

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 771 of 1987
Date of Decision : 09.12.2015

Idu and othersAppellants

Versus

Jakarya and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Mohinder S. Nain, Advocate
for the appellants.

Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the respondents.

Surinder Gupta, J.

This is second appeal against judgment dated 31.01.1986 passed by the Sub Judge (IInd Class), Palwal whereby the suit filed by plaintiffs Jakarya, Unus and Abdul Waheb sons of Abdul Rahim seeking relief of declaration that attachment, auction and sale deed of the suit land dated 06.08.1974, 24.02.1976 and dated 06.01.1981/10.03.1981 respectively are illegal, null and void and non-effective/non-operative *qua* right of the plaintiffs, was decreed. The suit of plaintiffs was also decreed for permanent injunction restraining the defendants from interfering in possession of plaintiffs and from taking forcible possession of the suit land.

2. In later part of judgment, parties will be referred as 'plaintiffs' and 'defendants' as per the civil suit.

3. The case of plaintiffs, in brief, is that Abdul Rahim

was owner in possession of 1/4th share of the land measuring 88 *kanals* 18 *marlas* situated within the revenue estate of village Utawar, *Tehsil* Hathin, District Faridabad as per entry in *jamabandi* for the year 1978-79. He left village Utawar alongwith his family during the year 1971 due to his employment in village Sarohi, *Tehsil* Ballabgarh. Abdul Rahim expired on 30.05.1980 leaving behind the plaintiffs as his legal heirs. Mutation no. 5654 dated 25.09.1980 was sanctioned regarding inheritance of property of Abdul Rahim by the plaintiffs.

4. Abdul Rahim also owned land situated in the revenue estate of village Kalinjar, *Tehsil* Nuh, District Gurgaon. Defendants Idu and father of defendants Suleman and Ishaq, namely; Sikandar in collusion with the revenue officials managed attachment of the land of Abdul Rahim at village Kalinjar against false and fictitious loan in the name of Abdul Rahim, vide *Rapat Roznamcha* No. 414 dated 06.08.1974 and then got the land of village Utawar belonging to Abdul Rahim auctioned in a fictitious and deceitful manner. The mutation of auction sale was sanctioned in their favour on 17.12.1981. Sale deed No. 963 dated 10.03.1981 for a fictitious sum of ₹6000/- was also executed as per that auction.

5. Plaintiffs have challenged the auction of land of Abdul Rahim of village Utawar *inter alia* pleading in para 6 of plaint as follows:-

“(a) *That neither the plaintiffs nor their father Abdul Rahim has ever borrowed any loan from any agency and so lands of father of the plaintiffs of village Kalinjar, Tehsil Nuh District Gurgaon, was*

illegally and unlawfully attached without the notice and knowledge of the plaintiffs and their father.

- (b) That father of the plaintiffs expired on 30.05.1980 and the mutation of inheritance of the deceased Abdul Rahim was sanctioned in favour of the plaintiffs on 25.09.1980. The plaintiffs were not impleaded as parties to the auction sale made by the revenue officials, hence the auction is illegal and not binding on the rights of the plaintiffs.*
- (c) That the lands mentioned in para no. 1 of the plaint was illegally and unlawfully put to auction without attaching the same and giving proper opportunity to the plaintiffs for hearing the objections of the plaintiffs. The plaintiffs have never been served or informed and was not given any opportunity of being heard.*
- (d) That the sale deed executed by the defendant no. 4 in favour of defendants no. 1 to 3 is also illegal and unlawful as the said deed is collusive because the total land of Abdul Rahim comes to 22 kanals and 4 marlas which has amounting (sic was auctioned) for only ₹ 6000/-. The price of the land is more than ₹ 2000/- per acre and hence the sale deed is illegal and liable to be set aside, as the sale consideration of this land is more than ₹ 16,000/- per acre.*
- (e) That the father of the plaintiffs and the plaintiffs used to live outside the village since 1971 and no proper intimation, notice or summons were ever served upon the plaintiffs and their father.*
- (f) That the lands of village Kalinjar were attached for auction on 06.08.1974 whereas the lands of the village Utawar were put to auction illegally*

and unlawfully during (sic on) 24.02.1976. The sale deed was executed on 06.01.1981 and got registered on 10.03.1981. All these proceedings were carried out in camera.”

