

Civil Revision

Present:

The Hon'ble Justice Jyotirmay Bhattacharya

Judgment on 03.09.2010

C.O. No. 1931 of 2010

SHEW SDHANKAR SHAW @ SHEW SANKAR DAS.

VERSUS

GAUR HARI MAITY & ORS.

Points:

Valuation date, Delegation of power- Valuation of the share for the purpose of preemption to be made whether with reference to the date of application or date of preliminary decree or date of filing application for valuation.- Court directed the Collector to assess valuation-Assessment done by deputy officer of collector whether acceptable-Partition Act, 1893- S.4

Facts:

Originally stranger purchaser filed a suit for partition. Thereafter petitioner transposed as plaintiff in that suit and prayed for declaration of respective shares of the parties and a decree of preemption. In that suit share of the opposite party was declared as 3/4th on February 26, 2009 and prayer for preemption disallowed but appellate court allowed the preemption and directed for valuation of said 3/4th share. The matter went upto Hon'ble Supreme Court. Thereafter plaintiff filed application on March 13, 2007 to determine the valuation of the share of the stranger purchaser. As per order of the court collector have to assess the valuation but the deputy officer of the collector assessed the valuation and the collector forwarded the same to the court. Plaintiff challenged the said valuation contending that the date of valuation should be with reference to the date of filing application for

preemption, i.e. May 30,1997and collector should personally done the valuation. Trial court is of the view that the date of valuation would be with reference to the date of application, i.e. March 13, 2007.

Held:

The learned Trial Judge was not justified in directing the Collector to assess the valuation of the share of the stranger purchaser with reference to its valuation as on 13th March, 2007 which was not the date when the plaintiff, in fact, undertook to preempt the share of the stranger purchaser. The plaintiff simply filed an application on 13th March, 2007 inviting the Court to assess the valuation of the shares of the stranger purchaser in terms of the direction passed by the Hon'ble Supreme Court so that he can fulfil his undertaking given by him in the plaint itself. As such 13th March, 2007 cannot be regarded as the relevant date for the purpose of valuation of the share of the stranger purchaser under Section 4 of the Partition Act. Para 12 The Collector, 24 Parganas (South) is thus directed to assess the valuation of the 3/4th share of the opposite parties in the suit property as on the date of passing the preliminary decree in the said partition suit i.e. as on 26th February, 1999. Such assessment should be made by the Collector personally.

Para 13

Cases cited:

Malati Ramchandra Raut & ors. vs. Mahadevo Vasudeo Joshi & ors., AIR 1991 Supreme Court 700; Gopal Chadra Mitra & Ors. vs. Kalipada Das & Ors., AIR 1987 Calcutta 210; Surendra Nath Achar & Anr. vs. Ram Chandra Hasra & Ors., 75 CWN 195; Monomohan Saha vs. Usha Rani Ghosh & ors., AIR 1979 Calcutta 79;

For the Petitioner : Mr. Rabindra Nath Mahata

Ms. Indrani Saha (Mukherjee)

For the Opposite Party : Mr. R.K. Jaiswal

Mr. Nandalal Pradhan

The Court: This application under Article 227 of the Constitution of India is directed against an order being No. 84 dated 15th September, 2009 passed by the learned Civil Judge, Senior Division at Sealdah in Title Suit No. 149 of 1992 by which direction was given by the learned Trial Judge for determination of the valuation of 3/4th share of the stranger purchaser in the suit property by the Collector, 24 Parganas (South) himself with reference to its valuation as on 13th March, 2007 which was the date when, the intention to purchase the share of the stranger purchaser in the suit property was expressed by the plaintiff/petitioner herein. The plaintiff is aggrieved by the said order. Hence the plaintiff has come before this Court with this application under Article 227 of the Constitution of India.

2. Heard the learned Advocates for the parties. Considered the materials of the record including the order impugned. Let me now consider as to how far the learned Trial Judge was justified in passing of the impugned order in the facts of the instant case.

