

Ashim Guha Thakurata and Ors. Vs. Benoy Kumar Chatterjee and Ors.

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Court : Kolkata

Decided On : Jun-01-2015

Judge : Soumen Sen

Appellant : Ashim Guha Thakurata and Ors.

Respondent : Benoy Kumar Chatterjee and Ors.

Judgement :

CS No.943 of 1982 GA No.1820 of 2009 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction ORIGINAL SIDE ASHIM GUHA THAKURATA &
ORS.-Versus BENOY KUMAR CHATTERJEE & ORS.Appearance: Mr.Praveen
Kumar, Adv...for the applicant.

BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date : 1st June, 2015.

The Court : This is an application at the instance of five persons claiming to be the owners of the property for setting aside of sale in favour of one Reliable Industries pursuant to the order passed by this Court on 23rd July, 2008.

The dispute relates to a very valuable property situated at New Delhi measuring about 4000 sq.

feet.

The sale was conducted by the Joint Administrators appointed by this Court on 28th June, 1983.

The suit was instituted by the depositors of M/S.Chatterjee Polk PVT.LTD.for relization of the amount invested by the depositors in the said company.

The company received substantial amount as deposits from the public and out of its fund, its managing director Dr.

Benoy Kumar Chatterjee acquired several assets and immovable properties and/or saleable interest thereon in different parts of the country in the name of the said company and/or in his own name and/or in the name of his family membeRs.relatives, nominees etc.The depositors Company in defaulted accordance with in returning the terms the and money to conditions its agreed upon.

In view of such failure in the year 1982 on behalf of the depositors of the said company, an administration suit was instituted under Order 1 Rule 8 of the Code of Civil Procedure where Ashim Guha Thakurata and ORS.are the plaintiffs and Benoy On 23rd December, Kumar Chatterjee and ORS.are the defendants.

1982, an order of injunction was passed restraining the defendants from dealing with and/or disposing of and/or encumbering the properties mentioned in Annexure-D to the petition for interim injunction except in the usual couRs.of business.

On directed to 12th take August, 1983 possession of the all joint the administrators assets were mentioned in Annexure-D to the petition whether in its name or in the benami name of Benoy Kumar Chattejnee or his nominee with a further direction that if the joint administrator finds that the monies collected by them were insufficient to pay the depositors in accordance with the direction passed in the said order, they would sell the immovable properties and flats of the said company and of the defendant B.K.Chatterjee to the highest bidder after issuing advertisement in The Statesman, Jugantar and Viswamitra.

From time to time the assets and properties of the defendant have been sold by the sole and/or joint administrators and the proceeds thereof have been distributed amongst the depositors in the manner stipulated in the orders passed by this Honble Court.

In course of implementation of the aforesaid orders, the joint administrators came across documents relating to various properties including the Balasaheb Road property.

The documents relating to the said property are: (a) Agreement dated 04.11.1980 by and between Sr. Surinder Singh Sobti and Dr.

B.K. Chatterjee, Managing Director of M/s Chatterjee Polk PVT. LTD. Re-premises No. 2, Balasaheb Gurudwara Marg, New Delhi.

(b) Irrevocable General Power of Attorney issued by Sr. Surinder Singh Sobti dated 4th November, 1980 to Dr.

B.K. Chatterjee, Managing Director of M/s Chatterjee Polk PVT. LTD. for property at 2, Balasaheb Gurudwara Marg, New Delhi measuring 3924 sq. yds.

(c) Letter from Sr. Surinder Singh Sobti dated 04.11.1980 to Dr.

B.K. Chatterjee, Managing director of M/s Chatterjee Polk PVT. LTD. whereby the land is given to Dr.

Chatterjees possession and the same was accepted by Dr.

B.K. Chatterjee.

(d) Receipt issued by S. Lal Singh, S.

Charan Singh and S.

Amar Singh, the executant of the receipt on 5th day of November, 1980.

(e) Photo copy of the UCO Bank, Parliament Street Branch, New Delhi dated 3rd October, 1988 confirming the payment by Dr.