6. On the basis of sale in their favour, defendants no. 1 to 3 were threatening to take illegal and forcible possession of the suit land. They were requested to get the sale deed in their favour cancelled but they refused, resulting in filing of the instant suit.

7. Defendants no. 1 and 2 contested the claim of plaintiffs with the averments that land in dispute was earlier owned by Abdul Rahim and now by defendants no. 1 and 2. Plaintiffs are not the sons of Abdul Rahim. The share of Abdul Rahim in the suit land was sold for recovery of arrears due in respect of a loan outstanding against him and defendants purchased the same in public auction with full knowledge and notice of plaintiffs and Abdul Rahim for valuable consideration and are *bona fide* purchasers. It was alleged that all the proceedings relating to attachment and auction of the land were carried out in open and according to rules. The attachment, auction and sale of the suit land was legal and valid.

8. Defendant no. 4 (wrongly mentioned as defendant no. 3) in his separate written statement contested plaintiffs' claim *inter alia* pleading that Abdul Rahim had taken loan in the year 1969 and was a defaulter in repayment. For recovery of loan, land of Abdul Rahim was attached and sold in public auction held on 24.02.1976 and the sale was confirmed on 31.08.1976. Defendants no. 1 and 2 purchased share of Abdul

Rahim in the suit land in public auction and have become owner in possession of the same in equal share.

9. Plaintiffs reasserted his case in replication and pleadings of the parties led to framing of the issues as follows:-

1. Whether the attachment and sale of the suit land in favour of defendants no. 1 and 2 is illegal and not binding on the plaintiffs as alleged, if so what effect? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiffs have no locus standi to file the present suit? OPD
4. Whether the plaintiffs are estopped from filing the present suit? OPD
5. Whether the civil court has no jurisdiction to try the present suit? OPD
6. Whether the suit is bad for want of notice u/s 80 CPC? OPD
7. Relief.

10. Learned Sub Judge (IInd Class), Palwal on appraisal of evidence observed that there was no proclamation of auction which took place on 24.02.1976. The sale, as such, was illegal, null and void and the suit was not barred by limitation. The suit of plaintiffs was decreed as prayed for.

11. Not satisfied the defendant-appellants filed appeal which was also dismissed by Additional District Judge, Faridabad.

12. Learned counsel for the defendant-appellants while assailing findings of the Courts below has argued that findings of the Courts below are based on misreading of evidence. As per copy of *rapat* dated 17.01.1976 (Ex. D-1), a *munadi* was effected

for auction of the land of Abdul Rahim situated in village Utawar. The auction was fixed for 24.02.1976. One copy of auction notice was pasted at *chaupal* of *Gram Panchayat* and one at the house of Abdul Rahim. The auction was conducted on 24.02.1976 and the proceedings of auction are Ex. D-2. In these proceedings, Idu and Sikandar were highest bidders and their bid was accepted. This dispel the findings of Courts below that no publication of notice has taken place and the auction was bad in the eyes of law. Plaintiffs have raised the plea that no amount was outstanding against their father while report Ex. D-3 shows that a sum of ₹ 9029.33 ps. were outstanding towards price of fertilizers supplied to Abdul Rahim. Defendant-Idu and others gave undertaking for release of Abdul Rahim who was arrested for non-payment of his dues and gave undertaking that he will pay the dues after selling his land. They also furnished undertaking on 22.03.1973 for repayment of the outstanding loan amount against Abdul Rahim @ Yusaf. The statement of Abdul Rahim was also recorded on 22.03.1973 (Ex. D-8) wherein he sought one months time to enter into a deal for sale of his land for payment of outstanding amount towards purchase of fertilizers. He also gave undertaking that in the event of his failure to pay the amount, his land at village Kalinjar and Utawar be attached and auctioned. Abdul Rahim moved application before the *Tehsildar* on 12.03.1974 (Ex. D-10) for attachment and sale of 7½ *killas* of land of village Bibipur (Kalinjar) and vide order Ex. D-12 Assistant Controller, IInd Grade ordered the attachment of his land at village Utawar as the land measuring

