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JOTE SINGH (DEAD) BY LRS.

v.

RAM DAS MAGTO AND ORS.

AUGUST 22, 1996

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[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Transfer of Property Act, 1882 :*

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*Sections 41 and 43—Applicability of—Property—Transfer—Sale by a person who is not owner—Transferor afterwards becoming the owner—Such a transferor is bound to make good the same to purchaser out of his subsequently acquired interest—The said principle is not applicable when sale is made by or through a Court—Sections 41 and 43 held applicable in case of voluntary transfers and not to involuntary transfers—Held High Court was right in not giving the benefit of two provisions to the auction purchaser.*

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*Alukmonee Dabee v. Banee Madhub Chuckerbutty and Anr., ILR-IV Cal. 677, approved.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1509 of 1976.

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From the Judgment and Order dated 7.7.76 of the Patna High Court in S.A. No. 597 of 1971.

Pramod Swarup for the Appellants.

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B.B. Singh for the Respondents.

The following Order of the Court was delivered :

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The facts as found by the High Court are that at a point of time, Smt. Udhwantia was the owner of the estate left by her late husband - Thakur Mahto. In the present of her daughter Ram Deiya, she gifted her property to Ramdas Mahto, her grandson, the son of Ram Deiya. This Ramdas Mahto deprived himself of the property by effecting two sales and by suffering an auction sales. Ram Deiya filed a suit, out of which this appeal has arisen, to claim that her mother Udhwantia being a limited owner, could not have gifted the property to Ramdas Mahto, the latter's son and, thus,

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she pleaded for return of the properties, by then in the hands of the transferees and the auction purchaser. The suit was decreed by the trial court. The first appellate court of the Additional District Judge confirmed the same. At the second appellate stage before the High Court, the plaintiff - Smt. Ram Deiya - died and her son, Ram das Mahto, who was a defendant in the suit, succeeded to the estate. It was then that an argument was built that since Ram Das Mahto had succeeded to the property, any defect in title to those sales stood rectified and omission(s) supplied by the thrust of the provisions of Sections 41 and 43 of the Transfer of Property Act (the Act). The argument was accepted by the High Court but insofar as the voluntary transfers were concerned. In respect of the court sale, in the execution of a decree against Ram Das Mahto, such treatment was not meted out. This has given rise to this appeal by the auction purchaser, clamouring that he was entitled to equal treatment on the same interpretation of Sections 41 and 43 of the Act, as put by the High Court.

As a doctrine, it is well-established that where a person sells property of which he is not the owner but of which he afterwards becomes the owner, he is bound to make good sale to the purchaser out of his subsequently acquired interest. See in this connection *Alukmonee Dabee v. Banee Madhub Chuckerbutty and Anr.*, ILR-IV Calcutta at 677. It is equally well-settled that the said doctrine does not apply to a sale when made by or through court because of its very nature, it being involuntary from the sufferer's angle. It is also well-understood that neither the provisions of Section 41 nor that of Section 43 of the act are available for the benefit of the auction-purchasers, for these provisions come to the rescue of transferees from ostensible owners or of transferees who purchase property in good faith from unauthorised persons and who subsequently acquire interest in the property transferred. These two provisions logically get engaged in voluntary transfers and not in involuntary transfers, like auction sales. There is no question of the court ever playing the role of an ostensible owner or a representative owner of the property when selling, so as to attract the provisions of Section 41 or 43 of the Act. In face of these principles, it is difficult to hold that the High Court was in error in not giving the benefit of the aforesaid two provisions to the auction purchaser, the appellant herein.

The appeal, therefore has no merit. It fails and is hereby dismissed. No costs.

T.N.A.

Appeal dismissed.