B.K.Chatterjee to S.

Charan Singh, S.

Amar Singh, S.

Lal Singh and Sm.

Sant Kaur.

(f) Photo copy of the Will dated 29th day of August, 1992 by S.

Lal Singh & ORS.Executed in favour of Dr.

B.K.Chatterjee.

(g) issued by Receipt Ashok of Lal Rs.10.000/- Chandani 8th dated towards November, advance for 1980 designing housing at No.2, Bala Saheb Gurudwara Road, New Delhi raised and received from M/s Chatterjee Polk PVT.LTD.(h) Bill dated 15.12.1980 for Rs.32,500/- raised for cost of design of proposed housing at 2, Balasaheb Gurudwara Road, New Delhi (from Mr.Ashok Lal Chandani).Bill dated 2nd February, 1981 for Rs.48,750/- (i) for cost of design of proposed housing at 2, Balasaheb Gurudwara Road, claimed against M/s Chatterjee Polk PVT.LTD.(from Mr.Ashok Lal Chandani).(j) Letter dated 25th February, 1981 from Ashok Lal Chandani to Chatterjee Polk PVT.LTD.forwarding the bills and receipts in relation to jobs executed at the said premises bearing an endorsement of Dr.

B.K.Chatterjee on 7th April, 1981.

(k) June, 1990 T.P.for Das.

Sole taking Administrators symbolic possession 7th letter dated of Balasaheb 2, Gurudwara Road, New Delhi.

(l) Banks Certificate in respect of Cheque No.555320 and Cheque No.555318 dated 23.12.94.

On discovery of the said documents and after ascertaining that the property belongs to the defendant No.1, the joint administrators put the property to sale by public advertisement, pursuant whereof, the sale was confirmed in favour of the Reliable Industries.

According to the applicants, the applicants became aware of the said sale in favour of Reliable Industries on the basis of a notice issued by the Municipal Corporation of Delhi, Assessment Department dated 26th December, 2008 intimating that the said office had received an application for mutation of the property No.2 (New No.80, Gurudwara Bala Saheb Road, New Delhi) from the Reliable Industries.

Mr.Praveen Kumar, learned counsel appearing on behalf of the applicants submit that the orders passed in this proceeding confirming sale of the said property in favour of Reliable Industries is required to be recalled since the said order has vitally affected the right of the applicants to enjoy the said property.

It is submitted that the joint administrat ORS.while taking steps to have the said property sold suppressed from this Honble Court the fact that the said applicants are in possession of the said property as owners thereof on the basis of seven deeds of sale executed by the defendant No.1 as constituted attorney of the original owner of the said property namely S.

Amar Singh, S, Chaman Singh and S.

Lal Singh.

It is submitted that apart from the consideration amount of Rs.13.95 lakhs paid in aggregate for the purpose of purchasing the said property, the applicants have discharged the liability of the owners towards the banks and have invested substantial amount for improvement of the said property.

It is submitted that the applicants have so far spent a sum of Rs.1.5 crore towards improvement of the said property.

It is claimed that on the basis of the seven several deeds of sale, the applicants took possession of the property in question in 1995 and since then they are in possession of the property.

The petitioners are bona fide purchasers for value without notice and were entitled to notice before a sale is conducted in respect of the property in question.

disclosed in this It is submitted that from the documents proceeding, it would appear that Mr.B.K.Chatterjee was merely an agreement holder and such agreement for sale does not create any right, title or interest in respect of the property in question and accordingly the joint administrators could not have proceeded to sell the said property in which Mr.B.K.Chatterjee had no right, title or interest.

The learned Counsel has referred to three decisions of the Honble Supreme Court reported at 2004(9) SCC48(Sangeeta Chowdhury versus Commissioner, Sanchaita Investments & Ors.).2008(10)SCC153(Kumar Gonsusab & ORS.versus Mohammed Miyan Urfaban & Ors.) and 2010(8) SCC383(Meghmala & ORS.vs.G.Narashimha Reddy & Ors.) for the proposition that an agreement for sale does not create any right or title in favour of an intending buyer.

