

(2011) 03 CAL CK 0113

Calcutta High Court

Case No: C.A. No. 708 of 2010 in BIFR Case No. 107 of 1987 and C.A. No. 50 of 2011 in C.P. No. 35 of 2000

Sudipta Traders P. Ltd.

APPELLANT

Vs

Official Liquidator and Others

RESPONDENT

Date of Decision: March 22, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 65, Order 21 Rule 66, Order 21 Rule 90, Order 21 Rule 91, Order 21 Rule 92
- Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Section 20
- Registration Act, 1908 - Section 17
- Transfer of Property Act, 1882 - Section 54, 55, 55(1)

Citation: (2011) 164 CompCas 61 : (2011) 3 ComplJ 353**Hon'ble Judges:** I.P. Mukerji, J**Bench:** Single Bench

Advocate: S.K. Kapoor, S.N. Mookerjee, Jishnu Saha and K. Mallick, in C.A. No. 708 of 2010 and S. Sen, Manju Bhutoria, G.S. Asopa and Ruma Sikdar, in C.A. No. 50 of 2011, for the Appellant; Tilak Kumar Bose, Susanta Dutta and B. Dutta for official liquidator in C.A. No. 708 of 2010, D.K. Mukherjee and Aparna Banerjee for official liquidator in C.A. No. 50 of 2011, for the Respondent

Final Decision: Allowed

Judgement

I.P. Mukerji, J.

The question to be answered in each of the two applications above is whether an order can be made permitting the purchaser of an immovable property of the company in liquidation to obtain the conveyance in favour of its nominee ?

2. Since identical questions of law and more or less identical facts are involved in these two applications, they are being disposed of by a common judgment and order.

Sudipta Traders

3. Let me take the facts of Sudipta Traders first. Sale of its immovable property was confirmed at Rs. 13.5 crores by an order of the hon'ble Supreme Court of India made on June 20, 2008. That order said that upon the balance of the said consideration being deposited by the purchaser "the sale in favour of the Petitioner shall be confirmed". Upon payment of the balance consideration by them possession was handed over to the applicant by the official liquidator on August 19, 2008.

4. The terms and conditions governing the sale, inter alia stipulated under Clause 7 that intending purchasers could not bid in the name of any nominee (Clause 7). Furthermore, Clause 11 provided that the deed of conveyance should be executed in favour of the purchaser.

5. Sometime in December 2008 a draft conveyance was sent by the purchaser to the official liquidator.

6. A 100 per cent, subsidiary of the applicant was incorporated on 19th July, 2010 by the name of Blackberry Properties Private Limited.

7. Now, by this application, the applicant wants the conveyance to be executed in favour of its subsidiary as a co-purchaser.

8. There is absolutely no dispute about the fact that the entire consideration was paid by the applicant.

9. This application was resisted by the official liquidator. Mr. Tilak Kumar Bose, learned senior advocate, appearing for him said that the terms and conditions of the sale prohibit making of an offer by a nominee. Consequently any conveyance cannot be executed in his favour. He relied on the above clauses in the terms of the sale. Moreover, it was submitted that sale by the official liquidator is a court sale and that such sale is complete at the time of confirmation of the sale by the court. This sale has become final. Therefore, passing an order of execution of conveyance in the name of the applicant's nominee as co-purchaser would substantially alter the order confirming the sale.

10. The detailed submissions of the parties will be more fully discussed under the heading "discussion" below.

Rajesh Ispat

11. Now, I come to the case of M/s. Rajesh Ispat Private Limited. That was sale of the assets of M/s. Kero Rajendra Monolithics Limited, in liquidation. The sale was confirmed in favour of the applicant by an order of this Court dated October 1, 2010. Here also there is no dispute that the entire consideration was paid by the applicant purchaser within the date stipulated in the order confirming the same. On November 23, 2010, the applicant wrote to the official liquidator requesting him to

hand over physical possession of the property to them. The applicant is in physical possession of the property. Now, is the stage for execution of conveyance.

12. The applicant says that Vijayshree Laminates Pvt. Ltd. is its sister concern. The shareholders of the applicant and this company are the same. By this application the applicant wants execution of conveyance in favour of itself jointly with its said sister concern as a co-vendor.

13. In this case also the terms and conditions of sale are identical. It provided that no offer could be made in the name of the nominee. Furthermore, the conveyance was to be executed in favour of the purchaser. The official liquidator objects to execution of conveyance in favour of the applicant and its sister concern on the same grounds of objection as it made in the case of Sudipta Traders.

14. In the case of Rajesh Ispat Private Limited, submissions were made by Mrs. Ruma Sikdar, on his behalf. The detail submissions will appear as I discuss the merits of this matter.