48 *kanals* and 3 *marlas* at village Kalinjar was not found sufficient for recovery of outstanding loan. Under this order Assistant Collector IInd Grade, Nuh observed that the land measuring 48 *kanals* 3 *marlas* of Abdul Rahim situated at village Kalinjar will not be sufficient to pay ₹ 22,908/- due against three creditors i.e. Abdul Rahim, his son Jakarya and Rahim Khan son of Chand Khan, as such, it will be appropriate to attach share of Abdul Rahim in land measuring 88 *kanals* 18 *marlas* situated at village Utawar, which was attached and duly auctioned.

13. Learned counsel for the defendant-appellants has argued that the Courts below have failed to look into the order (Ex. D-12) and warrants of attachment produced on file by the defendant to prove that the land of Abdul Rahim was attached before auction. Limitation for filing suit seeking setting aside of sale for recovery of government revenue as provided under Article 99 is one year and for seeking declaration under Article 113 is three years. He has relied upon observation of this Court in case of **Mula Singh (deceased) represented by his LRs vs. State of Punjab, 1993 PLJ 40.** He has also relied upon observation of Apex Court in case of **State of Punjab and others vs. Gurdev Singh and Ashok Kumar, 1991 (4) SCC 1.**

14. Learned counsel for the appellants has further argued that even if there was some irregularity in the conduct of auction, the sale is not void and has relied upon the observation in cases of **S.A. Sundarajan vs. A.P.V. Rejendran, 1981 (1) SCC 719** and **Babubhai Karimbhai Jasani and another vs. Vora Daudji Amji and others, 1976 AIR (Gujarat) 111.**

15. Learned counsel for the plaintiffs-respondents has argued that both the Courts below on perusal of evidence have rightly reached the conclusion that auction of the land of Abdul Rahim at Village Utawar was made without publication of any notice. It was a camera affair. As per order Ex. D-12, auction of the land of Abdul Rahim in village Utawar was opted by the revenue authorities as the same was found sufficient to pay off the loan of ₹ 22908/- but strangely enough the land was disposed of for a paltry sum of ₹ 6000/-. As per certificate (Ex. P-2), average price of the land in village Utawar in the year 1975-76 was ₹ 6,716.67 p. per acre. Learned counsel for the appellants has not been able to point out that the Courts below have reached the conclusion and have recorded finding based on misreading of evidence or on no evidence. As per observation of the Apex Court in case of **Govindaraju vs. Mariamman, 2005 (2) SCC 500**, the findings of fact recorded by the Courts below call for interference in the regular second appeal only if the same are perverse i.e. based on misreading of evidence or on no evidence. There is no reason to interfere with the concurrent findings of Courts below and no substantial question of law arises in this appeal for determination.

16. Before proceeding further it will be relevant to look into the citations referred by learned counsel for the appellants. On perusal of the same these are not found to be applicable to the facts and circumstances of this case. The sale of suit land has been held by both the Courts below as illegal, null and void. Trial Court on appraisal of evidence concluded that the revenue

officer(s) have got no jurisdiction to sell the suit land by auction as there was no proclamation for the date fixed and the same is null and void. It was also observed that as per case of defendants, Sikandar the successful bidder had purchased the land of Abdul Rahim in auction on 24.02.1976 for ₹ 11,500/- but in the sale deed the sale price was shown as ₹ 6,000/-. It was also concluded that when the sale is null and void, no limitation to file the suit is attracted.

17. In the case of **Mula Singh (supra)**, plaintiff had challenged the auction but had failed to prove that it was in violation of the provisions of Act. Under these circumstances, auction proceedings and sale challenged by plaintiff after a period of 10 years was held to be barred by limitation. In the case of **Gurdev Singh (supra)** plaintiff was dismissed from the service. He was precluded from attending the office and was not paid salary. The order was found to be against the provisions of Police Regulations. The Apex Court held that consequences of that order have followed, as such, the suit was held as barred by limitation. In the instant case, plaintiffs have sought declaration that the auction proceedings of the suit land are illegal, null and void and both the Courts below have recorded the finding in favour of plaintiffs-appellants. Plaintiffs have also claimed to be in possession of suit property, as such, consequences of auction have not travelled out to plaintiffs as in the case of **Gurdev Singh (supra)**. The observations in the above cases are not applicable to the facts and circumstances of this case.

