Madhadev Narayan Datar and Others Vs Sadashiv Keshev Limaye, Raghunath Ram Chandra Agarkar and Others

Court: Bombay High Court

Date of Decision: Feb. 9, 1920

Acts Referred: Limitation Act, 1963 â€" Section 26, 28

Citation: (1921) ILR (Bom) 45

Hon'ble Judges: Norman Macleod, J; Heaton, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.
In this case the plaintiffs sued to recover possession of the suit property together with Rs. 109-9-6 as

damages and costs. In the trial Court the plaintiffs succeeded. An appeal by the defendants to the District Judge was dismissed.

2. The plaintiffs claimed title trough their vendors, who were the purchasers at a revenue sale on the 27th of May 1904, which was confirmed on

the 6th of August 1904. The defendants remained in possession. They resisted the plaintiff"s claim to possession on the ground that the sale was

invalid.

3. The first question is, whether the defendants can raise this defence, since they did not file a suit to set aside the sale within one year under Article

12A of the Limitation Act. That question was decided in favour of the defendant in Venkatachalapathi Ayyar v. Robert Fischer (1907) 30 Mad.

444. The reasoning appears to be that the Limitation Act applies only to the limitation of suits, and it is only when a suit comes within Section 26 or

28 of the Act that a defence is barred, otherwise the defendant, who would be barred if he was raising the same question as a plaintiff, is not

barred from raising that question when he is a defendant. It seems well-recognized that unless the suit falls within Section 26 or 28 of the Limitation

Act, there is no bar of limitation to a defence. The plaintiff suing for possession has to prove his title. He sets up as his title a sale of 1901. The

defendants reply. ""The sale was invalid. It is true that if we file a suit now to set aside that sale, it would be time-barred. But there is -nothing in the

Limitation Act which prevents us from raising that defence in a suit by a plaintiff for possession of the property which was sold, when the question

arises whether the sale in 1904 was a good sale as against the defendants"". There was a sale by the Revenue Court under the provisions of the

Land Revenue Code for arrears of revenue. At that time proceedings were pending in the suit brought by the defendants against their landlord for a

declaration that the lands they held were held by them free of assessment. They had lost in the lower Courts and an appeal was pending in the High

Court. After the date of the sale but before the sale was confirmed the High Court set aside the decree of the lower Courts and remanded the case

for further inquiry, and eventually in 1905 passed a decree in favour of the defendants. The result was that it was held that the defendants held the

lands free of Assessment and it would follow that they would be entitled to recover any arrears of assessment which the plaintiff had recovered in

the revenue suit. In my opinion it follows that the sale to recover arrears of assessment, when as a matter of fact the land was free of assessment,

would be invalid as against the judgment-debtor in those proceedings.

4. But it has been argued in favour of the plaintiffs that they are purchasers without notice, and therefore their title is good as against the judgment-

debtor. That argument is sought to be supported on the analogy of a sale in execution of a, decree in a civil Court. No doubt when a decree is

passed against a defendant in a civil suit and his property is put up for sale in execution proceedings and he does not ask for a stay of execution,

the purchaser at the execution sale acquires a good title although it may happen that eventually the decree against the defendant is set* aside on

appeal. It appears to me that there is a very great distinction between sales in execution of civil Court decrees and sales by the revenue Courts for

arrears of assessment. I think that if it were found, as it has been found in this case, that as a matter of fact the defendant in the revenue

proceedings was entitled to hold his lands free of assessment, any sale which took place on the footing that he was bound to pay assessment would

be invalid and that the purchaser in such a sale would not acquire a good title except by adverse possession. In this case the purchaser did not

even get possession. The judgment-debtor remained in possession of the property, and ten years after the sale the vendor who had bought the

property for Rs. 8, subject to various mortgages, sold to the present plaintiffs. In my opinion the defendants were entitled to raise the question

whether or not the sale in 1904 was valid, and on the facts of this case I think that they succeeded in showing that the sale was invalid.

5. The result must be that the appeal succeeds, the decree of the lower appellate Court must be reversed and the plaintiff"s suit dismissed with

costs throughout.

6. In this case the plaintiffs sue for cancellation of the sale of the same property. But in my opinion Article 12A of the Limitation Act applied, and

they ought to have filed the suit to set aside the sale within one year. This appeal, therefore, must be dismissed with costs.

Heaton, J.