On the aspect of notice to be served upon the applicants before a sale could take place, the learned Counsel has referred to the decision of the Honble Supreme Court reported in 1994(1) SCC131(Dash Bandhu Gupta versus N.L.Anand & Rajinder Singh).It is submitted that on the basis of the application made by the joint administrat ORS.the Court proceeded to sell the said property treating the said property belonging to the defendant No.1 and in such a situation it is mandatory for the Court to issue a notice upon the applicants before confirming the sale in favour of any intending buyeRs.It is submitted that no notice of sale of the said property has been published in any newspaper in New Delhi although the said property is situated at New Delhi and, as a result whereof, the applicants were unaware of the said sale.

It is argued that a registered sale deed can only be cancelled by a deed of cancellation and not by a unilateral act of the defendant no.1.

In this regard reliance is placed on Thota Ganya versus Laxmi & Anr.

Government reported at 2010(15) SCC207 of Andhra Pradesh & Anr.

Having regard to the fact that several deeds of sale were executed in favour of the applicants on behalf of the original owners by Mr.B.K.Chatterjee as the constituted attorney of the owners such deeds of sale could only be cancelled on adjudication being done by a court of competent jurisdiction.

deeds The applicants have by virtue of the said sale acquired an indefeasible right, title and interest in respect of the property in question and the same cannot be set at naught by the process adopted by the Joint Administrators by putting the property to sale and that too without notice to the applicants.

The learned consideration amount paid Counsel was by Reliable the favour the sale was confirmed.

also critical about Industries in the whose It is submitted that the value of the property would not be less than 30 crores whereas the sale was confirmed for Rs.51 lacs.

The Joint Administrat ORS.in this proceeding, have filed four affidavits, out of which in the supplementary affidavit affirmed on July 31, 2012, the Joint Administrators have disclosed the documents which have been alluded to above.

The Joint Administrat ORS.apart from disclosing the said documents, have also disclosed an affidavit of Mr.B.K.Chatterjee dated August 23, 2002 which would show that Mr.B.K.Chatterjee did not receive the entire consideration amount from Raja Singh of M/S.Texta Towers PVT.LTD.and he conveyance in their favour.

the said affidavit was unwilling to execute deed of The Joint Administrators stated that contradicts the statements affidavit of Texta Towers PVT.LTD.filed in G.A.made in the No.251 of 2010 and affirms the certificate issued by the Bank and the reason for non-issuance of the memo of consideration of each deed disclosed by the said Sukhvinder Singh in G.A.No.1820 of 2009.

The said contention of the Joint Administrators appears to be correct.

Apart from the aforesaid, it would appear from the deeds disclosed in this proceeding that the applicants, in their capacity as directors of Tekla Towers PVT.Ltd., purchased the said property although in a later part of the same documents it is stated that the said property is sold to M/S.Tekla Towers PVT.LTD.by Mr.Benoy Kumar Chatterjee as a constituted attorney of the owners of the property.

In this regard, it is significant to mention that an order was passed by this Court on December 14, 1983 in terms of prayers (b) and (c) of the petition which read as follows: b) In the alternative, for an order directing the Joint Administrators mentioned in to the take said possession report of of the assets the Deputy Superintendent of Police, Bureau of Investigation being Annexure B hereto and any other assets of which they will recover possession pursuant to orders and directions made in that behalf.

c) For an Order directing the Joint Administrators to sell and/or otherwise dispose of the assets set out in Annexure B and C hereto and any other assets of which they will recover possession pursuant to orders and directions made in that behalf. The said order is omnibus in its term as it includes all or any other asset which may come to the possession of the Joint Administrators in future.

the defendant no.1 There is a clear embargo on the part of and/or his nominees from dealing with or disposing of any of the properties belonging to the said defendant no.1 either in his name or in the name of his nominees.

