Har Charan Lal vs The Agra Municipal Board And Ors. on 16 August, 1950

Equivalent citations: AIR1952ALL315, AIR 1952 ALLAHABAD 315

JUDGMENT

Bind Basni Prasad, J.

1. These two second appeals arise out of the same decree. The Municipal Board of Agra brought a suit for the recovery of Rs. 1,632.6 against defendants 1 to 4 and prayed for a decree under Order 34, Rule 4, Civil P. C., for this amount. It further asked for a simple money decree for Rs. 112-15-9 against all six defendants. Thakur Ram Sarup, defendant 5, was the original owner of house No. 132 and 132/1-2 in Roshan mohalla in the City of Agra and he was so recorded in the Municipal registers. The house tax and water rate upon these premises were respectively Rs. 33-9.10 and Rs. 56-0.6 prior to 1-4-1937 and Rs. 25-6 9 and Rs. 42-4.10 after April 1937. On 28-2-1923, Abir Chand defendant 4, acquired 1/3rd share in these premises at a court sale. He obtained delivery of possession on 25-6-1923. Banwari Lal, father of defendants 1 to 3, purchased one half share in this house at a court sale on 10-2-1927 and 1/6th share on 25-7-1928. He obtained delivery of possession on 4-9-1928. Thus Banwari Lal became the owner of 2/3rd and Abir Chand of 1/3rd share in these premises. Abir Chand sold his 1/3 share in the house in November 1942 to Lala Har Charan Lal, defendant 6. These are the facts so far as the history of the title of these premises is concerned.

2. It appears that there is a bye-law in the Agra Municipality according to which it must be informed whenever there is a transfer of title in any house. The Courts below have held that the defendants in the present case did not comply with this bye-law and sent no information to the Board of their various purchases. It is also undisputed that none of the defendants applied for mutation of their names in the Municipal Registers.

3. In 1934 the Municipal Board of Agra brought a suit in the Court of Munsif for the recovery of arrears of tax then due. It was against Ram Sarup, defendant 5, only because he alone appeared as the owner of these premises in the registers of the Municipality. That suit was decreed but when the execution was taken out it was discovered that the house had passed out of the hands of Ram Sarup. The execution was infructuous. In those execution proceedings the Municipal Board had to spend Rs. 112-15.9. Hence a simple money decree is claimed for this sum.

4. Banwari Lal is dead and defendants 1 to 8 are his sons. When the house was about to be sold in the execution of the decree in suit No. 520 of 1934 brought by the Municipal Board, defendants l to 3 brought a suit against the plaintiff in the Court of Munsif at Agra praying for an injunction to restrain it from executing the decree against the aforesaid property. Abir Chand also brought a

similar suit, being suit No. 658 of 1939. These suits were decreed and appeals therefrom were dismissed on 17 4-1942.

5. Having failed in its attempt to execute the decree No. 520 of 1934 against Ram Sarup Singh, the Municipal Board then brought the suit from which this appeal arises [Suit No. 519 of 1943] for the reliefs noted at the beginning of this judgment. Taxes were claimed from 1-10-1922 to 30-9-1943. It was alleged that the defendants 1 to 4 committed a fraud upon the Municipal Board by not informing it of the purchases made by them. The benefit of Section 18, Limitation Act, was claimed. The defendants denied the fraud and contended that the claim was time barred. Abir Chand, in addition, contended that he did not get actual possession and had to file suit No. 219 of 1935 for the recovery of possession. It was fought up to this Court and it was only in 1939 that Abir Chand got possession. He, therefore, contended that he could in no case be liable for any taxes prior to 1939. Har Charan Lal defendant also took the same defence.

6. The trial Court held that the defendants' omission to give notice of their purchases did not amount to fraud and the Board itself was negligent in not finding out the purchaser because the Board was under a statutory obligation to make quinquennial assessment. It decreed the claim for Rs. 821-11 as against defendant 1 to 4. In addition a decree for Rs. 108 was passed by it as against defendants l to 3. A decree under Order 34, Rule 4, Civil P. C., was ordered to be drawn up. The rest of the claim was dismissed.

7. The claim was for taxes from 1-10-1922 to 30.9.1943. The trial Court decreed it for the period commencing from 31-7-1931 and ending with 30-9-1943.

