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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ *CS(OS) 1405/2011 & I.A. 9329, 20370/2011*
& I.A. 19375/2013

% ***Judgment dated 06.02.2014***

POONAM MALHOTRA ..... Plaintiff
Through: Mr.Jagjit Singh, Advocate
versus
UNION BANK OF INDIA & ORS ..... Defendant
Through: Mr.Aditya Madan, Advocate for the defendant no.1 along with Mr.K.K. Dhawan, Chief Manager, Union Bank of India Mr.Prag Chawla and Mr.A.Khan, Advocate for defendant no.3

\+ *CS(OS) 1406/2011 & I.A. 20461/2011*

RAM PARKASH MEHRA ..... Plaintiff
Through: Mr.Jagjit Singh, Advocate
versus
UNION BANK OF INDIA & ORS ..... Defendant
Through: Mr.Aditya Madan, Advocate for the defendant no.1 along with Mr.K.K. Dhawan Chief Manager, Union Bank of India Mr.Prag Chawla and Mr.A.Khan, Advocate for defendant no.3

\+ *CS(OS) 1407/2011 & I.A. 8416/2012*

HARSH ARORA ..... Plaintiff
Through: Mr.Jagjit Singh, Advocate
versus
UNION BANK OF INDIA & ORS ..... Defendant
Through: Mr.Aditya Madan, Advocate for the defendant no.1 along with Mr.K.K. Dhawan,

Chief Manager, Union Bank of India
Mr.Prag Chawla and Mr.A.Khan,
Advocate for defendant no.3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (*ORAL*)

1. The above three suits have been filed with respect to the property bearing No.S-455, Greater Kailash, Part-I, New Delhi. Plaintiff in suit [CS(OS) 1405/2011] is the owner of the second floor of the suit property; plaintiff in suit [CS(OS) 1406/2011] is the owner of the ground floor of the suit property; and plaintiff in suit [CS(OS) 1407/2011] is the owner of the basement of the suit property.

2. The suit property measuring 208 sq. yrds. was originally developed by the colonizer, M/s.DLF Ltd. This plot was sold to one Jai Narain Seth and Sh.Sharanjit Singh, jointly by executing a sale deed dated 4.6.1964, a copy whereof has been placed on record. The sale deed was duly registered with the office of Sub-Registrar of assurances vide registration no.4106 in additional book no.1, volume no.1146 at pages 44-45 on 12.6.1964. The aforesaid persons have been arrayed as defendants no.4 and 5 in the present suit [CS(OS)No.1405/2011].

3. According to the plaint, defendant no.4 sold his undivided share in the suit property to defendant no.5 and a sale deed was executed on 5.2.1966, whereby rights, title and interest in the suit plot was transferred in favour of Mr.Sarajnit Singh, defendant no.5. The sale deed dated 5.2.1966 executed by Jai Narain Seth was duly registered with the office of Sub-Registrar of assurances, New Delhi vide Registration No.1144, Addl. Book No.I, Vol. No.1471, pages 153-155 dated 17th February, 1966. The permission from the Competent Authority under the Urban Land (C & R)

Act was obtained and also permission under Chapter 20C of the Income-Tax Act was obtained. After obtaining the necessary permissions, the defendant no.5 transferred all rights, title, interest and possession of the plot to defendant no.6. A sale deed was executed on 9.6.1989 in favour of defendant no.6, which was duly registered with the office of Sub-Registrar of Assurances vide Registration No.5026, in Addl. Book No.I, Vol. No.6437, pages 152-201 dated 9th June, 1989. The defendant no.6 finally developed the suit property and constructed a building thereupon comprising of basement, ground floor with mezzanine, first floor and second floor. The defendant no.6 sold the second floor portion of the suit property to defendant no.7 [in CS(OS)No.1405/2011] vide sale deed dated 6.3.1992 which was duly registered with the office of Sub-Registrar of Assurances vide Registration No.1689, in Addl. Book No.I, Vol. No.7289, pages 127-158 dated 6th March, 1992. Defendant no.7 thereafter sold the suit property (second floor) vide sale deed dated 26.3.2004 to the plaintiff in suit No.1405/2011.