3. The basic facts which were relevant for the purpose of fixation of the date with reference to which valuation of the share of the stranger purchaser in the suit property is required to be made, is set out hereunder:

i) Originally the stranger purchaser filed a suit for partition against the petitioner herein. The petitioner was contesting the said suit by filing written statement denying the allegations made out by the plaintiff in the plaint.

Ultimately the stranger purchaser became disinterested in proceeding with the suit and, in fact, they tried to get the suit disposed of by non-prosecution.

ii) Under these circumstances the petitioner herein filed an application under Order 1 Rule 10(2) of the Civil Procedure Code praying for his transposition to the category of the plaintiff. The petitioner's prayer for transposition was allowed on 15th July, 1996 and thereafter on 30th May, 1997, the petitioner filed a plaint of his own as a transposed plaintiff. The petitioner prayed for a declaration of the respective shares of the parties in the suit premises and for a decree of preemption in favour of the petitioner in respect of the shares of the opposite parties.

iii) A preliminary decree was passed in the said suit by the learned Trial Judge on 26th February, 1999. By the said decree the plaintiff/petitioner was declared as the owner of the suit property to the extent of 1/4th share therein. The opposite parties' share in the said property was declared as 3/4th share therein. The prayer for preemption which was made by the plaintiff/petitioner was disallowed by the learned Trial Judge.

iv) Since the prayer for preemption of the plaintiff/petitioner was disallowed by the learned Trial Judge, the plaintiff/petitioner preferred an appeal being F.M.A. No.221 of 1999 before the Division Bench of the Hon'ble Court and the said appeal was ultimately allowed on 17th February, 2004, granting a decree for preemption of the share of the opposite parties herein in favour of the plaintiff/petitioner. The Appeal Court remitted the matter back to the learned Trial Judge for the purpose of valuation of 3/4th share of the opposite parties and to effect the sale of the same in favour of the petitioner provided the petitioner pays the determined amount as per the direction of the Court.

v) The opposite parties were aggrieved by the said order passed by the Appeal Court. Hence they preferred an appeal being Civil Appeal No. 5297 of 2005 before the Hon'ble Supreme Court. The said appeal was ultimately dismissed on 18th October, 2006 with the following observations:-

“So far as this part of the impugned order is concerned, we need not interfere because it will be open for the Court to determine the valuation of 3/4th share of the property in question and in case the respondents are willing to pay that amount determined by the Court then the decree should be passed in favour of the respondents. It will be open for the Court to determine the fair market value of the property in question. With these observations the appeal is disposed of. There will be no order as to cost.”

vi) In this context the plaintiff/petitioner filed an application on 13th March, 2007 inviting the learned Trial Judge to determine the valuation of the share of the stranger purchaser in terms of the order of the Appeal Court which was affirmed in appeal by the Hon'ble Supreme Court.

vii) The petitioner's prayer for such determination was allowed by the learned Trial Judge. The Collector was directed to calculate the valuation of the suit property. The Collector assessed the valuation of the said property at Rs.2,74,55,708/-. Such valuation was made with reference to the valuation of the suit property as on 3rd February, 2009.

viii) The plaintiff/petitioner refused to accept the said valuation primarily on two fold grounds. Firstly, the Collector who was required to assess the valuation of the suit property himself did not do so personally. On the contrary he deputed some other Officer to assess the valuation of the suit property and in fact such the valuation was made by such deputed Officer and the valuation report was simply forwarded by the collector to the learned Trial Judge. Since the Collector himself did not assess such valuation, the

report submitted by the Collector cannot be accepted as valuation of the suit property as per Section 4 of the Partition Act. Secondly, though the valuation of the suit property was required to be assessed with reference to its valuation as on date of filing application for preemption by the petitioner, i.e. as on 30th May, 1997, but such valuation was assessed with reference to the valuation of the suit property as on 3rd February, 2009. As such, the said valuation cannot be accepted as a proper valuation of the suit property under Section 4 of the Partition Act.

