

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

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Court : Kolkata

Decided On : Jul-28-2015

Judge : Soumen Sen

Appellant : Ashim Guha Thakurata and Ors.

Respondent : Benoy Kumar Chatterjee and Ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction
ORIGINAL SIDE BEFORE: The Hon'ble JUSTICE SOUMEN SEN GA No.2065 of
2010 CS No.943 of 1982 ASHIM GUHA THAKURATA & ORS.-Versus BENOY
KUMAR CHATTERJEE & ORS.For the Plaintiffs/Applicants : Mr.Samit Talukdar,
Sr.Adv.Mr.Dhruba Ghosh, Mr.A.Basu For the Movement Traders PVT.LTD.:
Mr.Suman Dutta Mr.A.K.Gandhi, Ms.Sweta Gandhi Heard On : 30.03.2015,
06.04.2015, 08.06.2015, 29.06.2015, 22.07.2015 Judgment On : 28th July, 2015
Soumen Sen, J.:- This is an application at the instance of two persons claiming to
be the owners of the property for setting aside of sale in favour of one Movement
Traders PVT.LTD.confirmed pursuant to the order passed by this Court on 10th
May, 2010.

The dispute relates to a very valuable property situated at Mouza Hirapur, Tola
Jharudih, Mouza No.7, P.S.-Dhanbad, Dist-Dhanbad, admeasuring about 21
Cottahs, comprised in plot Nos.660 and 661 along with the two storied dwelling
house.

The sale was conducted by the Joint Administrators appointed by this Court on 12th June, 2010.

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 Company defaulted in returning the money to its depositors in accordance with the terms and conditions agreed upon.

In view of such failure in the year 1982 on behalf of the depositors of the said company, an administrative 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 Kumar Chatterjee and ORS.are the defendants.

On 23rd December, 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.

On 12th August, 1983 the joint administrators were directed to take possession of all the assets mentioned in Annexure-D to the petition whether in its name or in the benami name of Benoy Kumar Chatterjee or his nominee with a further direction that if the joint administrator finds that the moneys 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 diveRs.assets and properties of the defendants 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 Hon'ble Court.

The property which the applicants claimed to have purchased from the Chatterjees is part of Annexure D of the Petition as mentioned in the Order dated 12th August, 1983 and also one of such many other properties of the defendant No.1 which are also taken possession by the Joint Administrator and some of the properties were sold by the present administrators in terms of the order dated 12th August, 1983 by public auction to one Movement Traders PVT.LTD.by a Deed of Conveyance dated 22nd April, 2008.

By an order dated 10th May, 2010, the joint administrators were directed by this Court to hand over possession of the premises in question to the Movement Traders PVT.LTD.within a week from the date of reopening of this Honble Court after a summer vacation.

In implementation of the said order, the joint administrators visited the said premises.

The joint administrators stated in their affidavit that the said property was taken possession by the earlier administrators and the present applicants as unauthorized occupier had agreed to remove their articles from the said building and it was after removal of the articles peaceful and vacant possession was handed over by administrators to M/S.Movement Traders PVT.LTD.the joint The joint administrators have referred to the minutes of the meeting dated 12th June, 2010 wherefrom it appears that Dr.

Tajul Mulk and some of his well-wishers had removed the articles on the basis of their earlier assurance and thereafter the joint administrators have delivered vacant and peaceful possession of the ground floor to the purchaser.

Mr.Samit Talukdar, the learned Senior Counsel appearing on behalf of the applicants submits that the applicants purchased the plot No.660 by two several registered deeds of conveyance dated 11th January, 1990 and 18th January, 1990 from one Hengers (India) PVT.Ltd., Mr.B.K.Chatterjee and Smt.Pratima Chatterjee wife of Mr.B.K.Chatterjee.

The remaining part of the said property comprising Plot No.661 was purchased by and/or in the name of the second applicant namely Shadab Taj then a minor represented by his father Dr.

Tajul Mulk from the said vendors at a total consideration of Rs.3.45 lacs.

Since then the applicants are in peaceful possession of the property in question.

The applicants purchased the said property for valuable consideration and relying upon the representations and assurances given by the Chatterjees that the said property was free from all encumbrances.

The second and third vendors being B.K.Chatterjee and Smt.

Pratima Chatterjee respectively were actually the Managing Director and Director respectively of the said Hengers (India) PVT.Ltd., who by way of abundant caution also joined in the said conveyances as vend ORS.It is submitted that the applicants before purchasing the said property had duly conducted necessary searches in the local Registry Offices to ascertain that the vendors had the requisite right, title and interest to convey the said property to the said applicants.

It was only after making all due searches and being satisfied with the title the said property was purchased.

It is submitted that the applicants are bona fide purchasers for value of the said property without notice of any manner of any dispute relating to the same.

Moreover, even by the exercise of any stretc.of due diligence, the applicants could not have discovered the connection between M/S.Chatterjee Polk PVT.LTD.with Hengers (India) Private Limited and/or with Mr.B.K.Chatterjee or Smt.

Pratima Chatterjee.

The said property having been purchased by the applicants could not have been resold by the Joint Administrators in favour of the auction purchaser.

It is submitted that the joint administrators had never taken possession either actual or symbolic of the said property.

