting its conclusion. We, however, find nothing in the decision which supports the case of the respondent. What was decided in that case was that it was not necessary for

the crown to have obtained a decree before it could apply to the Court for payment out of amounts brought to Court by the sale of property in execution of a simple money decree obtained by some other attaching decree-holder We fail to see how that case can possibly help the respondent. As pointed out by Vivian Bose, J. in *Zumberlal Chhotelal Agarwal v. Sitaram* AIR 1937 Nag 80, the prior attachment fastens itself to the proceeds of sale pursuant to the latter attachment. The prior attachment effected by the State similarly fastens itself to sale proceeds taken away by the decree-holder. The State is, therefore, entitled to recover the amount from the decree-holder who has taken away the amount.'

14, On behalf of the petitioner, reliance has been placed on the case, *Kotak and Co. v. State of U. P.* : [1987]1SCR926 . Relevant extract reads :

'By necessary implication it means that as soon as an order for rateable distribution is made, the amount ordered to be distributed will cease to be the property of the judgment-debtor. We are of the same opinion as that of the High Courts of Madras, Calcutta and Bombay. As soon as the question of rateable distribution between the decree-holders and the State having statutory priority is determined, and the Court passes an order as to how to appropriate the assets of the judgment-debtor, the rights of parties become crystalized. What then remains is to give effect to the determination made by the Court by officials in charge of concerned departments dealing with accounts and cash which is a Ministerial act. The rights of the respective decree-holders or claimants are governed by the order for rateable distribution passed by the Court as a result of the adjudication and determination made by the Court. Nothing further remains to be done by the Court in the judicial sphere thereafter. The order partakes of the character of a judgment and decree passed by the Court. What the officials of the Accounts and Cash department are required to do thereafter is to carry out the command of the Court by implementing or giving effect to the order. The test which can be usefully applied is to pose the question whether the said officials can refuse to implement the order by refusing to make payment once the Court has passed the order. Obviously and undoubtedly they cannot. Therefore it is evident that nothing turns on whether or not actual payment pursuant to the order of the Court is made. And when the Court officials make payment to the decree-holder, they make payment

because the property in the said monies has vested unto them by virtue of the order of distribution passed by the Court. What is being paid by the officials of Accounts and Cash sections will be the decree-holder's money, it having ceased to belong to the judgment-debtor the moment the order for distribution was made, even though actual disbursement was made later. If the State lays its claim after the order for distribution is made by the Court, it will be of no avail as the property would have gone beyond the reach of the State, it having ceased to be the property of the debtor against whom the State had a claim. No question of priority can arise in that situation, the State having missed the bus. In the present case, the amount had ceased to be the property of the judgment-debtor from the point of time that the order for rateable distribution was passed by the executing court. There was no question therefore of the State being entitled to claim priority in respect of the claims lodged by it subsequent to the order for rateable distribution. The High Court was thus in error in reversing the order passed by the executing court.'

15. In the case in *V. S. Thiru Venkita Reddiar v. S. Noorudeen and another* : AIR1978 Ker11 , Court has observed thus :

'The auction-purchaser takes the property free from attachment. The consequence no doubt to an earlier attaching creditor is very serious, but his rights are sufficiently safeguarded in such a situation by entitling him a rateable distribution of the proceeds of the sale. This is the only way left to a money-decree-holder when other like decree-holders proceed against the same property in execution. If this were not so, complications will arise between an earlier attaching creditor. If the sale was under a private alienation with the earlier sale there is nothing left with the transferor to transfer subsequently to another. In the same manner the prior sale in pursuance of an attachment will prevail over a subsequent sale even if the latter sale was in pursuance of an earlier attachment. In other words with the Court sale all attachment subsisting on the property will fall to the ground. I am supported in these conclusions by the decisions of the Calcutta High Court in *Kashy Nath Roy Chowdhry v. Surbanand Shaha*, (1886) ILR 12 Cal 317, of the Madras High Court in *Chamiyappa Tharagan v. Rama Ayyar* ILR 44 Mad 232 : AIR 1921 Mad 30, of the Patna High Court in *Harnandan v. Pran Nath Roy* AIR

1921 Pat 409, and of the Travancore High Court in Civil Revn. Petn. No. 333 of 1115 : 14 Trav LT 767. If this was not so, it would give rise to great hardship and seriously affect Court sales and there may not be any bidders in Court sale. Hence it must be any bidders in Court sale. Hence it must be taken as fairly settled that when a property is sold in execution of a money decree it cannot be sold again at the instance of the decree-holder who had attached it before it was actually sold. The consequence is on the happening of a judicial sale all previous attachment effected upon the property sold fall to the ground. On the facts of this case if the revision petitioner's right is only based on attachment before judgment in O. S. No. 95 of 1953 he has no right over the properties because before he actually sold them in execution of the above decree they had been attached and sold in execution of the decree obtained by the respondent. The fact that the case before confirmation of the sale in O.S. No. 95/53 was confirmed is also irrelevant for Section 65, C.P.C., provided that with the confirmation the vesting of title will relate back to the date of sale (see also AIR 1921 Pat 409).'

16. In view of the decision referred to above, it is crystal clear that the claim of the respondents has no merit. Attachment orders dated 6.2.82 and 12.2.82 passed by respondent Nos. 2 and 5 have lost efficacy and Government dues cannot be realised from the property now in the hands of Ball Ram (Petitioner). Authorities may, if so advised, take action in accordance with law for recovery of Government dues but they cannot be permitted to interfere with petitioner's right to enjoy his property in question.

17. Writ petition is allowed. Impugned orders dated 12.11.82 and 20.7.83. (Annexures-5 and 6 to the writ petition) passed by the respondent Nos. 2 and 3 are set aside. In the facts of the present case, there will be no order as to cost.