8. Against this decree, there were two appeals : One was fled by Har Charan Lal, defendant 6, being Appeal No. 294 of 1944, which has given rise to Second Appeal No. 216 of 1946. He raised only the question of costs. The appeal by the Municipal Board was No. 305 of 1944 which has given rise to Second Appeal No. 651 of 1946. It claimed that the whole of the suit was within time.

9. There was a cross-objection by defendants 1 to 3 in which it was claimed that the liability as between them and defendant 6 should have been apportioned.

10. Learned Civil Judge in appeal held that the plaintiff was entitled to the benefit of Section 18, Limitation Act. The plea that the plaintiff was entitled to the benefit of Section 14 of that Act was repelled. In the result learned Civil Judge decreed the claim for taxes from 1-1-1924 to 30-9-1940 against defendants 1 to 6 jointly and directed a decree under Order 34, Rule 4, Civil P. C., to be drawn up. A decree for the amount due after 30-9-1940, with proportionate costs was passed against defendants l to 3 only.

11. Against that decree these two appeals have been preferred one by Har Charan Lal and the other by defendants l to 3.

12. Learned counsel for the appellants contends that Section 18, Limitation Act is not applicable. I agree with this contention. Section 18 provides :

> "Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded;
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> or where any document necessary to establish such eight has been fraudulently concealed from him, the time limited for instituting a suit or making an application
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> (a) against the person guilty of the fraud or accessory thereto, or
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> (b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production."

13. The word "fraud" is not defined in the Limitation Act. It must, therefore, have its plain literal meaning. One of the essential conditions of fraud is that there must be an intention to deceive another party. The mere fact that the defendants did not pay the taxes for these years or did not inform the Municipal Board of the purchases made by them or did not apply for the mutation of their names cannot amount to fraud.

Non-payment of taxes by a person may be due on account of his having not the necessary means to pay it. It does not necessarily follow that he intended to defraud the Board. The failure on the part of the defendants to notify to the Municipal Board the purchases made by them may be due to mere negligence. So many persons do not know the obligations cast upon them by the bye-laws of the Municipalities. A breach of a bye law by the defendants does not necessarily mean any fraud on their part. The breach can be punished according to law, but surely no inference of fraud can be drawn from it. Similarly the failure to ask for mutation may be due to sheer laziness or negligence.

14. Now Section 18 will be attracted only if it is proved that the Municipal Board has by means of a fraud, been kept from the knowledge of its right of suit. It has already been found above that there was no fraud. Another ground why Section 18 does not apply is that the Municipal Board was not kept from the knowledge of its right of suit for the recovery of these taxes. Section 177, U. P. Municipalities Act, 1916, gives a statutory right to the Municipality to recover taxes as a charge upon the buildings or lands. In the face of this section it is impossible to say that the plaintiff had no knowledge of its right of suit. It may have been unaware of the real person who should have been sued for the taxes, but this ignorance of the Municipal Board was not due to any fraud on the part of the defendants. They acquired the property at auction sales publicly. There was nothing clandestine in the purchase of property by them. Notice of these auction purchases must have been sent in due course to the registration office also. The Municipal Board can very well have the knowledge of the transfers of the house within its area by periodical inspections of the registration office and if it failed to be vigilant about the matter the defendants cannot be held responsible for it. I have no hesitation in saying that the provisions of Section 18 are utterly inapplicable to the facts of the present case for two reasons : (1) there was no fraud on the part of the defendants, and (2) the plaintiff Municipality was not kept from the knowledge of its right by the defendants.

15. That being the position, the suit could be decreed only for the taxes for twelve years immediately preceding its institution and the decree of the trial Court must be restored to that extent.

16. Learned counsel for the appellants has claimed also for apportionment. He has urged that the two sets of the defendants should be liable for the decree to the extent of their respective titles in the disputed premises. According to Section 177, Municipalities Act the charge is indivisible. Section 100, T. P. Act, provides that all the provisions contained in that Act which apply to a simple mortgage shall, so far as may be, apply to a charge created either by act of parties or by operation of law. Just as the integrity of a mortgage cannot be broken up, so in the present case the charge cannot be split up by apportioning the liability among the various defendants. The appellants are not entitled to the apportionment.

17. The two appeals are allowed with costs. The decree of the lower appellate Court is set aside and that of the trial Court restored.

18. Leave for Letters Patent appeal was asked for but it was refused.