

sub-section (2) of section 8, but as laid down by the Full Bench in *Union of India v. Roshan Lal Gupta* (1) where the fair rent of the premises has been assessed under the Rent Restriction Act, that order would be taken into account as a relevant piece of evidence, but it would not form the sole basis for determining the recurring payment."

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After giving the matter my consideration I am of the opinion, though for somewhat different reasons, that the above view expresses the position correctly. I would, accordingly, hold that an arbitrator can take into consideration, apart from the factors mentioned in sub-section (2) of section 8 of the Act, the other circumstances of the case before arriving at the figure of compensation which appears to him to be just for the requisitioned property.

The case shall now be sent back to the learned Single Judge for decision in accordance with law.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

SETH CHIRANJI LAL JAIPORIA,—Appellant.

Versus

HARDWARI LAL AND OTHERS,—Respondents.

F.A.O. No. 72-D of 1962.

Partition Act (IV of 1893)—Ss. 2 and 3—Order for sale of property made under S. 2 at the instance of some of the

1963

Dec., 13th.

co-sharers—Other co-sharers—Whether can apply under S. 3 for purchase of the shares of the Co-sharers desiring sale—Such application—Whether can be made even after the preliminary decree has been passed—S. 3—Whether applies only to small shareholders.

Held, that once the Court comes to the conclusion that the property involved is impartible and some of the co-sharers apply for the same being sold under section 2 of the Indian Partition Act, the provisions of section 3 are attracted and the other shareholders can apply under this section for leave to buy the share of the party asking for a sale at a valuation to be fixed by the Court. An application under section 3 can, therefore, be made at any time after a co-sharer has moved the Court under section 2 and before the property involved is actually sold, because after the sale, the rights of third parties come in. The mere fact that a preliminary decree has been passed would not stand in the way of the co-sharers exercising their rights under section 3 of the Act, because at that stage it cannot be said that any injustice would be done to any body by doing so. The object of section 3 mainly, is that the property should remain joint in case some of the co-sharers are inclined to purchase the shares of those, who want the sale of the property under section 2 of the Act.

Held, that section 3 of the Act does not anywhere lay down that it is only the small shareholders who can make an application under this section and acquire the share of the others, who want the property to be sold under section 2 of the Act. Section 3 is not intended only for the benefit of the small shareholders. Bigger shareholders can also purchase the property under this section.

Appeal under Section 8 of the Indian Partition Act and Section 96 of the Civil Procedure Code, first appeal from the order of Shri B. K. Agnihotri, Sub-Judge, 1st Class, Delhi, dated the 22nd May, 1962; holding that the matter will be proceeded with under section 3 of the Partition Act.

MANMOHAN NATH, ADVOCATE, for the Petitioner.

S. N. SHANKER AND DALJIT SINGH, ADVOCATES, for the Respondents.

JUDGMENT

PANDIT, J.—Charanji Lal Jaipuri filed a suit against Hardwari Lal and others for partition of certain properties, including the property in dispute namely Jaipuria Spinning and Weaving Mills, Delhi, and rendition of accounts. One of the issues in this case was whether the property in dispute was impartible or not. During the pendency of this suit, on 19th September, 1960, the plaintiff filed an application under section 2 of the Indian Partition Act (4 of 1893) (hereinafter referred to as the Act), in which it was stated that the defendants had raised an objection that the property in dispute was impartible. The objection was frivolous, but in case the Court held against him, this property be sold by public auction, which would be in the interests of all concerned. In answer to this application, only Hardwari Lal, defendant No. 1, put in his reply on 26th September, 1960, saying that the property in dispute was impartible and it would be more beneficial for all the shareholders, if the court directed a sale of the same and distribution of the proceeds in accordance with the Act. It was, however, mentioned that the plaintiff, who was claiming only a very small share, namely 7½ per cent, in this property, could not dictate the sale. It was, therefore, prayed that orders in accordance with the Partition Act—section 2 may be passed, if so desired by the plaintiff. While deciding this suit on 1st December, 1960, the trial Court came to the following conclusion:—

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“*Para 31.* When such is the case, the Court is empowered to act under section 2 of the Partition Act on the application of any of the shareholders. In the present case, an application has been made by the plaintiff himself and defendant

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No. 1 who is the major shareholder, has not only agreed to it, but also pleaded that it would be beneficial if this property is sold by public auction under the provisions of the Partition Act. In these circumstances, I decide this issue in favour of the defendants and further hold that it is a fit case, in which this property should be sold by auction under the provisions of the Partition Act.

* * *
* * *

Para 33. In regard to the sale of Jaipuria Spinning and Weaving Mills, Subzi-
mandi, Delhi, it is necessary for the
Court to fix a reserve price of the pro-
perty under section 6 of the Partition
Act. This can be done only after the
parties file their respective estimates
of its value. They should do so on
15th December, 1960."

A preliminary decree was then passed in which the shares of the various owners were mentioned and a Local Commissioner was appointed to take the accounts of the income of the property in dispute. The estimate of the reserve price of this property as given by the plaintiff was Rs. 45 lacs, while according to one of the defendants it was Rs. 50 lacs.