4. As per the two separate suits [CS(OS) 1406/2011 & CS(OS) 1407/2011] having been filed, reliance is placed on the similar chain of events, except the defendant no.6 sold the basement of the suit property to defendant no.7 [in CS(OS)No.1407/2011], who in turn sold it to the plaintiff in suit [CS(OS) 1407/2011] and the ground floor with mezzanine and first floor were sold by defendant no.6 to the plaintiff in suit [CS(OS) 1406/2011] vide separate sale deeds.

5. The original documents were produced by the plaintiff before the Division Bench and also before this Court as well, which were seen and returned. The plaintiffs in all the three suits [CS(OS) 1405/2011, CS(OS) 1406/2011 & CS(OS) 1407/2011] have been enjoying possession of their respective portions, however, they received notices on or around

11.5.2011 issued by the defendant no.1 bank, intending to contemplate action under Section 13 of the Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act 2002 with the intention of taking possession of the suit property. The notice also revealed that defendant no.3 (who is the proprietor of defendant no.2 company) had mortgaged the suit plot in favour of defendant No.1 and further that defendant no.2 was liable to pay the outstanding amount to defendant no.1 bank. The plaintiffs issued letters to defendant no.1 bank explaining their stand that they had never created any charge /mortgage in favour of the bank, nor did anyone by the name of Krishan Gopal Sharma, defendant no.3 herein, who as per the notice had allegedly created the mortgage, ever enjoy any right, title, interest or possession with respect to the aforesaid property. Simultaneously a complaint was made to the Police and on enquiry from the bank the plaintiffs learnt:

i) One Sh.Krishan Gopal Shrma deposited some sale deed dated 5.1.1979 (alleged to have been executed in Urdu) under which Sh.Krishan Gopal Sharma allegedly is conferred with rights, title and interest qua plot No.S-455, Greater Kailash-I, New Delhi-48.

ii) Defendant No.1 bank had shown documents recording and styled as memorandum of deposit of title deeds (creation of equitable mortgage) reading as:-

UNION BANK OF INDIA
Inter Office Memo

S.K. TRADING CO.

Dt.21.12.1989

MEMORANDUM OF DEPOSIT OF TITLE DEEDS/ PERPETUAL SUB LEASE

Shri Krishan Gopal Sharma s/o.Sh.R.K. Sharma resident of 220, Friends Enclave, Nangloi Delhi-41 called on us on 21st December, 1989 and handed over the undersigned the following documents of Sale Deed of property situated at S-455 at Greater Kailash Part-I belonging to Sh.Krishan Gopal Sharma with a view to create an equitable mortgage in our favour of the said property to secure the advances being made by us from time to time to M/s.S.K. Trading Company D-33, DSIDC Industrial Complex Rohtak Road, Delhi.

The said Sh.Krishan Gopal Sharma declares that documents were all there and which were in his possession and control that they were absolutely seized and possessed of or otherwise well and sufficiently entitled from any encumbrances to the aforesaid property, that no one else has any right or interest in the said property, that adverse claim of any kind existed against the said property and that no notice of intend compulsory acquisition of the said property has been received by him.

The said Sh.Ram Niwas Sharma agreed to have a valid legal mortgage in respect of the property executed and registered in favour of the Bank at his cost if and when called upon by the Bank to do so.

SCHEDULE OF DOCUMENTS ABOVEREFERRED TO

1. Sale Deed dated 10.1.1986 executed by Sh.Raghunath Prasad, son of Sh.Ram Swaroop in favour of Sh.Ram Niwas Sharma, son of Sh.Govind Ram Sharma in respect of property situated at 16-A, Block-C, Satyawati Nagar, Delhi.
2. None-encumbrance Certificate obtained form Sh.Rajvinder Singh & Co. Advocate in respect of said property.
3. Valuation Certificate in respect of above property from H.Chaddha & Associates, Architect & Valuers for Rs.16.05 lacs

Sd/-
Official
Union Bank of India
With Rubber Stamp.

