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NALINI DASI ALIAS NABANALINI DASSI

v.

KRITICAL CHANDRA HAZRA AND OTHERS

September 23, 1965

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[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO,
M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

Bengal Agriculturists Debtors Act (7 of 1936), s. 37A—Property of debtor in the hands of bona fide purchaser for value—If can be recovered by debtor.

C The mortgagee of the property in dispute had obtained a mortgage decree and in execution purchased it. In 1942, he sold the property to the appellant. After the introduction of s. 37-A into the Bengal Agricultural Debtors Act, 1936, by the Amendment Act of 1942, the respondents who were the owners of the property, applied under the section, to the Debt Settlement Board, for getting back possession of the property. They succeeded in their application and obtained possession, but their possession was disturbed by the appellant. Therefore, the respondents filed the suit to remove the cloud on their title and to obtain possession in case it was found that they were not in possession. The suit was decreed by the trial court, but the appellate court allowed the appeal. The High Court, on further appeal, restored the decree of the trial court.

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In his appeal to this Court, the appellant contended that, (i) the Board had no jurisdiction in the matter as the decree in the mortgage suit was for more than Rs. 5,000, and (ii) section 37-A did not apply to a *bona fide* purchaser for value from the auction purchaser.

E HELD : (i) The contention as to jurisdiction on the ground of value should be rejected as the point was not taken in the trial court, for, if it had been raised, the respondents would have been able to show that, even if the debt was over Rs. 5,000, the previous sanction of the Collector had been taken by the Board before it dealt with the matter as permitted by the proviso to r. 144 framed under the Act. [932 F]

F (ii) Reading the wide language used in s. 37A(8) with s. 37A(1)(c), it is clear that once the sale is set aside, even alienees from the decree-holder would be liable to be ejected and would be covered by the words "any person" used in the latter part of s. 37A(8), unless they were alienees of the four kinds mentioned in s. 37A(1)(c). [936 E]

G When an award in favour of the debtor was made under s. 38A(5) and where a copy of the award was presented to the Civil Court or Certificate-officer at whose order the property was sold, s. 37A(8) imperatively enjoins on the Civil Court or the Certificate Officer to set aside the sale. It follows that where a sale is set aside, whoever may have purchased the property in the sale—whether the decree-holder himself or somebody else—will have to give up possession, for the right of the person who had purchased the property, to remain in possession, would only exist so long as the sale subsists. On the same reasoning, if the auction-purchaser, whether he be the decree-holder or somebody else, has parted with the property subsequently in favour of any person that person would be equally liable to ejection, for his right to remain in possession only flows from the sale which is ordered to be set aside. Further, the word "decree holder" has been given an inclusive definition and so, it cannot be said

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that it is confined only to the decree-holder-auction-purchaser. Also, under s. 37-A(1)(c) only four kinds of transfers, including *bona fide* transfers for valuable consideration (excepting a mortgage) before 20th December 1939, are excepted, and so an application could be made under the section even where there was an alienation of any kind by the decree-holder, so long as the alienation was after 20th December 1939. Therefore, there is no doubt that s. 37A(8) intends that the sale should be set aside whoever may be auction-purchaser, and it also intends that after setting aside the sale the property should be delivered back to the debtor, whoever may be in possession thereof at the time of the delivery back, except in the case of an *under-riyat* under certain conditions. [934 D-H; 935 A-B, D; 936 A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 901 of 1963.

Appeal by special leave from the judgment and decree dated December 22, 1959, of the Calcutta High Court in Appeal from Appellate Decree No. 1039 of 1954.

Niren De, Additional Solicitor-General, B. P. Singh and P. K. Chakravarti, for the appellant.

D. N. Mukherjee, for respondent Nos. 1 to 4.

Sukumar Ghose, for respondent No. 10.