On 15th December, 1960, Hardwari Lal and his mother, Smt. Muni Devi, defendant No. 3, filed an application under section 3 of the Act and section 151, Civil Procedure Code, to the effect that the applicants were prepared to purchase the share of the plaintiff at a valuation that might be fixed under the provisions of section 3 of the

Act. Under these circumstances, it was just and proper that the plaintiff's share might be ordered to be sold to the highest bidder from amongst the shareholders under the provisions of section 3(2) of the Act. A prayer was, therefore, made that orders for the sale of the plaintiff's share under section 3 be passed and the bids be confined to the shareholders alone.

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This application was opposed by the plaintiff, who submitted that the same was legally not maintainable. By order, dated 1st December, 1960, the Court had held that this property would be sold by public auction. This order had been passed on the plaintiff's application under section 2 of the Act and defendant No. 1 did not raise any objection at that stage that it should not be so sold. The defendant's application was *mala fide* and the plaintiff would be greatly prejudiced, in case the property was not sold by public auction. It was also mentioned that the plaintiff was a poor man and was unable to purchase the Mills. After the passing of the judgment and the preliminary decree, such an application did not lie.

The trial Court came to the conclusion that an application under section 3 of the Act was maintainable even after orders had been passed by the Court for taking proceedings under section 2. It was also held that the application filed by the plaintiff under section 2 did not disentitle them to move an application under section 3 of the Act. On these grounds, the objections raised by the plaintiff were dismissed. Against this order, the present appeal has been filed by Charanji Lal Jaiporia.

The first question for decision is whether defendants 1 and 3 could file an application under section 3 of the Act after an order had been passed

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by the Court that the property in dispute be sold by auction. Learned counsel for the appellant submitted that the proper time to apply under section 3 was before a Court made an order under section 2 and that when an order for sale had been made under the latter section, a co-sharer could not apply to have the property sold to him at a valuation to be fixed by the Court under section 3 of the Act. For this submission, reliance was placed on a Division Bench authority of the Madras High Court in *Angamuthu Mudaliar v. Ratna Mudaliar and others* (1).

In my view, there is no merit in this contention. Sections 2 and 3 of the Act are in the following terms:—

“S. 2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of the one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

(1) A.I.R. 1925 Mad. 1234.

S. 3 (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications."

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A plain reading of these two sections would show that no such restriction as suggested by the learned counsel for the appellant has been imposed by the Legislature. Once the court comes to the conclusion that the property involved is impartible and some of the co-sharers apply for the same being sold under section 2 of the Act, the provisions of section 3 are attracted and the other shareholders can apply under this section for leave to buy the share of the party asking for a sale at a valuation to be fixed by the Court. An application under section 3 can, therefore, be made at any

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time after a co-sharer has moved the Court under section 2 and before the property involved is actually sold, because after the sale, the rights of third parties come in. The mere fact that a preliminary decree has been passed would not stand in the way of the co-sharers exercising their rights under section 3 of the Act, because at that stage it cannot be said that any injustice would be done to any body by doing so. The object of section 3 mainly, is that the property should remain joint in case some of the co-sharers are inclined to purchase the shares of those, who want to sell the property under section 2 of the Act. In this view of mine, I am supported by a Bench Decision of the Calcutta High Court in *Nitish Chandra and another v. Promode Kumar and others* (2). As regards *Angamuthu Mudaliars case* (1) relied upon by the learned counsel for the appellant, in the first place, it is distinguishable on facts, because there the preliminary decree was passed when both the parties to the suit were present and had agreed to the sale being ordered. Secondly, in view of the reasons, already mentioned above, the proposition of law laid down in that authority, namely that after an order had been made under section 2 that the property be sold, a co-sharer could not move an application under section 3, with due respect to the learned Judges, is not sound.

The next question argued was that defendant No. 1 had agreed to the property being sold by public auction and, therefore, he was debarred from filing an application under section 3 of the Act.

There is no force in this contention also. So long as the property is not sold, any co-sharer can make an application under section 3 of the Act for

(2) A.I.R. 1953 Cal. 18.

the purchase of the shares of those who want the same to be sold.

The last contention raised was that only the small shareholders could file an application under section 3 and defendant No. 1, who had the largest share in the property, was not entitled to exercise this right. Reliance for this was placed on *L. Ram Prasad v. Mt. Mukandi and another* (3), where it was held that the Partition Act must be construed strictly as the provisions of the Act exclude the right of the majority shareholder to acquire the property, the subject of partition, at the option of the minority shareholder.

There is no substance in this contention as well. Section 3 does not anywhere lay down that it is only the small shareholders who can make an application under this section and acquire the share of the others, who want the property to be sold under section 2 of the Act. It is not quite clear if the learned Judges of the Allahabad High Court wanted to lay down that section 3 was only intended for the benefit of small shareholders and the bigger ones could not purchase the property under this section. But if that was the intention, then, with great respect to them, I cannot subscribe to this view, because no such restriction is discernible from the plain reading of section 3.

In view of what I have said above, this appeal fails and is dismissed. In the circumstances of this case, however, I will make no order as to costs in this Court.

K.S.K.

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