15. Discussion There is no dispute whatsoever, that in each of the above two applications the entire consideration was paid by the purchaser in whose favour the sale was confirmed. I had specifically put this question to learned Counsel representing the official liquidator. The purpose of asking the question was to ascertain whether the nominee had directly or indirectly paid the consideration, without disclosing its identity and thereafter claiming conveyance at the final stage of the sale. But it was confirmed by learned Counsel that such consideration had been paid in its entirety by the purchaser.

16. The only substantial point, to my mind in the arguments advanced on behalf of the official liquidator is that the sale took place when it was confirmed by the court. The property vested at that point of time. Now, to execute a conveyance in favour of the nominee of the purchaser as a co-vendor would be to make a resale of the property already sold which cannot be done in law. At any rate that would amount to divesting a transferee of the property already transferred to it.

17. The foundation for this argument is in [Megha Enterprises Pvt. Ltd. Vs. Official Liquidator \(Rathi Alloys and Steel Ltd. in liquidation\)](#), which relies on [Bishan Paul Vs. Mothu Ram](#),

18. In my opinion, the case of [Bishan Paul Vs. Mothu Ram](#), is to be examined first.

19. In that case property was being transferred under the provisions of Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The procedure for sale was mentioned in Chapter XIV of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The question arose before the Supreme Court as to the point of time when the title passed. There were five stages in the sale (a) the fall of the hammer and the declaration of the highest bid, (b) the approval of the highest bid by the Settlement Commissioner or officer appointed by him, (c) payment of the

full price after approval of the highest bid, (d) grant of certificate, (e) registration of the certificate. There was a further condition that the entire purchase price had to be paid and unless such purchase price was paid no title passed. It held that in that particular case title passed upon payment of the full price. That case distinguished sale made under the Act from the sale conducted under the Code of Civil Procedure, 1908. After noting the relevant sections, orders and rules, the hon"ble Supreme Court held that under the Code "title is deemed to commence from the date of auction and not when the sale becomes absolute" and in that case from the date of payment of full consideration.

20. I am afraid that this decision of the hon"ble Supreme Court has been misunderstood and misapplied. Let me examine the CPC regarding sale of immovable property by the court. Section 65 is in the following terms:

65. Purchaser"s title.--Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

21. The detailed provisions regarding sale in execution are contained in Order XXI, Rule 65 enacts that sale in execution of a decree shall be conducted by an officer of the court or such other person as the court may appoint. Order XXI, Rule 65 is as follows:

O. XXI, Rule 65. Sales by whom conducted and how made.--Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf, and shall be made by public auction in manner prescribed.

22. Rule 66 enjoins that the sale has to be made by public auction. In case of immovable property the full purchase money has to be paid within fifteen days from the date of sale of the property. Then there are provisions like Rules 90 and 91 for making applications to set aside the sale. Order XXI, Rule 92 provides that where no such application is made or made and disallowed the court shall make an order confirming the sale and thereupon the sale shall become absolute. Rule 94 says when the sale becomes absolute the court will grant a certificate to that effect. Order XXI, Rule 92 and Order XXI, Rule 94 are reproduced below:

Order XXI, Rule 92. Sale when to become absolute or be set aside.--

(1) Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the court shall make an order confirming the sale, and thereupon the sale shall become absolute:

(Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the court shall not confirm such sale until the final disposal of such claim or objection.)

(2) Where such application is made and allowed, and where, in the case of an application under Rule 89, the deposit required by that rule is made within sixty days from the date of sale, (or in cases where the amount deposited under Rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the court, the court shall make an order setting aside the sale):

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby:

(Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the CPC (Amendment) Act, 2002)

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(5) If the suit referred to in Sub-rule (4) is decreed, the court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the court otherwise directs, be revived at the stage at which the sale was ordered.)

94. Certificate to purchaser.--Where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date, the day on which the sale became absolute.

23. Now, according to Section 65, the property is to vest in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

24. Therefore, if and when the sale becomes absolute the property vests from the date of the sale.

25. In the instant sale the question to be asked is has the sale become absolute ?

26. The aforesaid provisions of the CPC plainly provide that the sale is ordered by the court but conducted by its officer. There are various stages in this sale. One of the stages is confirmation or acceptance of the offer in a public auction, by the court. At that point of time, the sale is confirmed in favour of the purchaser. But the sale does not become absolute. The purchaser has to pay the full consideration. Time has to be given to invite objections to such sale as provided in the rules set out

above. After expiry of such time period the sale certificate has to be issued. Section 17 of the Registration Act, 1908 plainly provides that any instrument of sale has to be registered. Therefore, the certificate of sale also has to be registered. Similar is the procedure in the conduct of sale by the official liquidator.