The Judgment of the Court was delivered by

Wanchoo J.—This appeal by special leave raises a question as to the interpretation of s. 37-A of the Bengal Agricultural Debtors Act, No. VII of 1936 (hereinafter referred to as the Act). The respondents brought a suit in the court of the Second Munsif, Burdwan for a declaration that they were entitled to the property in dispute, for confirmation of their possession thereof and for a permanent injunction restraining the appellant from interfering with their possession. In the alternative they prayed for delivery of possession to them of the property in dispute in case it was found that they were not in possession. The case of the respondents was that the property in dispute belonged to one Jatindra Mohan Hajra, who was the father of three of the respondents. He mortgaged the property to Kali Krishna Chandra who was a defendant in the suit. Kali Krishna Chandra obtained a mortgage decree in the Court of the Subordinate Judge Burdwan and in execution of the said decree got the mortgaged property sold, purchased the property in auction sale and thus came into possession thereof in November 1937. This happened before s. 37-A was introduced in the Act by the Bengal Agricultural Debtors (Amendment) Act, 1942, (No. II of 1942). After the introduction of s. 37-A in the Act, the respondents applied thereunder for getting back possession of the property.

- ▲ In the meantime it appears that Kali Krishna Chandra sold the property to the present appellant in June 1942. That is how she was made a party to the proceedings under s. 37-A of the Act. The respondents succeeded in their application under s. 37-A of the Act and obtained possession of the property in suit in November 1947. The respondents' case further was that their possession was disturbed by the appellant thereafter and they had to go to the criminal court in that connection. But the criminal case resulted in acquittal and consequently the respondents brought the present suit in order to remove the cloud on their title and to obtain possession in case it was found that they were not in possession.
- The suit was resisted by the appellant on a number of grounds. In the present appeal, however, learned counsel for the appellant has raised only two grounds before us, namely—(i) that the Debt Settlement Board (hereinafter referred to as the Board) had no jurisdiction in the matter as the decree in the mortgage-suit was for more than Rs. 5,000, and (ii) that s. 37-A of the Act did not apply to a *bona fide* purchaser for value from the auction-purchaser. We shall confine ourselves therefore to these two points only.

- The Munsif who tried the suit held that s. 37-A was available against a *bona fide* transferee for value also. But the question of jurisdiction of the Board on the ground that the amount involved was more than Rs. 5,000 was not raised before the Munsif and so there is no finding on that aspect of the matter in the Munsif's judgment. Holding that s. 37-A applied to *bona fide* transferees for value also, the Munsif decreed the suit.

- Then there was an appeal by the appellant which was decided by the Subordinate Judge. It was in that appeal that it was urged for the first time that the Board had no jurisdiction inasmuch as the amount involved was over Rs. 5,000. That objection was however over-ruled by the Subordinate Judge on the ground that the amount involved was only Rs. 4,044/8/-.
- But the Subordinate Judge seems to have held that a *bona fide* transferee for value cannot be affected by the provisions of s. 37-A. He therefore allowed the appeal and dismissed the suit.

- Then followed an appeal to the High Court. The High Court considered the two questions, which we have set out above. On the question of jurisdiction the High Court held that the amount of debt involved was only Rs. 4,044/8/- and therefore the Board had jurisdiction. On the question whether *bona fide* transferees for value were bound, the High Court reversed the

view taken by the Subordinate Judge and held that such transferees were also covered by s. 37-A. It therefore allowed the appeal and restored the decree of the Munsif but ordered parties to bear their own costs throughout. In the present appeal by special leave, the appellant raises the same two points before us.

We shall first consider the question of the jurisdiction of the Board. It is urged in this connection that the very application made by the respondents under s. 37-A shows that the amount of decretal dues was Rs. 5,841 and therefore the Board had no jurisdiction. We are of opinion that this point as to jurisdiction should have been raised at the earliest possible stage in the Munsif's court and as it was not so raised it should not have been permitted to be raised for the first time in the Subordinate Judge's court in appeal. Rule 144, framed under the Act, which relates to jurisdiction of the Board, provides that the maximum amount of the sum total of all debts due from a debtor which can be dealt with under the provisions of Act shall be Rs. 5,000. There is however a proviso to this rule to the effect that with the previous sanction in writing of the Collector, a Board may deal with an application if the sum total of all debts due from the debtors exceeds Rs. 5,000 but does not exceed Rs. 25,000. It is unnecessary for us to decide in the present appeal whether the High Court was right in holding that the debt due was only Rs. 4,044/8/- and not Rs. 5,841, which was shown to be the amount of decretal dues in the application under s. 37-A. It is enough to point out that if this point had been raised in the trial court, the respondents would have been able to show that even if the debt was over Rs. 5,000, permission of the Collector as required by the proviso had been taken by the Board before it dealt with the matter. It is not as if the Board has no jurisdiction above Rs. 5,000 at all. Ordinarily the Board has jurisdiction upto Rs. 5,000 but with the sanction of the Collector in writing its jurisdiction can go upto Rs. 25,000. Therefore if any party wishes to urge that the Board had no jurisdiction because the amount of the debt was over Rs. 5,000, it must urge it in the trial court in order to give an opportunity to the other party to show that even if the amount due was over Rs. 5,000 the sanction of the Collector had been obtained by the Board. As the point was not taken in the trial court in this case, we are not prepared to go into the question whether the total debt due in the present case was over Rs. 5,000 or not, for the respondents had no opportunity of showing that even if the debt was over Rs. 5,000 the sanction of the Collector had been obtained. We