ix) The learned Trial Judge found much substance in such contention of the plaintiff and accordingly modified the earlier order but while passing the impugned order on 15th September, 2009 the learned Trial Judge directed the Collector to value $3/4^{\text{th}}$ share of the opposite parties in the suit property on the basis of its valuation as on 13th March, 2007 which was the date when the plaintiff/petitioner invited the learned Trial Judge to determine the valuation of the share of the stranger purchaser after disposal of the aforesaid special leave petition by the Hon'ble Supreme Court. The learned Trial Judge was of the view that 13th March, 2007 was the relevant date as the petitioner undertook to purchase the stranger purchaser's share in the suit property by filing the application on that date. The learned Trial Judge further directed the Collector to assess the valuation of $3/4^{\text{th}}$ share of the stranger purchaser in the suit property by himself.

4. In this context, this Court is invited by the plaintiff/petitioner to assess the propriety of the order of the learned Trial Judge whereby the Collector was directed to assess the valuation of the suit property with reference to its valuation as on 13th March, 2007.

5. According to the plaintiff/petitioner such valuation should be made with reference to its valuation as on the date when the plaintiff/petitioner applied

for preemption i.e. as on 13th May, 1997 when the petitioner, after his transposition to the category of the plaintiff, filed his own plaint praying for preemption of the share of the stranger purchaser.

6. The opposite parties however supported the impugned order by submitting that since the plaintiff/petitioner filed an application inviting the learned Trial Judge to determine the valuation of the share of the stranger purchaser in the suit property on 13th March, 2007, after the disposal of the appeal by the Hon'ble Supreme Court, the date of filing of such application i.e. on 13th March, 2007 should be regarded as a relevant date when the plaintiff/petitioner actually undertook to purchase the share of the stranger purchaser in the suit property.

7. Several decisions were cited by Mr. Mahato, learned Advocate for the plaintiff/petitioner to support his submission that the valuation of the share of the stranger purchaser should be made with reference to the date when the plaintiff/petitioner undertook to purchase the share of the stranger purchaser. Mr. Mahato thus submitted that neither the date when the plaintiff's prayer for such purchase under Section 4 of the Partition Act was ultimately allowed nor the date when the plaintiff subsequently filed an application inviting the learned Trial Judge to assess the valuation of the shares of the stranger purchaser in the suit property after the disposal of the appeal by the Hon'ble Supreme Court, is the relevant date for the purpose of assessing the valuation of the share of the stranger purchaser in the suit property as per Section 4 of the Partition Act. These are following decisions which were referred to by Mr. Mahato in support of his above submission:-

i) In the case of Malati Ramchandra Raut & ors. vs. Mahadevo Vasudeo Joshi & ors. reported in AIR 1991 Supreme Court 700;

ii) In the case of Gopal Chadra Mitra & Ors. vs. Kalipada Das & Ors. Reported in AIR 1987 Calcutta 210;

iii) In the case of Surendra Nath Achar & Anr. vs. Ram Chandra Hasra & Ors. reported in 75 CWN 195;

iv) In the case of Monomohan Saha vs. Usha Rani Ghosh & ors. reported in AIR 1979 Calcutta 79;

8. The decision in the case of Malati Ramchandra Raut & ors. vs. Mahadevo Vasudeo Joshi & ors. (Supra) is a decision on a case where the Hon'ble Supreme Court considered the effect of Sections 2 and 3 of the Partition Act. While considering the issue regarding the valuation of the share of the party whose share will be sold to the other co-sharer as per Section 2 of the Partition Act, the Hon'ble Supreme Court held that the valuation should be assessed by the Court with reference to the date when the right of a party to buy the other co-sharer's share is crystallized. Be that as it may, the said decision is not a direct authority on the present issue before this Court as the sale is directed in the instant case as per the provision of Sections 4 of the Partition Act.

