Vishali and ors. Vs. Rajendra and ors.

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Court : Madhya Pradesh

Decided On : Nov-28-2001

Reported in : 2002(1)MPHT27

Judge : P.C. Agrawal, J.

Acts : Madhya Pradesh Land Revenue Code, 1959 - Rules 37, 38, 39, 44 and 47; Code of Civil Procedure (CPC), 1908 - Order 21, Rules 84, 85, 86 and 90; Limitation Act, 1963 - Schedule - Articles 65 and 99; Hindu Law - Sections 270 and 271

Appeal No. : Second Appeal No. 536/90

Appellant : Vishali and ors.

Respondent : Rajendra and ors.

Advocate for Def. : M.L. Jaiswal, Adv. and ;Kiran Mehta, Panel Lawyer

Advocate for Pet/Ap. : Dharmesh Bhatt, Adv.

Disposition : Second appeal dismissed

Judgement :

P.C. Agrawal, J.

1. Surendra Kumar (R-4), Birendra Kumar (R-5), Santram (R-3), Rajkumar (R-2) and Rajendra (R-l) are sons of Ram Kripal (R-6) and his wife Pan Bai (R-7). These sons filed a civil suit on 8-10-86 challenging an auction sale held by Revenue Court on 1-9-71 of khasra No. 547 area 8.191 hectares, land revenue 30.84 paise, situate in village Bhanpur. Tehsil Ajaygarh (to be called as 'suit land' only) in favour of Vishali (A-1). The grounds have been taken that :--

(1) The same was for repayment of loan taken by Ram Kripal for immoral purpose and

(2) that sale was nullity.

(a) firstly because a higher bid of Rs. 4000/- put by one Motilal was disregarded while the bid of Vishali (A-1) who had bid next lower bid of Rs. 3000/- was accepted and

(b) Secondly that the l/4th sale amount was not deposited immediately but was deposited on the next day rest of the amount i.e., 3/4th of sale amount was deposited on 22-2-78 about 6-1/2 years afterwards when the sale was confirmed.

2. It is undisputed that Vishali (A-1 purchaser) had sold 4.191 hectares of land to Daou (A-3) and Bhagat (A-4) on 19-7-78 vide Ex. D-2, 1.596 hectares of land to Sampat Bai (A-2) vide Ex. D-3 on 8-2-80 and rest 2.428 hectares of land to Anmil Rao (A-5) who sold the same to Sampat Bai (A-2) vide Ex. D-1 on 6-1-87.

3. Appellants have claimed that Vishali (A-1) was put in possession of the land just after auction on 1-9-71. Ram Kripal (R-6) continued litigation in Revenue Courts but Vishali (A-1) was successful everywhere. Ram Kripal had taken Tallavi loan for purchase of diesel pump set. As he could not pay, sale was done by the Revenue court. As Motilal had not deposited l/4th of the bidmoney, recovery proceedings were started against him. Auction sale was confirmed on 22-2-78. The sale certificate was issued in favour of Vishali (A-1). Mutation was effected in favour of Vishali (A-1) and others appellants in due course. Surendra Kumar (R-4) and Birendra Kumar (R-5) were not even born on the date of auction thus, they could not challenge the auction. The other respondents had not filed the civil suit within a

period of three years of their attaining the majority and thus the suit was barred by limitation.

4. The Trial Court fully agreed with the appellants and held that (a) that the land was ancestral property of Ramkripal (R-6), (b) loan was taken for legal necessity, (c) auction sale was legal and (d) the civil suit was barred by limitation and thus dismissed the civil suit. The First Appellate Court agreed with him on points (a) and (b) but held in favour of respondents on points (c) and (d) and thus, decreed the civil suit with costs setting aside the auction sale and granting a decree for possession.

5. Following substantial questions of law are framed in this appeal:

(1) Whether the auction sale in respect of suit lands in favour of the appellants was valid ?

(2) Whether the suit by the respondents was incompetent in respect of minor plaintiff Nos. 1 and 2, who have not even born on the date of auction sale ?

(3) Whether the suit was barred by limitation I proceed to decide all these questions serially.

6. Rules 37,38 and 39 of the Schedule (1) of the M.P. Land Revenue Code, 1959 relating to sale of immovable property read as follows:--

'37. On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty five percent of the amount of his purchase money to the officer or other person conducting the sale, and in default of such deposit, the property shall forth with be resold.

38. The full amount of purchase money payable shall be paid by the purchaser within fifteen days from the date of the sale of the property.

39. In default of payment within the period mentioned in Rule 38, the deposit may, if the Revenue Officer, thinks fit after defraying the expenses of the sale be forfeited to the Government, and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which

it may subsequently be sold.'

