

Ahamad Mea Vs. Gunu Mea

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Court : Kolkata

Decided On : Nov-22-1946

Reported in : AIR1948Cal105

Appellant : Ahamad Mea

Respondent : Gunu Mea

Judgement :

Edgley, J.

1. This rule relates to an applicatoin filed by the debtor under Section 37A, Bengal Agricultural Debtors Act. It appears that the decree-holder obtained a decree against the petitioner in mortgage suit No. 2136 of 1934 as a result of which the mortgaged property was put up for sale in one lot and was purchased on 28-3-1936 by the decree-holder who obtained possession through the Court on 28-10-1936 Thereafter the decree-holder leased a portion (.15 acre) of the property purchased by him to the petitioner and retained the remaining portion of the property (1. 19 acres) in his own possession.

2. The case for the petitioner is to the effect that he is entitled under Section 37A, Bengal Agricultural Debtors Act to apply for relief and to recover possession of the whole of the property amounting to 1.34 acres. He claims that in the alternative he should in any event be put into possession of that portion of the property which is still in the possession of the decree-holder.

3. With regard to the first of these points, Mr. Sen Gupta contends that his client is entitled to the benefit of the section by reason of the fact that the decree-holder is still in possession of the whole of the property purchased by him on 28-3-1936. He argues that the decree-holder is in khas possession of 1.19 acres and is in possession of the remaining portion of the property through the petitioner himself who is now the tenant of the decree-holder. In support of his contention, the learned advocate relies on Section 37A (1)(c); Bengal Agricultural Debtors Act. This sub-section sets out one of the conditions which must be fulfilled in order to entitle a person, whose immovable property has been sold after the 12th day of August 1935 in execution of a decree of a civil Court relating to a debt, to apply for relief under the section; the terms of the sub-section so far as they are relevant, are:

If the property sold was in the possession of the decree holder on Or after the 20th day of December 1939, or was alienated by the decree-holder before that date in any manner otherwise than by a bona fide lease for valuable consideration whether by registered instrument or not....

Several other bona fide transactions are also mentioned in the section but these need not be here referred to.

4. A question for consideration in this case is whether the property sold was in the possession of the decree-holder within the meaning of the section at the material time. It is admitted in this case that when the sale took place on 28-3-1936, the property was sold as one item and in one lot, and there is no doubt that after the sale a portion of the property which was purchased by the decree-holder was leased by him to the judgment-debtor on 8-8-1937. It is difficult to see how Section 37A (1)(c) of the Act can be used by the judgment-debtor in a case such as this. In the first place, the particular item of property which was purchased by the decree-holder on 28-3-1936, cannot be said to have been in his possession within the meaning of the section at the time when the judgment-debtor made his application to the Debt Settlement Board. At that time, a portion of it had actually been alienated to the judgment-debtor under a bona fide lease and the decree-holder was therefore not in possession of 'the property sold.' He was merely in

possession of a portion of the property sold. Moreover, as we read the section, a bona fide lease is one of the methods of alienation specifically protected from the operation of Section 37A by the terms of Sub-section 37A (1)(c) in this sense, that a condition necessary for the operation of the section does not exist where there has been such an 'alienation.' On behalf of the petitioner, it has been urged that Sub-section (c) does not purport to detail circumstances in which a debtor is not entitled to¹ relief, but only those in which he is; and that a restrictive reading of the section is not justified by the language used. But in our view, read as a whole, the effect of the sub-section is that the debtor has no right to recover property which has been alienated by the decree-holder in any of the four specified ways. If however the property has been alienated by the decree holder in a manner otherwise than by one of the four methods-methods mentioned, which include a bona fide lease for valuable consideration whether by a registered instrument or not, the section enables the judgment-debtor to apply for the restoration of his property. If, on the other hand, the property has been alienated in one of the four methods mentioned above the judgment-debtor has no remedy. In this connection it is significant that Sub-section 37A (1)(c) contrasts property in the possession of the decree-holder with property which has been alienated by him. Leased property is placed in the latter category and it therefore follows that property which a decree-holder has leased to tenant under a bona fide lease cannot be regarded as being in his possession within the meaning of the sub section.

5. On the facts of this particular case, we must hold that S 37A (1)(c) has no application and that the judgment-debtor is not entitled to recover the whole of the property.

6. Mr. Sen Gupta further contends that in any event his client is entitled to recover that portion of the property amounting to 1.19 acres which is still in the possession of the decree-holder. In support of this contention he relies on the judgment of Chakravarti J. Madaripure Commercial Bank Ltd. v. Lal Mohan Saba : AIR1947 Cal127 . That case related to a sale in which 15 items of property were sold in separate lots and the learned Judge pointed out in his judgment that when there is a sale of separate properties in separate lots there are in fact so many separate sales and there is no legal bar to setting aside one or some of them. He went on to

say that:

We are of opinion that Section 37A cannot be read as limited to cases where the sole purchaser at the sale was the decree-holder and the sale proceeds were exactly sufficient to satisfy the decretal amount. It covers a case where certain properties were purchased by a third party at the same sale and the sale proceeds were either more or less than the decretal amount.

7. The case cited above is distinguishable on its facts from the case with which we are now dealing because, as already stated, in the present case, we are concerned with one item of property only which was sold as one lot at the sale which took place on 28-3-1936. If we were to accept the contention put forward by the learned advocate for the petitioners in this case it would be necessary for us to hold that the expression 'any immovable property' which is used in Section 37 A (1) of the Act covers not only lots which are separately sold as happened in *Madaripure Commercial Bank Ltd. v. Lal Mohan Saba* : AIR1947 Cal127 . but also portions of such lots. We do not think that this interpretation can be supported by the general scheme of the section. In Section 37A (1), the reference is to 'any immovable property.' According to the context in our view, this expression should be taken to refer to any particular item of immovable property which has been separately sold or separately lotted at the sale and 'separately sold' in that sense. In Section 37A (1)(c) the words used are 'if the property sold was in the possession of the decree-holder.' If it had been the intention of the Legislature to make this section applicable to any portion of a particular property which might have been purchased by a decree-holder at an execution sale one would have expected the language used to have been more precise, for instance, by the insertion of the words 'or any part thereof' after the words 'property sold.' Further, Sub-section (8) provides that the debtor may present a copy of the award to the civil Court or the Certificate Officer and that such Court or Certificate Officer shall thereupon direct the sale to be set aside. It is difficult to see how the expression 'the sale' can refer to anything but the sale of the property as a whole or to the sale of a particular lot under which a specific item of the property was sold to some particular person.

8. In this view of the case, we are unable to hold that the decree-holder was actually in possession of any item of immovable property to which Section 37A of the Act can have any possible application. He was merely in possession of a fraction of the property which he had purchased at the civil court sale, on 28-3-1936 and, in our view, the decision of the learned District Judge is correct. The Rule must accordingly be discharged with costs-the hearing fee is assessed at three gold mohurs.

Clough, J.

9. I agree.

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