(1950) 02 CAL CK 0017

Calcutta High Court

Case No: Civil Revision Case No. 1968 of 1949

Radha Krishna Sau		APPELLANT
	Vs	
Munchehara Bibi		RESPONDENT

Date of Decision: Feb. 16, 1950

Acts Referred:

- Bengal Public Demands Recovery Act, 1913 - Section 20(2)
- Bengal Tenancy Act, 1885 - Section 260, 26C, 26F, 26F(2)
- Civil Procedure Code, 1908 (CPC) - Section 65
- Limitation Act, 1908 - Article 181

Citation: (1951) 1 ILR (Cal) 415

Hon'ble Judges: Roxburgh, J

Bench: Single Bench

Advocate: Paresh Nath Hookerjee and Basanta Kumar Panda, for the Appellant;Sarat Chandra Janah and Saroj Kumar Haiti, for the Respondent

Judgement

Roxburgh, J.

This Rule raises the question as to what is the starting point for the period of limitation under Article 181 of the Limitation Act in respect of an application for pre-emption u/s 26F of the Bengal Tenancy Act in a case where no notice has been served. The sale in this case was a certificate-sale under the Public Demands Recovery Act. The application for pre-emption was made within three years of the date of confirmation of sale, but more than three years from the date of the actual sale. The learned Munsif decided that the application was barred by limitation. On appeal, the Subordinate Judge, Midnapore, has allowed the application.

2. There is a second point as to the amount which the opposite party in the pre-emption application is entitled to receive. The sale in question included some mokarari mourashi holdings as well as occupancy holdings. The total purchase price was Rs. 250. The learned Subordinate Judge has decided that the opposite party is

entitled to Rs. 125, that is, half of the purchase price, plus 10 per cent., in all Rs. 137-8-0.

3. The lower court has based its decision on the analogy of the case of Gobardhan Bar v. Gunadhar Bar ILR (1940) 2 Cal. 270. In that case a transfer by way of deed was in question, the transfer having been made before the amendment of Section 26F and registration having been made subsequently and it was held that the amended provisions of Section 26F applied to the case. Using similar arguments as adopted there, the learned Subordinate Judge has held that the starting point for limitation here is the date of confirmation of the sale.

4. It has been held in the case of Asmatali Sharip v. Mujharali Sardar ILR (1948) 2 Cal. 54 by a Special Bench that, in cases u/s 26F, where no notice has been served, the Article applicable is No. 181 of the Limitation Act. The argument put forward before me is that, as under the provisions of Section 20(2) of the Public Demands Recovery Act, which runs as follows:

Where immovable property is sold in execution of a certificate and such sale has become absolute, the purchaser''s right, title and interest shall be deemed to have vested in him from the time when the property is sold and not from the time when the sale becomes absolute;

the right to make the application u/s 26F accrued from the time when the property was sold and not from the time when the sale became absolute. In passing, I may note that the framers of Sections 260 and 26F never contemplated a case where no notice was issued and this gives rise to the difficulty in finding what is the period of limitation in such a case settled by the case of Asmatali Sharip v. Mujaharali Sardar (supra) and the present point,--what is the starting point for such limitation? It is not very profitable, I think, to examine the provisions of Sections 26C and 26F from this point of view, because so clearly the present problem was never in contemplation. u/s 260 a sale cannot be confirmed unless the purchaser files a notice and deposits the recess-fees as required under the section. In the present case no notice for service on the present Applicant for pre-emption was served. It is the purchaser''s case that, in fact he did not know of the existence of her interest in the property.

5. The learned advocate for the Petitioner here relies on the case of Bhawani Kuwor v. Mathura Prasad Singh (1912) ILR 40 Cal. 89 : L.R. 39 IndAp 228 but, in my opinion, the argument he seeks to base on that decision will not hold good. In that case, the sale took place on March 29, 1900 and was confirmed on April 23, 1900. It was a sale in execution of a mortgage decree. The dispute lay between the purchaser in that execution and a purchaser at a revenue sale. It was held that the purchaser in the sale held in execution of the mortgage decree could not keep his mortgage title alive so as to operate on the date of sale,--March 29, 1900, as an encumbrance within the meaning of Section 54 of Act XI of 1859. The case thus dealt with circumstances in which the sale had been confirmed and the equivalent of Section

65 of the CPC was in operation and the title to the property was to be deemed to have vested in the purchaser from the time when the property was sold, namely, March 29, 1900. All the reasoning of their Lordships of the Judicial Committee was based against a background of this circumstance.