27. In the case of [Bishan Paul Vs. Mothu Ram](#), after the sale became absolute by registration of the conveyance the property was deemed to vest in the purchaser when the entire consideration was paid. The Supreme Court decision does not say that before or without the sale becoming absolute, the property would vest in the purchaser from the date of his making over the full payment, irrespective of fulfilment of other conditions. In my opinion, there is not much difference between the sale which was before the Supreme Court under the Displaced Persons (Compensation and Rehabilitation) Act and the sale under the Code of Civil Procedure. Sale in both cases became absolute inter alia upon issuance of certificate and registration of such certificate. Only upon registration of certificate does the date of sale relate back. In the Supreme Court case it related back to the date of payment of full consideration. In an execution sale under the CPC after the sale became absolute, title related back to the date when the sale was confirmed by the court.

28. Sale of a property of a company in liquidation is by the court through the official liquidator. The official liquidator is the officer of the court conducting the sale. The sale is first confirmed by the court, then time is given to the purchaser to pay the balance consideration, then a conveyance is executed in his favour by the official liquidator. Section 54 of the Transfer of Property Act, 1882 enacts that a sale of a property valued at more than one hundred rupees may be made only by a registered instrument. Such is also provided by Section 17 of the Registration Act, as discussed before. Therefore, when conveyance has not yet been executed in favour of the purchaser, it cannot be said that the sale has been completed. Therefore it cannot be said that title has already vested in the purchaser. Far less can it be said that the title has vested from a particular date.

29. Now, I will deal with the argument whether a conveyance can be executed in favour of a nominee.

30. u/s 55(1)(d) of the Transfer of Property Act, 1882 the seller is to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place. It follows that preparation of the conveyance is the obligation of the buyer. In Halsbury's Laws of England, 4th edition, para. 289 placed by Mr. S.K. Kapoor, senior advocate, it is noted that it is a common practice in England for a purchaser to direct conveyance of the property to be made to his nominee. This practice was also recognised in India, inter alia by the judgment of the Division Bench of the Bombay High Court in [Rahimtulla Lowji Damani Vs. The Official Assignee of Bombay](#), cited by Mr. S.K. Kapoor, learned senior advocate. In that case the appeal court of the Bombay High Court pronounced the following

dictum (page 341):

The short point we have to consider is whether the learned judge was right in saying that the official assignee is not bound to execute a conveyance in favour of a nominee of the purchaser.

... The right of a purchaser in England to require the conveyance to be made in his own name or in that of a nominee does not depend on his equitable interest under the contract; it depends on the terms of the contract. I have no doubt that the terms of the contract could negative that right, and the equitable interest which the purchaser takes would not override any express provision in the contract. In India the rights of the vendor are governed by Section 55 of the Transfer of Property Act, and Sub-clause (1) (d) of that section provides that the seller is bound, on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place. The obligation under that Sub-section is merely to execute a proper conveyance, the section being silent as to the person in whose favour that conveyance is to be executed. But the words "proper conveyance" must be used in the sense in which they would be understood in English law as meaning a proper conveyance in favour of the purchaser or as he shall direct.

31. It was also recognised in *B. Himantharaju Setty v. Corporation of the City of Bangalore*, reported in AIR 1954 Mysore 145, cited by the said learned Counsel. In paragraph 7, their Lordships held as follows (page 146):

(7) In a case decided by Beaumont C.J. and Rangnekar J. and reported in-- [Rahimtulla Lowji Damani Vs. The Official Assignee of Bombay](#), it has been pointed out that unless there is anything express in the contract to convey, entitling the vendor to insist that he is not bound to execute any conveyance except in the name of the purchaser, the vendor is bound to execute a proper conveyance to the purchaser "or his nominee". The party to a contract may dispose of the benefit of the same in favour of any other person. Such a disposition may be made either by way of assignment or by a sale or in other way. In England the law appears to be quite clear that a purchaser can always demand a conveyance from the vendor not only in his own favour, but in favour of any person as he would direct and the vendor cannot refuse to execute an conveyance in favour of the nominee of the purchaser. See--*Earl of Egmont v. Smith* (1876) 6 Ch. D 469 at page 474 (B), where Jessel, M.R., has pointed out that:

"an ordinary contract of sale is not only to convey to the purchaser, but to convey as the purchaser shall direct".

It is observed in Halsbury's Laws of England, Vol. 29, Hailsham edn., 1938, at page 411--

"Para. 558. As a rule the conveyance is made to the purchaser, but, provided the vendor is not prejudiced, the purchaser can direct it to be made to a nominee, for such estate and interest, not exceeding the interest purchased, as he pleases. Where the grantee is to enter into covenants with the vendor, the purchaser cannot substitute a new covenantor for himself without the vendor's consent, and in such a case the nominee must not be a person under disability.