9. In fact, an identical issue was raised before the Division Bench of this Hon'ble court in the case of Gopal Chadra Mitra & Ors vs. Kalipada Das & Ors. (Supra) wherein the Division Bench of this Hon'ble Court held as follows:-

“We are accordingly of the view that the relevant date for the purpose of determining the valuation under Section 4(1) of the Partition Act would be the date when the membershareholder undertakes to buy the share of the transferee, provided such undertaking is given after the share of the transferee has been ascertained by the Court in the preliminary decree. But when an application under Section 4 of the Act containing such an

undertaking has in fact been filed, as it can be filed, before the preliminary decree, the valuation shall have to be made as on the date of the preliminary decree, as only after ascertainment of share by such a preliminary decree, an application under Section 4 along with the undertaking becomes legally effective and operative which until that stage remains a mere paper.”

10. If the principle which was laid down by the Division Bench of this Hon'ble Court in the said decision is applied in the instant case, then this Court holds that since the plaintiff has applied for such preemption in the instant case prior to the passing of the preliminary decree in the said suit, the relevant date for the purpose of assessment of valuation of the share of the stranger purchaser in the suit property will be the date when the preliminary decree in the said suit was passed declaring the share of the parties in the suit property. Though the petitioner's right to preempt under Section 4 of the partition Act was recognized by the Appeal Court for the first time on 17th February, 2004 and subsequently was affirmed in appeal by the Hon'ble Supreme Court on 18th October, 2006 but sale price of the stranger purchaser's share cannot be fixed with reference to the date when the petitioner's right of preemption was recognized inasmuch as Section 4 of the Partition Act speaks of sale of the share of the stranger purchaser at its valuation as on the date when the co-sharer undertakes to purchase the share of the stranger purchaser.

11. The decisions which were cited by Mr. Mahato clearly demonstrate that the date when the plaintiff's right to preempt was recognized by the Appeal Court for the first time cannot be accepted as the date with reference to which valuation of the share of the stranger purchaser in the suit property is to be made, as the date of allowing the application under Section 4 of the Partition Act is not the relevant date with reference to which valuation of the

share of the stranger purchaser is required to be made inasmuch as the relevant date is the date when the plaintiff undertakes to purchase the share of the stranger purchaser in the suit property. Such undertaking was given by the plaintiff in his plaint itself which was filed on 31st March, 1997 but since such undertaking was given by the plaintiff in the plaint before passing of the preliminary decree, the relevant date in the instant case as per the decision of the Division Bench of the Hon'ble Court in the case of Gopal Chadra Mitra & Ors. vs. Kalipada Das & Ors. (supra) will be the date when the preliminary decree was, in fact, passed declaring the shares of the parties i.e. as on 26th February, 1999.

12. As such, by applying the principle as laid down by the Division Bench of this Hon'ble Court in the case of Gopal Chadra Mitra & Ors vs. Kalipada Das & Ors. (Supra), this Court holds that the learned Trial Judge was not justified in directing the Collector to assess the valuation of the share of the stranger purchaser with reference to its valuation as on 13th March, 2007 which was not the date when the plaintiff, in fact, undertook to preempt the share of the stranger purchaser. The plaintiff simply filed an application on 13th March, 2007 inviting the Court to assess the valuation of the shares of the stranger purchaser in terms of the direction passed by the Hon'ble Supreme Court so that he can fulfil his undertaking given by him in the plaint itself. As such 13th March, 2007 cannot be regarded as the relevant date for the purpose of valuation of the share of the stranger purchaser under Section 4 of the Partition Act.

13. Thus this Court holds that the impugned order cannot be sustained. The impugned order is, thus, set aside and the Collector, 24 Parganas (South) is thus directed to assess the valuation of the 3/4th share of the opposite parties in the suit property as on the date of passing the preliminary decree in the

said partition suit i.e. as on 26th February, 1999. Such assessment should be made by the Collector personally.

14. The said Collector is also directed to complete the entire exercise in this regard as early as possible but preferably by 31st November, 2010.

15. The revisional application is thus allowed.

16. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)