These rules are in pari-materia with Rules 84,85 and 86 of the Order 21 of the Code of Civil Procedure, 1908. Language of these rules is about the same. These rules are held mandatory. Their non-compliance renders sale proceedings a complete nullity requiring the Executive Court to proceed under Rule 86 and property has to be resold. The argument that it is only amovable property so as to attract Rule 90 instead of Rule 86 cannot be accepted as held in Manilal Mohanlal Shah v. Sardar Syed Ahmed, Syed Mohd., AIR 1954 SC 347, followed in Balram v. Ham Singh, AIR 1996 SC 2781, Ganga Bai Gopal Das v. Phoolchand, 1997 SC 1218, Bisen Swaroop v. Om Prakash, 1971JLJ 441, Nathuram Mahajan v. District Co-operative Bank Ltd., 1970 JLJ 385 and in Progressive Industry Enterprises v. Bank of Baroda, 1989 MPLJ 630 = AIR 1990 MP 177. The learned First Appellate Court has rightly relied upon Anoop Singh v. Ramesh Chandra, 1969 Revenue Nirnay 124 and Iqubal Narain v. Shanti Chandra, 1965 Revenue Nirnay 296.

7. In the present case auction was held on 1-9-71. 1/4th of sale money was not deposited the same day. It was deposited next day i.e,, on 2-9-71. Rest of the sale money i.e., 3/4 the amount Rs. 2250/- was deposited on 22-2-78 i.e., about 6-1/2 year after the auction. Obviously the Revenue Court had no jurisdiction to extend the time. The Court could only order resale. The only discretion which the Revenue Court had was either to forfeit the 25% of deposit or not to forfeit but there discretion ended and it was obligatory of the Court to resale the property was imperative.

8. Further Motilal was the highest bidder and Vishali (A-1) was the second best. Both had not deposited the l/4th of the amount of bid on 1 -9-71. The rejection of the highest bid and preferring the second bid had been improper. Though the impugned auction was held on 1-9-71 but the sale had been complete only on 22-2-78 when the remaining 3/4th amount was deposited and sale was confirmed and the sale certificate was given. When the civil suit was filed on 8-10-96, Surendra Kumar (R-4) was 10 years old while Birendra Kumar (R-5) was 12 years old. Rule 44 of the Schedule (1) of the M.P. Land Revenue Code, 1959 provides for confirmation of sale. Under Rule 47 a sale certificate has to be issued. Obviously

unless sale is confirmed and sale certificate is issued, sale cannot to be complete. Thus, it cannot be said that either Surendra Kumar (R-4) and Birendra Kumar (R-5) were not born on the date of sale. Under Section 270 of the Principles of Hindu Law by Mulla, any co-parcener who was in existence at the time of completion of alienation has a right to object and thus, Surendra Kumar (R-4) and Birendra Kumar (R-5) have right to file the civil suit. Obviously though the auction was held on 1-9-71, but the sale was complete on 22-2-78 when 3/4 of the sale money was paid. The sale was confirmed and sale certificate was issued. Obviously possession of the suit property could only be given to Vishali (A-1) thereafter. The claim of Vishali (A-1) that he was put into possession of the suit land immediately after auction on 1-9-71 cannot be relied upon. Thus, the same is not supported by any document. Actually there could be no such question of handing over possession of the suit property before the sale was complete. Thus, Vishali (A-1) had come into possession of the suit land only in year 1978 when civil suit for declaration and possession was filed on 8-10-86. Thus, the civil suit being within 12 years of dispossession was within limitation underArticle 65 of the Limitation Act read with Section 271 of the Principles of Hindu Law by Mulla.

9. The appellant had relied upon Article 99 and claimed that the civil suit be set aside. A sale by Revenue Court should have been filed within one year of confirmation of sale. However, the Article is not applicable to the sales which are void or nullity from the very inception. In Phoolchand v. Mathura Prasad, 1961 MPLJ 484. Laxminarain v. Mohar Singh and Ors., 1989 JLJ 271 on page 273, Nani Bai v. Gita Bai Kom Rama Gunge, AIR 1958 SC 706 on page 709 and in Phool Chand v. Mathura Prasad, ILR 1961 MP 385, it was held the sale being void ab initio, there has been no need to get the same set aside. In view of the fact that suit is not barred by limitation under Article 65 of the Limitation Act, the question of what date Rajendra (R-1), Rajendra Kumar (R-2) and Sant Ram (3) became major or did they file civil suit within 3 years of the date of their attaining the majority does not arise. Thus obviously the claim was not barred by limitation.

10. There has been no substance in this appeal. Hence the same is dismissed without costs. Advocate's fees Rs....... if certified.

11. Second Appeal dismissed.