Para. 559. When the purchaser has disposed of the land before the completion of the contract, it is usual, for the purpose of saving the expense of the second conveyance and double stamp duty, to take the assurance direct to the second purchaser. The disposition may be either by assignment of the contract or resale of the land. Upon an assignment of the contract the original purchaser is not usually a necessary party to the conveyance, nor is he a necessary party where there is a resale without increase of price".

In such a course there is no additional burden cast on the vendor as he receives full consideration and goes out of the scene. It is not urged in this case that the purchaser had to perform any other obligation or that any personal qualification of the purchaser was a material element of the contract of sale, or that there was any special contract which would override the general rights of the parties.

32. The principles in these decisions were applied and followed in the case of [Umrah Developers Vs. Deputy Commissioner and State of Karnataka](#),

33. The case of [Hans Raj Banga Vs. Ram Chander Aggarwal](#), cited by Mr. Tilak Kumar Bose, learned senior advocate appearing for the official liquidator was not placed in its proper perspective. In paragraph 14 of that report the hon"ble Supreme Court noted the facts and the law in this way (page 579):

14. The bid by way of tender given by the Appellant being the highest was accepted. He paid the entire sale consideration. The sale was confirmed in his favour and the sale certificate was issued. Since the property was sold on leasehold basis, the lease deed was executed on October 17, 1963 which was registered on February 22, 1964. The Appellant became the owner of the property, the moment full price of the property was paid and the title of the property passed on to him from the day of the confirmation of the sale and the issuance of sale certificate... the view taken by the High Court is against the law laid down by this Court in [Bishan Paul Vs. Mothu Ram](#), and also against the fundamental principle of jurisprudence as it is an established fact that a valid sale confirmed by the authorities confers title as well as ownership rights in the purchaser. Valid sale of property and ownership are inseparable and the moment the price is paid and sale is confirmed the purchaser becomes the owner.

34. This sale also was under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. In that particular case the sale had been perfected by issuance and registration of a sale certificate. Hence the title related back to the

time when property was intended to pass under the contract.

35. The decisions cited by Mr. Kapoor State of Himachal Pradesh v. Shivalik Agro Poly Products (2004) 8 SCC 556 and [Syndicate Bank Vs. Estate Officer and Manager, A.P.I.I.C. Ltd. and Others](#), are on the general propositions of law relating to sale that the sale must be by way of execution of conveyance and registration.

36. I have examined the terms and conditions of sale. It only says that offer by a nominee is not to be entertained. Furthermore, it provides that conveyance is to be in favour of the purchaser. The above authorities in [Rahimtulla Lowji Damani Vs. The Official Assignee of Bombay](#), ; B. Himantharaju Setty v. Corporation of the City of Bangalore AIR 1954 Mys 145 and Umrah Developers Deputy Commissioner, Bangalore Urban District, AIR 2010 Karn 186, say that unless there is a specific prohibition in the terms and conditions of sale, the purchaser, demanding conveyance in favour of a nominee is a well established practice in conveyancing.

37. In this case the bid was not made by any nominee or for and on behalf of another person. The full consideration was paid by the purchaser. The provision in the terms and conditions of sale that conveyance is to be executed in favour of the purchaser is the standard provision in an agreement for sale. There is nothing in those terms and conditions to exclude the right to demand conveyance in favour of a nominee, recognised by our common law. Particularly so, when the purchaser has paid the entire consideration and the nominee is a group company, as in the case of Rajesh Ispat or a subsidiary whose shareholding is held by the purchaser company, as in the case of Sudipta Traders.

38. But in the facts and circumstances of the case, the conveyance will be executed by joining the nominee as a co-purchaser.

39. The habendum of the conveyance will remain the same. There will be no provision for a division of the property in C.A. No. 50 of 2011 and then execution of separate conveyances is in favour of the purchaser and his nominee. There will be one conveyance of the property in favour of the purchaser and his nominee as co-purchasers.

40. Accordingly, each of the applications is allowed (a) by directing the official liquidator to join Blackberry Properties Private Limited, being the nominee of the applicant purchaser as a co-purchaser and execute the conveyance relating to C.A. No. 708 of 2010 within a period of four weeks from the date of service of a copy of this order upon him, (b) by directing the official liquidator to execute conveyance of the subject property in C.A. No. 50 of 2011 in favour of the applicant and its nominee Vijayashree Laminators Private Limited as co-purchasers within a period of four weeks from the date of service upon him of a copy of this order.

41. Urgent certified photocopy of this judgment/order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.