

Province of Bengal Vs. Probash Chandra Ghose and ors.

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Court : Kolkata

Decided On : May-01-1953

Reported in : AIR1955Cal400

Judge : G.N. Das and ;Debabrata Mookerjee, JJ.

Acts : Limitaiton Act, 1908 - Section 28 - Schedule - Articles 137, 138 and 180

Appeal No. : A.F.A.D. Nos. 1754 to 1850 of 1946 and 691 and 692 of 1948

Appellant : Province of Bengal

Respondent : Probash Chandra Ghose and ors.

Advocate for Def. : Rabindra Nath Bhattacharjee and ;Binoyendra Deb Ray Mahasay, Advs.

Advocate for Pet/Ap. : Sitaram Banerjee and ;Jogeswar Majumdar, Advs.

Disposition : Appeals allowed

Judgement :

G.N. Das, J.

1. These appeals are at the instance of the plaintiff and arise out of suits for recovery of rent.

2. The plaintiff claims rent on the strength of a purchase in execution of a certificate obtained by the plaintiff against one Anupama Dassi. The plaintiff's allegation is that by this purchase, the landlord's interest which was vested in Anupama Dassi passed to the plaintiff, Anupama's right to the reversion was derived in the following manner: The disputed lands appertain to three touzies one of which was numbered as Touzi No. 3241. This touzi comprised 3 annas, 6 gandas, 2 karas, and 2 krantis share of the parent touzi 1484. Under this touzi, the pro forma defendants Nos. 2 to 11 were tenure-holders. As the tenure-holders did not pay rent, the proprietors of touzi No. 3241 viz., Purna Chandra Ghose and others instituted a suit for rent against the tenure-holders impleading the co-sharer landlords and obtained a decree for rent.

This decree was executed in Rent Execution Case No. 64 of 1933 and the tenure-holders' interest was brought to sale and was purchased by the landlords Purna Chandra Ghose and others on 1-11-1933. The sale was confirmed on 5-12-1933. The auction-purchasers viz., Purna Chandra Ghose and others sold their purchased right on 13-6-1935 to Anupama Dassi.

The right of the plaintiff to receive rent was contested by the tenure-holders in these Rent Suits on the allegation that as Purna Chandra Ghose and others, the auction-purchasers, did not take delivery of possession through Court within three years of the confirmation of sale as required by Article 180, Schedule 1, Limitation Act, the title of the auction-purchasers became extinct on the expiration of three years from the date of confirmation of sale, that is, on 5-12-1936. By the purchase in execution of certificate against Anupama Dassi, the plaintiff did not acquire any right.

This defence was given effect to by the trial Judge and on appeal by Mr. Rule Bose, the learned Additional District Judge, 24 Parganas. The Courts below proceeded on the footing that as the auction-purchasers at the Rent Execution sale did not take delivery of possession within three years as required by law, their right to recover possession by a suit against the tenure-holders, the judgment-debtors, of the Rent Execution case, became barred, and, therefore, the title of the auction-purchasers ceased on the expiration of the said period of three years and

accordingly, the plaintiff did not acquire any title.

This view was based on the Full Bench decision of this Court in -- 'Kailash Chandra v. Gopal Chandra', AIR 1926 Cal 798 (A). The effect of the Full Bench decision was considered recently by a Bench of this Court in -- 'Tincourie Mazumdar v. Satish Chandra', : AIR 1955 Cal 369, to which I was a party.

In that case, the Bench was of the opinion that an omission on the part of the auction-purchaser to take possession, within three years of the sale being made absolute as required by Article 180, Schedule 1, Limitation Act, does not extinguish the title of the auction-purchaser. The Bench also pointed out that the title of an auction-purchaser may be extinguished either by transfer 'inter vivos' or 'in invitum' or by the operation of some statute or by adverse possession.

The Bench also pointed out that Section 28, Limitation Act, contemplates a suit for recovery of possession of an auction purchaser of immoveable property as provided for in Article 137 or Article 138, Limitation Act, that is, if the auction-purchaser fails to take possession within a period of 12 years from the date when the sale becomes absolute, the title becomes extinguished under Section 28, Limitation Act, and the title becomes transferred to the persons who were in possession for the requisite period.

In this case, no question of adverse possession can arise because at the date of the present suit for recovery of arrears of rent 12 years had not elapsed from the date when the sale became absolute. It was not proved in this case either that the judgment-debtors exercised acts of possession for more than 12 years and that by the operation of the rule of adverse possession, the title of the auction-purchaser became extinguished.

The Bench also pointed out that the effect of the Full Bench decision cited above was to disentitle the auction-purchaser who has not taken delivery of possession through Court to recover by suit the possession of the property sold. The Bench also held that in the circumstances like the present, the title of the auction-purchaser remains alive till it is extinguished by operation of law or by adverse possession or by transfer 'inter vivos' or 'in invitum'.

3. In this case, none of these exceptions has been proved. The right to receive rent which had previously vested in Purna Chandra Ghose and others by auction purchase was transferred to Anupama Dassi by private treaty and has since passed by certificate sale to the plaintiff. As this right of the plaintiff to recover rent has not been barred, the plaintiff is entitled to recover rent on the strength of title.

4. Mr. Banerjee relied on the fact that in regard to other portions of the land, auction-purchased by Purna Chandra Ghose and others, the plaintiff has been realising rent. It is not necessary to base our conclusion on this ground.

5. In these circumstances, the conclusion must follow that the plaintiff had the right to recover rent in all these suits and that the decision of the Courts below cannot be sustained.

6. In the result, these appeals succeed. The judgments of the Courts below are set aside and the plaintiff's suit will stand decreed.

7. As the question of law in controversy was in a somewhat unsettled state, we are of opinion that there should be no order for costs.

Debabrata Mookerjee, J.

8. I agree.

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