

## A SALE VOIDABLE AT THE INSTANCE OF A PERSON INTERESTED CAN ONLY BE SET ASIDE BY WAY OF A SUIT

### **INTRODUCTION:**

The Bombay High Court in the decision of ***Subhash Amolakchand Gandhi Vs Superintendent, Mumbai City survey and Land Records and Anr.***<sup>1</sup>, inter alia held that in respect of any voidable transaction, a person claiming adverse title or interest in a property is required to institute a suit seeking declaration to the effect that the transaction has been rendered illegal on account of contravention of any condition. If the legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but obviously voidable. The sale of a property by an Administrator of an estate duly appointed by the Court is voidable and not void if done without the permission of the Court.

### **FACTS:**

The Petitioner had purchased land bearing Plot No. 6A *vide* Deed of Conveyance dated 23<sup>rd</sup> October, 1997 ("**First Deed**") from one Mr. Latif Mohamed Hashambhoy and Mr. Gulamali Mohamed Hashmbhoy being the Administrators of the estate of one Mr. Habib Mohamed Hashambhoy. The First Deed was registered in the office of Sub-Registrar of Assurances, Mumbai.

Similarly, the Petitioner had also purchased half share in a land bearing Plot Nos. 7-B and A *vide* registered Deed of Conveyance dated 18<sup>th</sup> December, 1997 ("**Second Deed**") from one Mr. Govind Mathurdas Kapadia. Thereafter, the Petitioner purchased the other half undivided share in the land bearing Plot Nos. 7-B and A *vide* registered Deed of Conveyance dated 19<sup>th</sup> December, 1997 ("**Third Deed**") from the legal heirs and legal representatives of one Mr. Nooruddin Nomanbhai Malbari.

After purchasing the said three plots, the Petitioner applied to City Survey Officer for

recording his name on the property cards. He also submitted an application for subdividing the plot Nos. 6A, 7B, and A and for issuance of separate property cards.

By an order dated 31<sup>st</sup> October, 2015, the City Survey Officer, Mumbai rejected the Petitioner's request of recording his name in respect of Plot No. 6A on the ground that the Petitioner had failed to obtain prior permission of the Court before executing the First Deed, as the Letters of Administration specifically prohibited the Administrator from transferring the plots without prior permission of the Court. So far as the second request for sub-division of the Plots was concerned, the same was not specifically rejected but the Petitioner was directed to pay the necessary measurement fees and to submit necessary documents so as to process his request.

Being aggrieved by this order, the Petitioner challenged the same by filing an appeal before the Maharashtra Revenue Tribunal. However, the appeal was also rejected *vide* an order dated 6<sup>th</sup>

<sup>1</sup> 2023 SCC OnLine Bom 2275

February, 2018 passed by the Maharashtra Revenue Tribunal ("**said Order**").

Being aggrieved, the Petitioner preferred the present Writ Petition before the Bombay High Court, challenging the said Order.

### **ISSUE FOR CONSIDERATION:**

One of the main issues for consideration before the Bombay High Court was whether the transaction apropos to the First Deed was void or voidable and accordingly what was the effect of a voidable transaction effected in contravention of the condition specified in clause (iii) of sub-section (2) of Section 307 of the Indian Succession Act, 1955 ("**Act**").

### **SUBMISSIONS ON BEHALF OF THE PETITIONER:**

The Petitioner had two grievances in the matter:

- (i) Non-mutation of his name to the record of rights in respect of the land; and
- (ii) refusal on the part of the Respondents in sub-dividing the same and issuance of separate property card extracts.

In respect of the two grievances, the Court's attention was drawn to section 307 of the Act. It was submitted that under clause (iii) of sub-section (2) of the Act, disposal of a property by an Executor or Administrator in contravention of (i) or (ii) becomes voidable at the instance of any person interested in the property.

It was further submitted that no person had instituted any proceedings questioning the correctness of the First Deed and therefore the transaction is not void but merely voidable.

In support of the above submission, reliance was placed on the judgment of the Apex Court in the case of ***Dhurandhar Prasad Singh vs Jai Prakash University***<sup>2</sup> and the judgment of the Bombay High Court in the case of ***Gotiram Nathu Mendre vs Sonabai w/o Saveleram Kahane***<sup>3</sup>.

The Petitioner also submitted that in any case it is the bounden duty of the Revenue Authorities to record effect of any registered document and it is not for the authority to undertake enquiry into the correctness of that document. In support of this contention, reliance was placed on the judgment of the Bombay High Court in the case of ***Shri. Shrikant R. Sankarwar vs Shri. Krishna Balu naukudkar***<sup>4</sup>.