6. Having been satisfied that a fraud had been played upon the plaintiffs, the present suits were filed.

7. It is surprising that having regard to the serious allegations levelled by the plaintiffs and more particularly against defendants no.2 and 3 during the pendency of the matter, the bank settled the matter with the defendants no.2 and 3 and handed over the documents to defendant no.3, which appeared to have been forged and fabricated. It is also surprising how the bank accepted the title documents from defendant no.3, without inspecting the property which was being mortgaged with the bank, as certainly, had any officer of the bank bothered to visit the premises (the suit property), he would have been able to ascertain from the occupants thereof that they had no intention to mortgage the property. Irrespective of whether it was a lapse on the part of the defendant no.1 bank official(s) or it was intentional, an enquiry should be initiated by the Chairman of the bank through any senior officer not less than the rank of General Manager to ascertain what exactly transpired between the defendant no.1 bank and defendant no.3. Counsel for defendant no.1 however, clarifies that the bank itself being conscious of this fraudulent activity of defendants no.2 and 3 has got registered an FIR against defendant nos.2 and 3 and in which a criminal trial has been initiated.

8. Counsel appearing for the defendant no.1 bank submits that defendants no.2 and 3 have cleared the loan amount, as per OTS scheme of the bank on 13.12.2012, and thus the bank has withdrawn the notice issued under Section 13 of the Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act 2002 and the bank has no claim whatsoever with respect to the suit property.

9. Counsel for the defendant no.1, bank submits that as the loan amount has been cleared by defendant no.2 and the total dues were deposited by

defendant no.3, thus they have no claim whatsoever over the property in question. Counsel for the defendant no.1 thus submits on instructions from the Chief Manager, that prayers No.(ii), (iii), (iv), (v) & (vi) have become infructuous, in view of the fact that no lien is claimed over the property in question.

10. Counsel appearing on behalf of defendant no.3 on instructions submits that defendant no.3 does not claim any right, title or interest in the entire suit property i.e. S-455, Greater Kailash, Part-I, New Delhi and he has instructions not to contest the suit.

11. I have heard learned counsel for the parties and carefully considered their submissions. The original documents produced in Court leave no room for doubt that the plaintiffs are the owners of their respective portions, as stated in the plaint. The necessity for filing the present suits has arisen on account of the fact that the plaintiffs received notices from defendant no.1 Bank under Section 13 of Securitization and Reconstruction of Financial A and Enforcement of Security Interest Act with the intention of taking possession of the suit property. According to the notice, the property was mortgaged to the Bank by defendant no.3 for raising a loan for defendant no.2.

12. Learned counsel appearing on behalf of defendant no.3 on instructions has made a statement that he does not claim any right, title or interest in the suit properties and further he has instructions not to contest the suit. The effect of the statement made by learned counsel for defendant no.3 would be that he does not challenge the documents of the plaintiffs. Defendant no.3 has also cleared the loan of the Bank as per the statement made by counsel for the Bank. It is pointed out by learned counsel for the plaintiff that criminal proceedings are pending against defendant no.3 for the alleged fraud committed by him. Based on the original documents

produced together with the entire chain of documents and the statement made by counsel for the Bank and the admission of defendant no.3, the present suits [CS(OS) 1405/2011, CS(OS) 1406/2011 & CS(OS) 1407/2011] are decreed in terms of prayer (i) of the suit. Let a decree sheet be drawn up accordingly. No costs.

I.A. 9329, 20370/2011 & I.A. 19375/2013 in CS(OS) 1405/2011
I.A. 20461/2011 in CS(OS) 1406/2011
I.A. 8416/2012 in CS(OS) 1407/2011

10. In view of the order passed in the suits, all pending applications stand disposed of.

G.S.SISTANI, J

FEBRUARY 06, 2014
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