6. I concur in the decision in both matters. As regards pleading in defence an allegation which could riot Toe urged were the defendant a plaintiff, it

seems to me that the law as set out in the-Limitation Act is fairly clear. The Limitation Act deals with the bar of time in the case of suits and

applications. In general it does not profess anywhere either in the Act itself or in the Schedule to deal with defences. Therefore I do not think that

our law of limitation puts a bar of time to any defence in any case whatever except where it appears from the express words of the Act that such a

thing is intended. Such an intention is apparent in the words of Sections 26 and 28. The case we are dealing with is note however of the class

covered by these two sections. So the law of limitation does not in any way deprive the defendant of his right to put the plaintiff to prove that the

sale was a valid sale; provided of course that, the defendant establishes facts which appear to show-that the sale was invalid.

7. That the sale would have been set aside had a suit; been brought for the purpose within 12 months I cannot myself doubt. ""The owner of the

property, who is the plaintiff in one suit and defendant in the other, had brought a suit for the purpose of having it declared that he was not liable to

pay dhara, and that suit had been heard in the first Court and in the Court of first appeal when the land now in suit was sold. That sale was

authorised by a decision of the Revenue Court that dhara was in arrears. But when the second appeal was decided it was held that no dhara was

payable, so there would not have been any arrears. To explain a little more fully: the owner was sued for dhara in the Mamlatdar"s Court and an

order for payment was made and on his failure to pay his property was sold. That is to say, it was held that dhara was payable. But this was in an

order which assumed as determined a question which as a matter of fact had not been determined. At least it remained to be finally determined by

this Court in second appeal.

8. It may be that in those circumstances the Collector had no authority whatever to sell the property except subject to the condition that the sale

would not hold good if the decision of this Court was to the effect," as ultimately it was, that dhara was not payable. Or it may be that though the

sale might be held, it could only properly have been confirmed subject to such a condition. However it was held and it was confirmed quite

regardless of the possibility that the whole foundation, the whole justification of the sale might afterwards be removed by an order of this Court,

and such order was in fact eventually made. It seems to me that if sales of this kind are ever to be set aside, we have here overwhelming reason

why this particular sale should be held to have been a bad and not a binding sale; or rather one that would not have been upheld had a suit been

brought in time to set it aside. I find it difficult myself to imagine stronger reasons for setting aside a sale than are here disclosed. That the sale on its

merits therefore was bad and not good seems to me to be beyond question. In the case of Balkishen Das v. Simpson I.L.R (1898) IndAp 151

their Lordships of the Privy Council dealt with a sale which had been-made by a Collector on the supposition that arrears of revenue were due

when in fact they were not. They unhesitatingly set aside the sale in those circumstances, which do not seem to me to be really appreciably stronger

than those which exist in the present case. The appropriate result would appear to be the same in both cases, namely, that the Collector had really

no right to sell the property although he thought he had.

9. But it has been urged that although the sale was bad, yet as the land was sold to a stranger who paid the auction price for it and had no notice of

any defect of title, therefore the property cannot be taken away from such purchaser however bad the sale may have been. If the sale had been a

civil Court sale, it appears on the strength of the case of Shivlal Bhagvan v. Shambhuprasad (1905) 29 Bom. 435 that it would be so. But sales

held by civil Courts made after enquiry and after the fulfilment of all the required formalities are in a very different position from sales by Revenue

authorities. In the former case you have a Court of Justice at work with its impartiality and its care. In the other you have fiscal authorities at work,

and experience and common knowledge tell us that you certainly cannot expect and do not get the same qualities of impartiality and so forth in

fiscal authorities as you are entitled to expect and ordinarily do obtain from the civil Courts. So to apply to sales by fiscal authorities precisely the

same law which it is proper to apply to sales by civil Courts would seem, to me to be a very gross legal extravagance.

10. I feel no doubt whatever that this principle of a purchaser for value without notice cannot apply to the facts of this case. That principle to begin

with is based on this idea that circumstances occasionally arise in which a stranger who has paid money for property has a better right to that

property in equity than has the true owner. This of course is rather a startling proposition to any one who is disposed to regard the true owner of

property as the person undoubtedly entitled to it. The underlying idea is that the true owner loses his rights, not by parting with them but owing to

some carelessness or negligence on his part or on the part of those acting for him. In this particular case we have the true owner fighting vigorously,

assiduously and consistently for what he deems to be his right. There is nothing in the nature of negligence or carelessness on his part, and to

deprive him of his property by the application of a principle (or a rule as I prefer to call it) relating to a purchaser for value without notice would to

my mind be a very great injustice.

11. That is all I wish to say for myself in this case. I concur in the orders proposed.