The documents disclosed in this proceeding would show that by the year 1980, Mr.B.K.Chatterjee had acquired substantial interest in the property in question and the only thing that was required to be done is the formal execution of the deed of conveyance by the owners of the said property in favour of Mr.B.K.Chatterjee.

the saying goes, one makes hay when the sun shines.

As Till the year 1982, Mr.Chatterjee was successful in duping several depositors and acquiring deposit ORS.and amassing huge wealth at the cost of the This has resulted in the filing of the suit in which prohibitory orders were passed.

Mr.Chatterjee in view of the suit and orders passed in the suit deliberately avoided to execute deed of conveyance in the relation to the said property although entire consideration has been paid.

In fact, all the properties of the defendant no.1, by reason of the orders passed in the suit, have become custodia legis and Mr.B.K.Chatterjee or anyone on his behalf was clearly estopped from dealing with or disposing of the said property in any manner whatsoever.

teeth of illegal.

the orders passed restraining Any act done in the alienation is clearly All actions including the execution of the said seven sale deeds are clearly illegal.

It is significant to mention that the deeds disclosed in the petition are suspect documents and sham transactions clear from the recitals made in the said deeds.

as is The deeds purport to record that Mr.B.K.Chatterjee, was acting on behalf of the owners as their constituted attorney which statement is difficult to accept having regard to the fact the entire consideration was paid by Mr.B.K.Chatterjee to the owners in 1980 and has acquired substantial interest and becomes the virtual owner of the said property.

The said recital is improbable and concocted.

Since the proceedings have started and Joint Administrator were appointed over the assets and properties of Chatterjee Polk and of B.K.Chatterjee in an attempt to secret information, Mr.B.K.Chatterjee did not disclose the documents relating to the Delhi property and take any initiative to have the documents formally registered.

Mr.Chatterjee in complicity with the actual owners and the present applicants have created documents apparently to show that he had no interest in the said property although by time before the execution of the said deeds he had become the owner of the said property.

This clearly fits into the case that Mr.Chatterjee was trying to take away the said property from the custody of the Court by describing himself as the constituted attorney of the owners although at the relevant time the owners had lost all interest in the said property and had received the entire consideration from Mr.Chatterjee.

In fact, as the facts reveled Mr.B.K.Chatterjee was attempting to dispose property to Tekla Towers in the capacity as owner.

of the The applicants as directors of Tekla Towers were aware of the real state of affairs but did not disclose the said facts in the petition.

It is only in the opposition that the joint administrators disclosed such facts.

Moreover, the documents disclosed by the Joint Administrators would clearly show that Tekla Towers PVT.LTD.was aware of the fact that Mr.B.K.Chatterjee was in fact the main and the real person insofar as the said property is concerned.

the face of such disclosure, the judgment cited by On Mr.Kumar reported in (2010) 8 SCC363in fact is applicable against the applicants as it was a fraud committed on the Court by the applicants.

In a situation like the present one where several depositors are duped the properties acquired by the defendants out of their funds are to be traced and requires to be attached and sold so that the depositors could realise their amount.

It is for this reason orders were passed from time to time directing sale of the property of Chatterjee Polk and B.K.Chatterjee who is the alter ego of the compoany.

What is apparent is not real is the basis on which the documents disclosed by Tekla Towers are to be examined.

The creation of the said seven deeds of sale mentioning a consideration of Rs.1.95 lakhs for each of the said instrument is a ridiculously low amount by which Mr.B.K.Chatterjee, with the aid of the applicants tried to take away the said very valuable property from the custody of the Court.

In fact by reason of the existing orders Mr.B.K.Chatterjee could not have dealt with the property.

On stated facts it cannot be said that the applicants were bonafide purchasers for value without notice.

In any event such plea would existing prohibitory order.

not be available where there are Such orders cannot be circumvented by Mr.Chatterjee and the applicants with impunity and expect the Court to ratify such acts and confer its blessings.

Under such circumstances, the application being GA No.1820 of 2009 stands dismissed with costs assessed at 600 gMs.(SOUMEN SEN, J.) As./sp2/tk.

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