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Court : Madhya Pradesh Gwalior

Decided On : Aug-11-2011

Acts : Land Acquisition Act - Section 18; Transfer of Property Act, 1882 - Section 136

Appeal No. : Writ Petition No.1771 of 2008

Appellant : Devkinandan

Respondent : State of Mp and Others

Advocate for Def. : Mr. Bhagwan Raj Pandey, Adv.

Advocate for Pet/Ap. : Shri Sanjeev Jain, Adv.

Judgement :

1. Brief facts for adjudication of this matter are as under:-

2. The respondent No.1-State of Madhya Pradesh acquired the land belonging to the petitioner and his mother namely Smt.Dhanwanti Bai for public purpose under the provisions of Land Acquisition Act. In lieu of the land acquired, the compensation was awarded by the Collector by his award. Since the award was not adequate, the petitioner and his mother and other claimants applied for reference under the said Act. The reference was made to the Reference Court, namely, the Court of Second Additional District Judge, Bhind under Section 18 of Land Acquisition Act. The said Court is hereinafter called as 'Reference Court'.

The Reference Court enhanced the compensation by award dated 29.11.1996 (Annexure P/2). The award got stamp of approval by this Court in Appeal preferred by the State of Madhya Pradesh.

3. The case of the petitioner is that the said award is a “decree” within the meaning of Section 2 of the Code of Civil Procedure. For execution of said award, the petitioner filed an execution application jointly before the Reference/Executing Court on 28.3.1997 (Annexure P/3). The case was registered as Execution Case No. 8/92x97.

4. During pendency of execution proceedings, the decreeholders (present petitioner and his mother Dhanwanti Bai and other claimants) engaged Shri Ramnarayan Gupta, Advocate, as well as Shri Brijesh Kumar Gupta, Advocate (respondent No.2 in the present petition).

5. Shri Brijesh Gupta initially represented the decree-holders for some period, thereafter without the knowledge of decreeholders on his own as counsel for the decree-holders, submitted an application dated 4.7.2000 (Annexure P/5) alleging that the decree has been purchased by him by a registered sale deed dated 14.12.1999 and, therefore, in place of original decree-holders, his name be substituted as decree-holder.

6. Reference Court vide impugned order dated 11.10.2006 (Annexure P/1) has allowed the said application. Against which, the present writ petition has been filed.

7. Learned counsel for the petitioner Shri Sanjeev Jain has raised a singular ground. Shri Jain submits that as per Section 136 of the Transfer of Property Act, 1882 (hereinafter referred to as the 'T.P. Act'), the respondent No.2 Brijesh Kumar Gupta, Advocate could not have purchased the decree and Court below without examining the impediment of Section 136 aforesaid has committed a manifest error of law in allowing the application dated 4.7.2000 (Annexure P/5).

8. I have heard the learned counsel for the parties and perused the record.

9. For ready reference, Section 136 of T.P. Act is reproduced here as under:-

> **“136. Incapacity of officers connected with Courts of Justice.-- No judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid. ”**

10. According to Shri Jain, learned counsel for the petitioner, the decree which is purchased by respondent No.2 falls within the four corners of Section 136 of the T.P. Act and, therefore, it could not have been done by the respondent No.2 and the Court below should not have permitted his application in the teeth of impediment under Section 136 of the T.P. Act.

11. Section 136 of the T.P. Act can be an impediment in receiving any “share”, “interest” or any “actionable claim”. Admittedly the decree cannot be said to be a 'share' or 'interest'.

The only question which is required to be examined is whether decree can be said to be an 'actionable claim' ?

12. Therefore, the singular question which now requires to be decided is whether the action of purchasing decree falls within the ambit of Section 136 of T.P. Act.

13. Meaning of word “actionable” as per Black's Law Dictionary is as under:

> **“Furnishing the legal ground for a lawsuit or other legal action intentional interference with contractual relations is an actionable tort”**

As per Wharton's Concise Law Dictionary, the word

> **“Actionable Claim” has following meaning:-**

“actionable claim' means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.”

“Actionable Claim” is defined in Section 3 of the T.P. Act as under:-

“““actionable claim' means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.”

Even on perusal of this definition, it is clear that the 'decree' does not fall within the ambit of “actionable claim”. Thus, examining it from any angle whether as per the definition, clause or dictionary meaning, the 'decree' cannot be said to be an “actionable claim” and, therefore, the contention of the petitioner cannot be accepted. No other material, ground or authority is shown by learned counsel for the petitioner in support of his aforesaid contention.

14. Madras High Court in the case reported in AIR 1921 MADRAS 113 (M.Govindarajulu Naidoo v. D.H. Ranga Rao and others) held as under:-

“The next point taken before us is that the transfer of the decree to the petitioner who is a pleader was invalid by virtue of section 136 of the Transfer of Property Act (IV of 1882) since it is a

transfer of an actionable claim which the law prohibits in favour of pleaders and certain functionaries of court. Decree does not come within the definition of an actionable claim as given in the Transfer of Property Act Act IV of 1882), but partakes of the nature of property. ”

15. The Apex Court in the case reported in AIR 1955 SC 376 (Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd.) held as under:-

“Per Bhagwati J. : A judgment debt or decree is not an actionable claim for no action is necessary to realise it. It has already been the subject of an action and is secured by the decree. A decree to be passed in future also does not come as such within the definition of an actionable claim and an assignment or transfer thereof need not be effected in the manner prescribed by S. 130.”

16. In view of aforesaid dictionary meaning and the judgment passed by Madras High Court and Supreme Court (supra), it is crystal clear that the decree, by no stretch of imagination, can be said to be an “actionable claim”. Since in the opinion of this Court, the decree is neither a share nor interest or actionable claim, it does not fall within the four corners of Section 136 of the T.P. Act. Accordingly, there was no reason for the Court below to invoke Section 136 of the T.P. Act in the facts and circumstances of the case. In absence thereof, the Court below has committed no legal error in passing the impugned order.

17. Thus, there is no reason for invoking the jurisdiction under Article 227 of the Constitution of India. The result is inescapable that the petition is devoid of merit and substance and is accordingly dismissed. No costs.

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