A therefore reject the contention as to jurisdiction on the ground that the point was not taken in the trial court.

This brings us to the principal argument urged in this case that s. 37-A does not apply to *bona fide* transferees for value.

Now the Act was an ameliorative measure for the relief of indebtedness of agricultural debtors and the preamble of the Act shows

B that it was passed because it was expedient to provide for the relief of indebtedness of agricultural debtors. For that purpose it established Boards and also provided for reduction of the amount due under certain circumstances by ss. 18 and 22 thereof. It also made other provisions with respect to recovery of amounts C due within a period of 15 to 20 years under ss. 19 and 22 by instalments and made consequential provisions where the instalment was not paid. Section 37-A was introduced in the Act in 1942 and provided for certain reliefs to an agricultural debtor where any immovable property of such person had been sold after D August 12, 1935 in execution of a decree of a civil court or a certificate under the Bengal Public Demands Recovery Act, 1913, under certain conditions. It allowed the debtor to apply for relief thereunder to the Board within one year of the coming into force thereof. On receipt of such application, the Board had first to decide whether the application was maintainable and had E fulfilled the conditions subject to which such an application could be made. Thereafter the Board had to proceed in accordance with sub-ss. (4) to (7) and make an award under sub-s. (5). After the award had been made under sub-s. (5), we come to s. 37-A (8) which may be read *in extenso* :

F "The debtor may present a copy of the award made under sub-section (5) to the Civil Court or Certificate-

officer at whose order the property was sold, and such Court or Certificate-officer shall thereupon direct that the sale be set aside, that the debtor together with any person who was in possession of the property sold or any part thereof at the time of delivery of possession

G of such property to the decree-holder as an under-*raiyat* of the debtor and who has been ejected therefrom by reason of such sale be restored to possession of the property with effect from the first day of *Baisakh* next following or the first day of *Kartik* next following, whichever is earlier, and that any person who is in possession of the property other than a person who was

H in possession of the property or part thereof as an under-*raiyat* of the debtor at the time of delivery of

possession of such property to the decree-holder shall be ejected therefrom with effect from that date."

Decree-holder is defined in s. 37-A(12) as under :—

"In this section the expression 'decree-holder' includes the certificate-holder and any person to whom any interest in the decree or certificate is transferred by assignment in writing or by operation of law."

The contention on behalf of the appellant is that sub-s. (4) of s. 37-A speaks only of the applicant before the Board, the decree-holder and the landlord of the applicant in respect of the property sold in the case where the decree-holder is not such landlord and therefore a *bona fide* transferee for value from the auction-purchaser cannot be ejected under s. 37-A (8) and it is only the decree-holder who can be ejected thereunder if he is still in possession of the property. Now if we read the words of s. 37-A (8), that provision clearly lays down that any person who is in possession of the property (except an *under-riyat* under certain conditions) shall be ejected therefrom with effect from that date. The words "any person" used in s. 37-A(8) are of very wide import and would include even a *bona fide* transferee for value of the property sold. If the argument for the appellant were to be accepted, the benefit of s. 37-A(8) would only be given in a case where the property sold in execution is purchased by the decree-holder himself and he remains in possession upto the time the agricultural debtor asks for relief under s. 37A(8). We do not think that the legislature could have intended that the relief under s. 37-A(8) should be given only in this limited class of cases. In any case if that was the intention, the legislature would not have used the words which we have mentioned above and which clearly imply that any person in possession is liable to be ejected under s. 37-A(8). This would also seem to follow from another part of s. 37-A(8) which imperatively enjoins on the civil court or the certificate-officer to set aside the sale. It follows from this that where a sale is set aside, whoever may have purchased the property in the sale—whether the decree-holder himself or somebody else—will have to give up possession, for the right of the person who had purchased the property to remain in possession would only exist so long as the sale subsists. Once the sale is set aside, the auction-purchaser—whether he be the decree-holder or somebody else—cannot remain in possession; and this is enforced by the latter part of s. 37-A(8) which lays down that any person in possession would be ejected (except an *under-riyat* under certain condi-