18. The findings of Courts below require no interference

on this point. It is evident from the discussion of evidence by the Courts below that there were not only irregularity but total collapse of observance of law and rules before alleged selling the land of Abdul Rahim to recover the loan amount outstanding against him and his sons. It is nowhere evident that Abdul Rahim had ever undertaken to pay off the loan due against his sons as well.

19. First question which arises for consideration is as to whether any proclamation was issued for the sale of land of Abdul Rahim which allegedly took place on 24.02.1976. On the basis of evidence on record, learned trial Court has answered this question in negative.

20. Learned Ist Appellate Court endorsed the findings of trial Court and observed that DW-3 Karmu, *Chwokidar* through whom proclamation Ex. D-1 for auction was alleged to have been effected had stated on oath that he had not effected *munadi*. He was not confronted in cross-examination that *munadi* was effected by him on 17.01.1976. Regarding the sale consideration, Ist Appellate Court observed in para 11 as follows:-

“11. It is in the own statement of DW-4 Idu defendant-appellant that the land in suit was purchased for ₹ 11,500/-. He tried to explain that the land was under mortgage for ₹ 5500/- and he had paid a sum of ₹ 6000/- for the purchase of that land. It is in his statement that a sum of ₹ 1500/- was paid at the spot. In view of the conceded fact that the land was under an encumbrance of mortgage and the encumbrance was to the extent of ₹ 5500/-, it is the total amount of ₹ 11,500/- that

shall be taken to be the amount for which the appellant Idu etc. had purchased that land. In that case, the payment of ₹ 1500/- at the spot would fall short of the payment required to be made in accordance with the provisions of Land Revenue Act. As per Section 85 of that Act, the highest bidder has to pay to the officer holding sale, the deposit of 25 percent of the total amount for which that land stands sold. For that reason also, the auction was invalid. It is also in the statement of Idu that in addition to the amount of ₹ 1500/- he had paid a sum of ₹ 6000/-. He had not even claimed to have paid off the mortgage amount. That also invalidates the impugned sale in favour of the appellant Idu etc. The finding of the learned trial Court under issue no. 1 shall stand upheld.”

21. As per plaintiffs, auction had taken place on 24.02.1976. The plaintiffs had placed on file the certified copy of DDR register of *Halqa* Utawar, Tehsil Nuh District Gurgaon as Ex. P-1 which shows that on 24.02.1976 no entry in the DDR register was recorded. This fact has also been proved by PW-7 Rajdar, who had prepared and issued certificate Ex. P-2. His statement to this effect is un-rebutted. In case the auction had been effected on that day, *rapat* to this effect must have been recorded in the DDR register.

22. As per order Ex. D-12, appeared to have been passed around 30th of March, 1975 by Assistant Collector, IInd Grade, 1/4th share of Abdul Rahim in land measuring 88 *kanals* 18 *marlas* at village Utawar was required to pay off loan of ₹ 22,908/- and warrants of attachment of share of land of Abdul

Rahim situated at village Utawar were issued. In the order of Assistant Collector Grade -II, there is nothing that Abdul Rahim had undertaken to pay off the loan of his sons and how this amount of ₹ 22,908/- was the liability of Abdul Rahim. There was no reason for the revenue authorities as to why despite request by the Abdul Rahim his land measuring 48 *kanals* 3 *marlas* situated at village Kalinjar was not put to auction. Strangely enough the land of Abdul Rahim at village Utawar was sold for a paltry sum of ₹ 6000/- as per copy of auction proceeding Ex. D-17. It is alleged that this land was under mortgage for a sum of ₹ 5500/- which the buyer had to pay. It is quite strange that attachment of land at village Utawar as per order Ex. D-12 was preferred for recovery of outstanding amount of ₹ 22,908/-, but sale was effected for ₹ 6000/- only.

