Jogeshwar Mahata and ors. Vs. Jhapal Santal and ors.

Jogeshwar Mahata and ors. Vs. Jhapal Santal and ors.

SooperKanoon Citation : sooperkanoon.com/869525

Court : Kolkata

Decided On : Aug-14-1923

Reported in : AIR1924Cal638

Appellant : Jogeshwar Mahata and ors.

Respondent : Jhapal Santal and ors.

Judgement :

1. The question involved in this appeal is whether a sale held in contravention of the provisions of the Bengal Act, II of 1918, is merely an irregular sale or a nullity.

2. The appellant obtained a decree for money against the respondent who is an aboriginal residing in the District of Mindnapur to which the Act applies and in execution of the decree put up his tenure to sale and purchased it himself on the 20th August, 1920. An application was made to set aside the sale on the 13th January, 1922. It was far beyond the period prescribed by Article 166 of the Limitation Act or even Article 12 of the Limitation Act. The Courts below having come to the conclusion that the sale was a nullity, overruled the objection of limitation and set aside the sale.

3. The decree-holders have appealed to this Court, and it is contended that the sale was not a nullity, and that the provisions of the Act having been made for the benefit of a particular class of persons and not for the general public, the respondents could waive the irregularity of the sale and the sale therefore was not

altogether invalid. We have been referred to certain observations made by Mookerjee, J., in the case of Ashutosh Sikdar v Behari Lal Kirtainia (1907) 35 Cal. 61 (F.B.). The learned Judge observes : 'When the object of the statute has been determined, if the Statutory provision is not based on grounds of public policy and is intended only for the benefit of a particular person or class of persons, the conditions prescribed by the statute are not considered as indispensable and may be waived, because every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity and which may be dispensed with without infringement of any public right or policy.' The mere fact that the statutory provision is intended for the benefit of a class of persons does not necessarily show that it is not based on grounds of public policy. As was observed by Lord Campbell, L.O., in Liverpool Borough Bank v. Turner (1861) 2 Deg. F. & J. 502, 'that no universal rule can be laid down as to whether mandatory enactment shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed,' and the case of Rajani Kanta Gosh v. Sheikh Rahaman Gazi : AIR1924 Cal408 , Mr. Justice Mookerjee observes : 'The only rule that may be adopted is that when the provisions of a statute have been contravened, if a question arises as to how far the proceedings are affected by such contravention, the matter must be determined with regard to the nature, scope and object of the particular provision which has been violated. No hard and fast line can be drawn between a nullity and an irregularity.' We, therefore, have to consider the object of the Act. The preamble states 'whereas it is expedient to supplement and amend the Bengal Tenancy Act, 1885.' Section 49(B) of the Act lays down : 'No transfer by an aboriginal tenure-holder, raiyat or under raiyat of his right in his tenure or holding, or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement shall be valid to any extent except as provided in this chapter.' The voluntary alienation therefore is absolutely prohibited except as provided for in that chapter and Section 49-K lays down, 'notwithstanding anything in this Act, no decree or order shall be passed by any Court for the sale of the right of an aboriginal tenure-holder, raiyat or under-raiyat in his tenure or holding, or in any portion thereof, nor

shall any such right be sold in execution of any decree or order.' There are certain provisos to which we need not refer. Section 49-K therefore clearly lays down that there shall be no decree for sale of a tenure of an aboriginal, and no sale shall be held in execution of a decree except a rent decree and certain other cases mentioned in the proviso. It is not reasonable to hold that the legislature having enacted that there shall be no voluntary alienation by an aboriginal to any extent except as provided in this chapter should allow an involuntary sale in the same chapter. The enactment is for the protection of the aboriginals against any indiscreet transaction. That being the object of the enactment we think it was not open to him to waive the benefit of the provisions. We do not think that the mere fact that the enactment was made for the benefit of a class of persons, viz., the aboriginals in certain district, does not show that it was not on the ground of public policy. We are, therefore, of opinion that the sale was a nullity and if the sale is altogether void the question of limitation does not arise. That question arises where the sale is a valid sale until it is set aside as it was in the case of Malkarjun v. Narhari (1901) 25 Bom. 337 (P.C.). Having regard to the view taken by us that the sale in the present case was not an irregular sale but a void one, we are of opinion that the application is not barred by limitation.

4. The appeal is accordingly dismissed with costs. The hearing fee is assessed at one gold mohur.