It is stated that the joint administrators have put their padlock on a portion of the said property being the ground floor of the dwelling house without taking into consideration that the applicants are bona fide purchasers for value without notice and both the applicants are medical practitioners. The first applicant is a senior doctor based in Dhanbad, while the second applicant is a doctor attached to Ram Manohar Lohia Hospital, New Delhi.

The said property is being used as the family residence and home of the applicants.

The joint administrators in this proceeding have filed an affidavit wherefrom it appears that on 23rd December, 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 course of business.

There was a further order passed on 14th December, 1983 directing the Joint Administrator to take possession of the asset mentioned in the report of the Deputy Superintendent of Police, Bureau of Investigation being Annexure "B" thereto and any other assets of which they would 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.

However, I need not have to go that far.

In Annexure D to the order dated 12th August, 1983 particulars of properties and moneys due and payable to the defendant have been indicated which refers to Henglers (India) Private Ltd. at Serial No.2 and one two-storied building on 7/8 Cottahs (approx.) at Baker Bandh Lakeside, Dhanbad Town, Dhanbad, Bihar, in the name of Smt.

Pratima Chatterjee, wife of Benoy Kumar Chatterjee.

There is a clear embargo on the part of the defendant no.1 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 or companies owned by him.

The documents disclosed in this proceeding would show that Hengers (India) PVT.LTD.is the company controlled by B.K.Chatterjee and his wife.

They were the only two directors of the said company.

The said company is nothing but an alter ego of the Chatterjees.

It was precisely for that reason in the list of assets and properties there is a specific mention of Hengers (India) PVT.LTD.and a property of Dhanbad which stands in the name of Smt.

Pratima Chatterjee.

Till the year 1982 Mr.Chatterjee was successful in defrauding the deposit ORS.This has resulted in filing of the suit in which prohibitory orders were passed.

Mr.Chatterjee with a view to circumvent the said orders indulged in transferring properties that were held in the name of various entities controlled by the Chatterjees and acquired out of funds of the deposit ORS.In fact, by reason of the appointment of the administrators and the order of injunction dated 23rd December, 1982 and the subsequent order dated 12th August, 1983 by which the administrators were directed to take the possession of the assets whether in its name or in the benami name of Benoy Kumar Chatterjee or his nominee with a further direction that if the joint administrator finds that the moneys 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 Mr.B.K.Chatterjee or for that matter the companies which are its alter egos could not have dealt with and/or alienate the said properties.

On the date when the alleged two several deeds were alleged to have been executed by the Hengers (India) PVT.Ltd and for that matter Mr.B.K.Chatterjee and his wife as directors of the company the vendors had no authority to alienate and/or dispose of the said property in favour of any third party.

The Joint Administrators were in possession of the property in question.

In fact, all the properties of the defendant No.1 by reason of the aforesaid 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.

Any act done in the teeth of the orders passed restraining alienation is clearly illegal and void.

All actions including the execution of the said sale deeds in the teeth of the aforesaid orders are illegal.

Any act done in violation of an order of injunction is void.

The plea of bonafide purchaser for value without notice has no manner of application.

Such alienation clearly and squarely falls within the ambit of the restraint orders. In defiance of such orders alienations have been made.

If Court were to let it go as such as held in Surjit Singh & ORS.Vs.Harbans Singh & ORS.reported at 1995 (6) SCC50 it would defeat the ends of justice and the prevalent public policy.

It is stated in the said decision that when the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise.

Mr.Samit Talukdar, the learned Senior Counsel realizing that in the teeth of the orders existing in this proceeding it would be difficult to sustain the application prayed for some mercy being shown to the applicants after taking into

consideration that the said applicants have paid Rs.3.45 lacs in 1990 and are enjoying the said property for almost 25 years. Mr. A.K. Gandhi, the learned Counsel appearing on behalf of the auction purchaser submits that auction purchaser has paid a sum of Rs.6 lacs in 2008 as consideration for purchasing 12 Cottahs of land but could not get possession of the property by reason of the resistance put by the applicants.

The price at which the auction purchaser had purchased the property, in my view, is inadequate.

The suit was filed for the benefit of the deposit ORS. It is difficult to accept that 12 Cottahs of land being part of 21 Cottahs would only fetch a sum of Rs.6 lacs in the year 2008.

Since the alienation was made in violation of the order of injunction, the transfer made by Mr. B.K. Chatterjee in favour of the applicants are null and void.

At the same time this Court is unable to direct the Joint Administrators to deliver possession of the property in question to M/S. Movement Traders PVT. LTD. since the consideration paid for the sale appears to be inadequate and the present applicants are willing to bid.

The Joint Administrators are directed to make valuation of the property in question by an empanelled valuer of this Court and take steps to sell property by public auction.

The applicants as well as the auction purchaser would be entitled to participate at the time of sale.

It would be open for the auction purchaser to ask for return of the consideration amount paid to the Joint Administrators or to treat the said amount as earnest money.

The applicants shall deposit a sum of Rs.10 lacs within a period of three weeks from date with the Joint Administrators failing which the Joint Administrators shall take actual physical possession of the property if required by police force and shall

remain in possession until further orders. The Joint Administrators shall complete this exercise by ten weeks from date.

The sale shall be subject to the confirmation of the Court.

This application, accordingly, stands disposed of.

However, there shall be no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

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