

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.11252-11253 OF 2016

MADAN MOHAN BHAKAT

...APPELLANT(s)

VERSUS

STATE OF WEST BENGAL & ORS.

...RESPONDENT(s)

WITH

CIVIL APPEAL Nos.11254-11255/2016

O R D E R

CIVIL APPEAL Nos.11252-11253 OF 2016

We have heard learned counsel for the parties.

The short question that has arisen in this appeal is whether the notice impugned by the respondents was issued to the original landlords, i.e., Ram Kumar Marjit, Chinmoy Marjit, Sushil Kumar Marjit, Jyotirmoy Marjit, Dhruva Marjit.

The admitted position is that the aforesaid five persons are brothers and they are all sons of Madhusudan Marjit and are staying in the same premises.

The dispute in this case pertains to land comprising Plot No.1864 appertaining to Kh. No.1381 of Mouza Popara, P.S. Sagardighi, District Murshidabad (West Bengal). The aforesaid plot was agricultural land, but it was being used as a cattle Hat.

Since the land was not being used for the prescribed purpose, the Additional District Magistrate issued a notice to the aforesaid five persons on 31st March, 1975.

The admitted position is that the notice was received by Chinmoy Marjit. The dispute is whether it was received by Chinmoy Marjit for himself or on behalf of himself and his brothers.

In any event, a reply was sent to the show-cause notice by Chinmoy Marjit on 11th April, 1975. In the reply, he stated that the land was never used as agricultural land and that it was shown to be agricultural land in the revenue records by mistake.

The reply was considered by the Additional District Magistrate who passed an order on 4th August, 1975 where he noted the contention raised by Chinmoy Marjit, but concluded that the land was actually required to be used only for agricultural purposes and could not have been for a cattle Hat. Accordingly, he ordered that the land be sold under Section 4(4) of the West Bengal Land Reforms Act, 1955 (for short "the Act"). Subsequently, on 8th October, 1975, he directed the Sub-Divisional Land Reforms Officer to hold an auction and to put up the matter before him for approval.

After the order was passed by the Additional District Magistrate, a representation was made on 16th October, 1975 by Dhruba Marjit. It is stated in the

representation that the share of Chinmoy Marjit had been sold by him three years earlier and that the notice sent by the Additional District Magistrate on 31st March, 1975 was not served upon him (Dhruba Marjit). It is not clear from a reading of the letter whether Dhruba Marjit wrote the letter on his own behalf or on behalf of himself and his brothers.

Be that as it may, since the representation was not replied to, a writ petition was filed by the Marjit family being Civil Rule No.19111(w) of 1975. It is significant to note that the petitioners in that case were Ram Kumar Marjit, Sushil Kumar Marjit, Dhruba Marjit and Chinmoy Marjit. It appears that the fifth brother, i.e., Jyotirmoy Marjit was not a party to the writ petition.

In any event, the writ petition was heard by the learned Single Judge on 17th September, 1979 when an order was passed to the effect that service of notice on Chinmoy Marjit was adequate service of notice on all the brothers. It was noticed by the learned Single Judge that there was nothing to indicate that the brothers were not members of the same family or that they were inimical towards each other. The learned Single Judge also considered the provisions of the West Bengal Land Reforms Rules, 1965 and came to the conclusion that there was nothing to indicate that service of notice was required

to be served on each individual raiyat. Accordingly, the writ petition was dismissed by the learned Single Judge.

Feeling aggrieved, an appeal was filed by the four brothers being F.M.A.T. No.3063 of 1979 before the Division Bench. The Division Bench allowed the appeal filed by the four brothers by a judgment and order dated 25th November, 2003. It was held by the Division Bench that subsequent to the orders passed by the Additional District Magistrate, an auction sale was in fact held on 24th October, 1975, but that it deserved to be quashed because service was not effected on all the affected parties. The Division Bench directed that the auction purchaser will be entitled to a refund of the sum deposited by him along with interest.

Feeling aggrieved, the auction purchaser has preferred this appeal.

The only issue canvassed before us by learned counsel for the appellant and which we have adverted to earlier is to the effect that it was not necessary to serve the notice dated 31st March, 1975 on each of the raiyats or each of the brothers in the Marjit family. It was contended by the appellant - auction purchaser that the notice was served on Chinmoy Marjit and that was adequate service on all the brothers, particularly since they were living under the same roof. As mentioned above, there was nothing to indicate that the relations between the

brothers were not cordial.

The submission advanced by learned counsel for the appellant is disputed by learned counsel for the Marjit brothers who say that notice should have been served on each one of them. At this stage, it may be noticed that the Marjit brothers have sold a substantial portion of their share to third parties who are also before us and are represented by the same learned counsel. The submission on behalf of the subsequent purchasers is to the same effect, viz., that the notice should have been served on each one of the Marjit brothers.

Learned counsel for the State of West Bengal supports the auction purchaser/appellant before us.

In our opinion, there is no substance in the contention on behalf of the Marjit brothers and the respondents who are the subsequent purchasers. There is nothing in the West Bengal Land Reforms Act, 1955 or the rules framed thereunder which requires that the notice dated 31st March, 1975 should have been served on each one of the Marjit brothers individually. There is nothing to indicate that Chinmoy Marjit did not represent his brothers when he submitted a reply to the Additional District Magistrate on 11th April, 1975. There is also nothing to indicate that the relations between the Marjit brothers were not cordial, in fact all of them were living under the same roof and it is unlikely that the

other brothers were not aware of receipt of the notice by Chinmoy Marjit.

We are of the view that the service of notice on Chinmoy Marjit was effective service of notice on all the Marjit brothers and that they were fully aware of the service of notice, but they did not choose to file independent replies and apparently were satisfied that the reply sent by Chinmoy Marjit was on behalf of his brothers as well.

Under the circumstances, the view taken by the learned Single Judge is the correct view and the reversal of that view by the Division Bench, in our opinion, is not sustainable. Accordingly, we allow the appeals and set aside the judgment and order passed by the Division Bench of the High Court in F.M.A.T. No.3063 of 1979.

Pending application, if any, is disposed of.

CIVIL APPEAL Nos.11254-11255/2016

In view of orders passed in Civil Appeal Nos.11252-11253 of 2016, these appeals are disposed of.

.....J.
(MADAN B. LOKUR)

.....J.
(DEEPAK GUPTA)

NEW DELHI
JULY 18, 2017

ITEM NO.103

COURT NO.5

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).11252-11253/2016

MADAN MOHAN BHAKAT

Appellant(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

WITH C.A. No. 11254-11255/2016 (XVI)

Date : 18-07-2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE DEEPAK GUPTA

For Appellant(s) Mr. Pijush K. Roy, Adv.
Mrs. Kakali Roy, Adv.
Mr. Rajan K. Chourasia, AOR

For Respondent(s) Mr. Soumitra G. Chaudhuri, Adv.
Mr. Chanchal Kumar Ganguli, AOR

Mr. Somnath Mukherjee, AOR

Mr. Abhijit Sengupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

CIVIL APPEAL Nos.11252-11253 OF 2016

The appeals are allowed in terms of the signed order.

Pending application, if any, is disposed of.

CIVIL APPEAL Nos.11254-11255/2016

In view of orders passed in Civil Appeal
Nos.11252-11253 of 2016, these appeals are disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SHARDA KAPOOR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)