6. If an Applicant for pre-emption u/s 26F were to make his application before a sale had been confirmed, either under the Public Demands Recovery Act or the Code of Civil Procedure, he would be met by the answer that, before confirmation, title clearly had not vested and application could not be made. The question is--if he makes his application after confirmation of sale, is he to be told that, although, in fact, he could not apply for pre-emption before confirmation, when he comes after confirmation, his right to apply was then to be held to have accrued as from the actual date of sale, and therefore, if he comes more than three years from that date, this application is barred by limitation. This, in my opinion, will only hold good if we are to interpret the words in Article 181 "when the right to "apply accrues" as including the words "and in cases of sales "under the Public Demands Recovery Act, etc., the right to "apply shall be deemed to have accrued from the date of sale." In fact, the right certainly does not accrue until confirmation, for the reason I have indicated above. It might be in law, because the law provided that the right shall be deemed to have accrued at some earlier date, that the earlier date would become applicable, but, in my opinion, it would require very clear provision to make this the case. It does not, in my opinion, at all follow that, because it is provided for other purposes u/s 20(2) of the Public Demands Recovery Act that the purchaser''s right, title and interest shall be deemed to have accrued from the date of sale, anything else is to be deemed to have taken place on that date. When a statute provides that something is to be deemed to have happened, it means that something which did not, in fact, happen is now in law to be deemed to have happened. Similarly, here, in fact, clearly the right to apply for pre-emption cannot accrue before confirmation. There is nothing, in my opinion, requiring me to hold that, after confirmation, the right is to be deemed by law, but contrary to the facts, to have accrued at the earlier date. For this reason, I hold that the decision of the lower appellate court in this matter is, therefore, correct.

7. The argument as to the second point is somewhat ingenious, but I do not think effective. It is to some extent based on a remark in the Special Bench case already stated. In that case, a contention was taken that where no notice was served u/s 26F, no right to apply for pre-emption arose at all. To reinforce the argument, reference was made to Section 26F(2), which is as follows:

The application shall be dismissed unless the Applicant or Applicants at the time of making it, depot in court the amount of the consideration money or the value of the transferred portion of share of the holding, as stated in the said notice, together with compensation at the rate of ten per centum of such amount (the italics are mine).

Mukherjea J. rejected this contention and said:

We do not think, however, that it would be impossible for a non-notified co-sharer to comply with the provision of Sub-section (2) of Section 26F. All that the sub-section says is that the application shall be dismissed in limine, unless the Applicant deposits in court the value of the property or the amount of consideration money as stated in the notice u/s 26C together with 10 per cent, of the sum as compensation. The value or consideration money specified in the notice must, subject to any clerical or arithmetical error which court can always rectify, be the same as the value or consideration stated in the instrument of transfer. The Applicant even though he might not get any notice u/s 26C must be acquainted with the contents of the deed of transfer before he files the application and it would be a sufficient compliance with the requirement of Sub-section (2), if the amount stated in the conveyance is deposited. In our opinion, the language of Sub-section (2) of Section 26F is not such as to compel the inference that the legislature did not intend to make the remedy by way of application available to a co-sharer who was not served with a notice u/s 26C.

8. The argument before me is that the Special Bench has held that the Applicant must deposit the total amount of consideration stated in the document. Therefore, in the present case, admitting that the Applicant has in fact deposited that amount, the opposite party is entitled to receive the full amount. In the first place, there is no decision of this sort in the paragraph. I have above quoted. The point is merely used as one argument to meet the other argument that, in the circumstances, no application u/s 26F could at all be made. In the second place, with great respect, the very facts of this case appear to draw attention to, shall we say, a weakness in the argument used by the learned Judge. Reading Section 26F(2) strictly, with great respect, it would seem to me that as the Applicant is only required to deposit the amount of consideration money or the value of the transferred portion or share of the holding as stated in the said notice and in view of the fact that there is no notice and therefore, no such value stated, the sub-section, in fact, does not require the Applicant to deposit anything. In any case, the sub-section clearly contemplates a case similar to the present, where the transferred portion or share of the holding may not represent the whole consideration money of the document of transfer and it, therefore, requires the purchaser, applying for confirmation of sale, for example, u/s 26C, when supplying the notices in respect of the occupancy holding of the portion of the lands transferred, to state its value. Where there is no notice and where there is a transfer of a share of an occupancy holding along with other rights, the Applicant for pre-emption is not so conveniently in a position to deposit the value of the holding as was contemplated in the argument in the passage quoted above. At best, he can only deposit a sum, according to his own idea, of the value of the holding. The argument, therefore, based on the passage cited that the opposite party is entitled to the full consideration money, in my opinion, cannot stand.

9. It was suggested that I ought to interfere and send the matter back for the lower court to investigate further the actual value of the share. The learned Judge has given a rough decision deciding that the amount the opposite party is entitled to is half of the consideration money and I certainly see no reason to interfere with that reason. On the contrary, were the matter pressed, I might be disposed to decide the case on the view indicated above that, in the circumstances, illogical and anomalous as it may seem, no notice having been served, nothing was required to be deposited and consequently, the opposite party is entitled to nothing.

10. The case shows that urgent necessity of some patching up of the provisions of Section 26F. This was pointed out in the Special Bench case in 1947 but no action has yet been taken.

11. The result is that the present Rule must be discharged with costs.