So far as the second grievance of sub-division of the plot was concerned, the Petitioner drew the attention of the Court to various documents received under the Right to Information Act to suggest that the subdivision had actually been sanctioned and the Petitioner was ready to deposit the measurement fees and that despite the compliance on the Petitioner's part, the Respondents were not effecting the subdivision and issuing separate property cards.

<sup>2</sup> (2001) 6 SCC 534

<sup>3</sup> AIR 1970 Bom 753

<sup>4</sup> 2003 (1) ALL Mr. 1161

## **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

The Respondents opposed the Petition and supported the orders passed by the Tribunal and the Superintendent of Land Records submitting that so far as Plot No. 7-B and A are concerned, the name of the Petitioner had already been recorded in the property card register relating to C.S. No. 669 (part) and that the Petitioner's name cannot be recorded in respect of land bearing Plot No. 6A as the transaction executed in his favour is in violation of provisions of Section 307 of the Act.

It was submitted that the Administrator had no authority to transfer the land without seeking prior permission of the Court. The Petitioner had admittedly not obtained prior permission of the Court before executing the First Deed and since the transaction itself was invalid, no mutation entry could be effected based on such invalid transaction.

The Respondent submitted further that so far as sub-division of the plots is concerned, since Plot No. 6A cannot be mutated in the name of the Petitioner, his request for effecting sub-division in respect of Plot No. 6A, 7B, and A, cannot be entertained and accordingly prayed for the dismissal of the Petition.

## **JUDGMENT:**

On the aspect of voidability of a transaction, the Bombay High Court observed that clause (iii) of sub-section (2) of Section 307 of the Act provides that disposal of any property by an

Executor or Administrator in contravention of the condition requiring prior permission of the Court becomes voidable at the instance of any other person interested in the property. Thus, the transaction does not become void but merely becomes voidable. If the transaction was to be void, the same was not to be acted upon and can be set aside or ignored even in collateral proceeding.

The Court observed that the present case involved a voidable transaction and in such a case, a person claiming adverse title or interest in the property is required to institute a suit seeking declaration to the effect that the transaction effected has been rendered illegal on account of contravention of any condition. The Court placed reliance of the judgment passed by the Apex Court in *Dhurandar Prasad Singh* (supra).

The Court observed further that a voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleged otherwise is obliged to prove it. In cases where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be voidable.

The Court also relied upon its own judgment – *Gotiram Nathu Mendre* (supra) on the aspect of the effect of voidable transaction effected in contravention of the condition specified in clause (iii) of sub-section (2) of Section 307 of the Act wherein it was *inter alia* held that where

a sale was voidable at the instance of a person interested and there is an article in the Limitation Act applicable to such a suit, he can only get it set aside by a suit. In *Gotiram Nathu Mendre* (supra), it was also held that that the position in law is that where a sale is voidable at the instance of a person interested, he can only get it aside by a suit.

In view of the above, the Bombay High Court held *inter alia* that the law is now well settled that in respect of any voidable transaction, the proceedings are required to be instituted for the purpose of seeking a declaration in respect of such a transaction and that there was nothing on record to indicate that any person had instituted a suit for a declaration in respect of the transaction involved in the First Deed.

In respect of non-mutation of Petitioner's name in the revenue records was concerned, the Court relied upon its own judgment – *Shri. Shrikant R. Sankarwar* (supra), observing that revenue entries are not determinative of final

adjudication of rights and entitlements of parties. Thus, on mere mutation of Petitioner's name to the revenue records, rights of any person, who is interested in seeking declaration in respect of transaction involved in First Deed would not be extinguished. If in future, any person claiming adverse title or interest in respect of Plot 6-A, secures a declaration that the First Deed is invalid, such declaration would prevail over the revenue entry made by Respondents at Petitioner's instance.

Accordingly, the Court held that since the transaction involved in the First Deed is not void but merely voidable, and in absence of any declaration secured or sought, there should be no difficulty for the revenue authorities to mutate the name of the Petitioner in the revenue records pertaining to Plot No. 6-A. In the circumstances aforesaid the Bombay High Court allowed the Writ Petition quashing and setting aside the said order passed by the Maharashtra Revenue Tribunal as well as the order dated 31<sup>st</sup> October, 2015 passed by the City Survey Officer, Mumbai.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*