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- A tions). Further on the same reasoning if the auction-purchaser—whether he be the decree-holder or somebody else—has parted with the property subsequently, that person would be equally liable to ejectment, for his right to remain in possession only flows from the sale which is ordered to be set aside under the first part of s. 37-A(8). If the intention had been that a *bona fide* purchaser for value other than the decree-holder—auction-purchaser would be out of the purview of s. 37-A(8), we should have found a specific provision to that effect in that sub-section by the addition of a proviso or in some other suitable manner. Further it may be pointed out that the word "decree-holder" in sub-s. (12) has been given an inclusive definition and it cannot therefore be said that when the word "decree-holder" is used in s. 37-A(8), it is confined only to the decree-holder-auction-purchaser. There is no doubt that s. 37-A(8) is somewhat clumsily drafted but there is equally no doubt that it intends that the sale should be set aside whoever may be the auction-purchaser and it also intends that after setting aside the sale the property should be delivered back to the debtor whoever may be in possession thereof at the time of this delivery back (except in the case of an under-*riyat* under certain conditions).

We may in this connection refer to sub-s. (1)(c) of s. 37-A, which would show what the intention of the legislature was in spite of the clumsy drafting of s. 37-A(8). Clause (c) lays down one of the conditions which has to be satisfied before an application under s. 37-A(1) can be made. It reads thus :—

- F " (c) if the property sold was in the possession of the decree-holder on or after the twentieth day of December 1939 or was alienated by the decree-holder before that date in any manner otherwise than by—
 - G (i) a *bona fide* gift by a *heba* whether by registered instrument or not, or
 - G (ii) any other *bona fide* gift by registered instrument, or
 - G (iii) a *bona fide* lease for valuable consideration whether by registered instrument, or not, or
 - G (iv) any other *bona fide* transfer for valuable consideration (excepting a mortgage) by registered instrument."

H This provision would suggest that an application under s. 37-A(1) can be made if the property was in possession of the

decree-holder on or after December 20, 1939. In this case that condition was fulfilled and therefore the application under s. 37-A(1) would lie. Further the latter part of cl. (c) shows that only certain alienations by the decree-holder were excepted for the purpose of deciding whether an application under s. 37-A(1) could be made. These exceptions require firstly that the alienation by the decree-holder should have been made before December 20, 1939. Further even so far as alienations before December 20, 1939 were concerned, exceptions were only of the four kinds mentioned above. These include *bona fide* transfers for valuable consideration (excepting a mortgage) before December 20, 1939. So an application could be made even where there was an alienation by the decree-holder of any kind so long as the alienation was after December 20, 1939. Thus the only exceptions to which s. 37-A would not apply would be alienations by the decree-holder before December 20, 1939 of the four kinds specified in cl. (c). The present alienation was by the decree-holder after December 20, 1939 and therefore the appellant cannot say that she is not covered by s. 37-A because she was a *bona fide* transferee for value. Reading therefore the wide language used in s. 37-A(8) with s. 37-A(1)(c), it is clear that once the sale is set aside, even alienees from the decree-holder would be liable to be ejected and would be covered by the words "any person" used in the latter part of s. 37-A(8) unless they were alienes of the four kinds mentioned in s. 37-A(1)(c). We are therefore of opinion that the High Court was right in holding that persons like the appellant were covered by s. 37-A of the Act.

The appeal therefore fails and is hereby dismissed. In the circumstances we order parties to bear their own costs.

Appeal dismissed.