23. It is evident from copy of DDR (sic) August, 1974 that land of Abdul Rahim measuring 48 *kanals* 3 *marlas* at village Kalinjar was attached for recovery of ₹ 22,908.05 ps. and a *rapat* no. 414 to this effect was recorded. This shows that revenue authorities have proceeded to attach the land of Abdul Rahim situated in village Kalinjar. An application was also moved to furnish bail of Abdul Rahim and at the time of furnishing bail on 22.03.1973 sureties undertook to repay the entire loan amount of Abdul Rahim. Abdul Rahim @ Yusaf who was in custody also got recorded his statement before the Assistant Collector, IInd Grade, copy of which was placed on record as Ex. D-8, vide which he sought one month's time to pay off the entire loan amount against him by selling his land. He gave undertaking

that in the event of his failure to pay off the loan amount, his land at village Kalinjar and Utawar may be auctioned. Assistant Collector, IInd Grade allowed one month's time to Abdul Rahim @ Yusaf. Application dated 12.03.1974 moved by Abdul Rahim (Ex. D-10) shows that he had requested *Tehsildar* that his land situated at village Kalinjar measuring $7\frac{1}{2}$ acres be put to auction to recover the loan amount.

24. The evidence discussed above show that revenue authorities were proceeding against Abdul Rahim. He was arrested and vide application Ex. D-10, he had requested the revenue authorities to sell his land at village Kalinjar but the Assistant Collector, IInd Grade vide order Ex. D-12 passed somewhere around 30.03.1975, ordered attachment of his land at village Utawar. It appears that warrants of attachment of $1/4^{\text{th}}$ share of land of Abdul Rahim measuring 88 *kanals* 18 *marlas* were issued copies of which are Ex. D-14 and Ex. D-15. Certificate Ex. P-1 categorically states that no auction proceedings have taken place in village Utawar on 24.02.1976. Had the auction proceedings taken place the same might have been recorded in the daily diary register. There is no reason or explanation as to why no entry regarding the alleged auction proceedings were recorded in the daily diary register of *patwari*. The statement of Karmu, *patwari* that he had not carried out any *munadi* for the auction to be held on 24.02.1976 and the fact that no entry was made in the daily diary register showing any auction having taken place in the village are strong indicator of the fact that the proceedings concerning the alleged auction

dated 24.02.1976 are only paper transaction or were camera proceedings. As per statement of PW-3 Karmu he had never conducted *munadi* for auction of land of Abdul Rahim fixed for 24.02.1976. Certificate Ex. P-1 and un-rebutted testimony of PW-3 Karmu strongly belie and defy the testimony of DW-1 Hira Lal, *Patwari* and DW-2 Ram Chand Sharma *Tehsildar* that they conducted the auction. The Courts below have rightly appraised the evidence before reaching the conclusion that the sale is null and void.

25. Another factor which weighed before the Court below is that as per auction proceeding Ex. D-18 the land was sold for ₹ 11,500/-. Auction price was mentioned as ₹ 6000/- and the buyer had also to pay the mortgage amount on this land. This shows that total price of land was ₹ 6000/- plus mortgage money but the revenue authorities accepted 25% of ₹ 6000/- at the spot and also issued the sale certificate Ex. D-19 pertaining to land measuring 22 *kanals* 4 *marlas* for a sale consideration of ₹ 6000/-. There is no evidence on file to prove that ₹ 1500/- allegedly received at that spot was deposited with treasury. In the certificate, there was no mention that the purchaser had also to pay any mortgage amount. All this indicate serious anomalies in the conduct of auction. Rather it reflects that the revenue authorities had indulged in hanky panky while conducting the auction without publication and in the matter of sale price.

26. Before parting, it will be relevant to take note of the fact that some loan/outstanding amount was due towards price of fertilizers supplied to Abdul Rahim in the year 1974. The

matter remained before the Civil Judge since the year 1982. The outstanding amount against Abdul Rahim or his sons was a public money, as such, they remained under liability to pay the same. It will, therefore, be in the interest of justice and to avoid loss of public money that plaintiffs pay off the entire loan amount before seeking rectification of revenue record and execution of the decree passed in their favour. The due amount shall remain a charge on the suit land.

27. On perusal of the record and judgments of Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

December 09, 2015
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters or not? Yes/No