

Jogindra Nath Roy Vs. Dingmi Garoni W/O Raichand Sangma and anr.

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Court : Kolkata

Decided On : Jul-23-1947

Reported in : AIR1948Cal114

Appellant : Jogindra Nath Roy

Respondent : Dingmi Garoni W/O Raichand Sangma and anr.

Judgement :

Harries, C.J.

1. This is a second appeal from an order of a learned Subordinate Judge dismissing an appeal from an order of a learned Munsif who set aside a sale under Section 174, Ben. Ten. Act.

2. The ease for the applicant respondents was that the processes and sale proclamation had been suppressed and that in consequence the property had been sold at a very inadequate price. By reason of the fraud practised on them the applicants were unaware of the sale for some considerable time and they prayed in aid Section 18, Limitation Act to bring the case within limitation.

3. The learned Munsif held that the processes had been suppressed and that there had been no sale proclamation. He further held that by reason of the fraud practised on them the applicants were unaware of the sale until shortly before they made the application. He accordingly set aside the sale.

4. The present appellant appealed to the Court of the learned Subordinate Judge and there an entirely new point was taken on behalf of the tenant respondents. It was urged that this sale was null and void by reason of non-compliance with Section 49L, Ben. Ten. Act. The respondents are aboriginals and as no reasonable time was given to them to satisfy this decree, it was urged that the sale held in execution of the decree was invalid. The learned Subordinate Judge upheld this contention and dismissed the appeal purely on this ground. He did not consider the other ground as to whether the processes had been suppressed and the sale had not been proclaimed.

5. On behalf of the appellant it has been argued that Section 49L would not apply to this case. Section 49L as it stood at the time this application was made, made no distinction between a rent decree and any other form of decree. There has since been an amendment by Bengal Act, 12 [XII] of 1945. By Section 3 of this Act decrees for rent are excluded from the operation of Section 49L.

6. It was argued that the amending Act must apply to this proceeding, as giving time to pay the decree was purely a matter of procedure. In my view Section 49L gives a

judgment-debtor a right and that is a right to have a reasonable time to pay the debt before his property is sold. It is a universal rule of construction that no statute must be construed as taking away accrued rights unless the words 'compel the Court' to give the statute such construction. The presumption is that a statute is merely prospective and not retrospective. I can see nothing in Section 3 of Act 12 [XII] of 1945 which would compel me to hold that it would apply to any proceeding instituted before the Act came into force. It appears to me that I am bound to hold that when this application was made Section 49L as it then stood made no distinction between a rent decree and any other form of decree and that being so, the respondents in this case were entitled to a reasonable time to pay the decretal debt though it was a rent decree.

7. Mr. Rama Prosad Mookerjee on behalf of the appellants has urged that in any event the respondents were given a reasonable time to pay this money. Admittedly, no order was passed giving them time to pay before the sale. But Section 49L, Ben. Ten. Act, does not in terms require any such order. What the section requires is that the judgment debtor should in fact be given a reasonable time to pay before the sale. If a Court bearing Section 49L in mind fixes the date of the sale, giving the date, Section 49L would be complied with. I have in an earlier case held that Section 49L would be complied with if the judgment debtor did in fact get a reasonable time though there was nothing to show that Section 49L was ever in the mind of the Court. The important factor always is—did the judgment-debtor get a reasonable time to pay the decretal amount? If he did then it appears to me that he has no ground for complaint, because no order was passed or even because the Judge had overlooked Section 49L if he had in fact been given a reasonable time. Mr. Rama Prosad Mookerjee has urged that in this case the judgment-debtor respondents were given a reasonable time to pay the decretal amount. The decree with costs was for Rs. 500 odd. Execution was started on 13-9-1942, and there is a note on the order sheet to the effect that notices under Section 163, Ben. Ten. Act were directed to be issued on that day. Whether they ever reached the judgment-debtors it is impossible to say, but even assuming they reached the judgment-debtors a few days afterwards, say August 15 or 16—could it be said that the judgment-debtors had a reasonable time to pay this debt when the sale took place either on October 5 or October 7? It would be a period of less than two months to pay Rs. 500 and whether the time was reasonable or not would depend upon the circumstances of the judgment debtors. Mr. Rama Prosad Mookerjee has urged that the very fact that they held the land in question shows that they are people of substance and therefore six to seven weeks would be quite enough time to give them to pay the amount. On the other hand, Mr. Lahiri suggests that his clients are not people of substance and that six weeks would be far too short a time to pay off this debt.

8. The learned Subordinate Judge did not regard the matter from this point of view. He seems to have thought that as the order sheet showed no order giving them time, that concluded the matter. It is quite clear from a Bench decision of this Court in *Ardha Chandra v. Namani Garoani* : AIR1939Cal323 that a Court may hold that a reasonable time is given, though no express order has been passed. It appears to me that before the learned Subordinate Judge could hold this sale to be null and void under Section 49L he would have to consider the period of time between the middle of August and October 5 or October 7, and hold whether that was or was not reasonable time to pay off the debt. As I have said, he must take into consideration the circumstances of the judgment-debtors existing at that time. If such time was sufficient to pay off the debt then Section 49L would have no application. But if the

time was too short to be reasonable time, Section 49L would invalidate the sale. Before this point under Section 49L, can be decided the Court must express a definite finding on this question. Further, I am of the view that the lower appellate Court must decide in this case whether or not the processes were suppressed. If no notices under Section 163 were ever served upon the respondents then they knew nothing of the sale and quite apart from Section 174, Ben. Ten. Act, the sale would be null and void under Section 49L, because they were never given any time at all to pay the debt. A finding on this question of service of notice appears to me to be essential not only to decide the point under Section 174, but to decide the point under Section 49L, because at the moment I have no conception as to when the judgment-debtor is supposed to have known about the sale. As I say, if all was done according to the order sheet they should have known round about August 15 or 16. Whether they did or not, it is impossible to say.

9. For these reasons the order of the learned Subordinate Judge cannot be maintained and must be set aside. The case will go back, to the lower appellate Court for that Court to record findings-firstly on whether the sale should be set aside on the ground of fraud and irregularity and whether the application under Section 174 was within limitation, and, secondly upon the further question whether the actual time which the judgment debtors had to pay this debt can be regarded as reasonable within the meaning of Section 49L, Ben. Ton. Act. Having arrived at findings on these two points, the learned Subordinate Judge will proceed to dispose of the appeal.

10. In the result therefore this appeal is allowed, the order of the lower appellate Court is set aside and the case is remanded to that Court to be disposed of in the light of the observation I have made and in accordance with law.

11. The costs in this Court will abide the event in the lower appellate Court.

12. No further evidence will be allowed in the lower appellate Court.

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