

Court No. - 19

Case :- SECOND APPEAL No. - 721 of 1988

Appellant :- Ram Shabad

Respondent :- U.P.Co-Operative Land Development Bank And Others

Counsel for Appellant :- Anurag Kumar Sared,Apoorva Kumar,D.P.Dwivedi,D.S. Pandey,H.G. Upadhyay,Hargur Charan,J.K. Sinha,N.K. Sinha,Rakesh Kumar Srivastava,Sharad Dwivedi,Smt. Bimla Misra,V.K. Srivastava

Counsel for Respondent :- H.S.Sahai,Badri Prasad,Manish Mani Sharma,S.K.Mehrotra,V.B. Verma,Vinod Kumar Singh

Hon'ble Jaspreet Singh,J.

1. Heard Shri Rakesh Srivastava, learned counsel for the appellant and Shri Vinod Kumar Singh, learned counsel appearing for the respondent-Bank.

2. The instant second appeal was admitted by the Court on 14.02.1989 on the two substantial questions of law which reads as under:-

(i) Whether lower appellate court was right in holding that because of Section 19 of the U.P. Co-operative Land Development Bank Act, 1964, the irregularities in the sale pointed out by the appellant were cured?

(ii) Whether the ground taken by the appellant for getting the certificate cancelled were irregular and illegal going to the root of the same?

3. In order to appreciate the controversy involved in the instant appeal, certain brief facts giving rise to the instant appeal are noticed hereinafter.

4. The plaintiff-appellant Ram Shabad instituted a suit in the Court of Munsif, South, Sultanpur seeking cancellation of the sale certificate dated 13.09.1979. The said suit was registered as Regular Suit No.115 of 1980. The suit was

primarily filed against the U.P. State Co-operative Land Development Bank, District Sultanpur while the auction purchaser were impleaded as defendants no.2 to 4. It was stated that the plaintiff had taken an agricultural loan of Rs.9000/- on 19.12.1974 for the purposes of getting a bore-well/tub well. The amount was to be re-paid alongwith interest at the rate of 9% per annum.

5. It was further pleaded that since there was a severe drought in the year 1979, the plaintiff could not service the loan. It is also stated that the plaintiff did not receive any notice nor there was material compliance of Section 29 of the U.P. Co-operative Land Development Bank Act of 1964 and as such the Bank did not follow the procedure in case of sale of mortgage property as provided under the Rules of Uttar Pradesh Co-operative Land Development Bank Rules, 1971 and thus the entire proceedings of auction dated 21.04.1979 was bad including the sale certificate dated 13.09.1979. In the aforesaid backdrop, it was prayed that the auction proceedings be set aside after decreeing the suit.

6. The suit came to be contested by auction purchaser and the bank did not file any written statement. In so far as the auction purchasers are concerned, they filed a detailed written statement wherein they denied the plaint allegation and further stated that all the process and procedure as provided in the Act of 1964 was followed. The plaintiff had not approached the Court with clean hand and he never attempted to re-pay the loan and now once the land has been auctioned and the defendants have been granted the possession, hence the suit has been filed only to harass the defendants, accordingly, the suit was liable to fail.

7. Upon the exchange of the pleadings, the trial court framed as many as eight issues, however, the relevant issue upon which the suit was contested was:-

(i) whether the auction held and the sale certificate issued in favour of the defendants no.2 to 4 is bad in light of the averments made in the plaint?

8. After the parties led evidence, the trial court noticed that the Branch Manager, namely, Paras Nath Singh had appeared in the witness-box and he gave a statement that he had followed the procedure as provided in the Act of 1964 and the Rules of 1971. He further stated that appropriate and proper notice was sent to the plaintiff who had received it but did not repay and the entire process as required has been followed. The trial court relying upon the same and also noticing that the plaintiff could not establish how auction and the sale certificate was violated for non-compliance of the rule, accordingly, dismissed the suit by means of judgement and decree dated 31.05.1982.

9. The plaintiff being aggrieved preferred a regular civil appeal under Section 96 CPC registered as Civil Appeal No.218 of 1982 which was heard by the first Additional District Judge, Sultanpur who also found favour with the finding recorded by the trial court and by means of judgment and decree dated 29.10.1988 the plaintiff's first appeal was dismissed affirming the decree of the trial court.

10. It is in the aforesaid backdrop that the instant second appeal has been preferred by the plaintiff assailing the concurrent judgment and decree dated 29.10.1988 passed by the lower appellate court affirming the judgment and decree dated 31.05.1982 passed by the trial court.

11. Shri Rakesh Srivastava, learned counsel for the appellant while assailing two judgments and decree has submitted that the Act of 1964 clearly provided that the Bank cannot exercise the power of selling the property unless a notice in writing requiring the payment of mortgage money has been served upon the plaintiff. It is further urged that such default of outstanding mortgage money must be for the period beyond three months after service of the notice of the demand and in case if any objections are filed the Board has to hear the objections and only thereafter the sale can be held and that too in context with the specific provisions of Section 16 read with Section 18 and Rule 23 to 29 as provided in Chapter-V of the Rules, 1971.

12. Taking his submissions forward, it is further submitted that the notice which is sought to be served on the defaulter must be affixed at a place which is conspicuous and also to be published in local newspaper and without comply with the said formalities the sale cannot be held. It is urged that in the instant case neither the notice was served on the plaintiff nor the notice were published in any newspaper and thus the process as provided has not been complied with, accordingly, this aspect has not been appropriately noticed by the two courts, hence the judgment and decree passed by the two courts is bad and accordingly is liable to be set aside after allowing the appeal.

13. Shri Vinod Kumar Singh, learned counsel appearing for the Bank has submitted that in so far as the procedure provided in the Act 1964 is concerned, the same was duly followed. Even though the Bank may not have filed the written statement but the plea was taken by the auction purchaser that in due process as provided in the Act was followed. Even otherwise, the Manager had entered into the witness-box and gave a positive statement regarding the compliance and even he was subjected to cross-examination at the behest of the plaintiff yet nothing adverse could be elicited from his testimony.

14. Shri Singh further submits that the plaintiff has to stand on his own leg and cannot take the benefit of any weakness in the defence. It is urged that where the plaintiff had made assertion in the plaint regarding non-compliance of the provisions of the Act. The initial burden lay on him to prove it. This fundamental aspect regarding proving the averments made by the plaintiff were not satisfied which has been noticed by the two courts rather the testimony of the Bank Manager and the documents placed on record indicated that there was due compliance and thus the suit was dismissed and even the first appeal came to be dismissed. The finding on the issue of compliance is a pure question of fact and as such the finding returned by the two courts based upon perusal of evidence cannot be said to be perverse and for the said reason, the said findings are binding on the court in exercise of jurisdiction under Section 100

CPC. It is thus submitted that the instant appeal deserves to be dismissed as there is no violation of any rule or provision of the Act, 1964.

15. The Court has heard the learned counsel for the parties and also perused the material on record.

16. At the outset, it may be stated that Uttar Pradesh Co-operative Land Development Bank 1964 provides for power of sale of mortgage property in Section 16. Another important section is Section 19 which provides that the title of the purchaser is not to be questioned on the ground of irregularity. These two sections if read with Rules of 1971 specifically Chapter-V Rules 23 to 43 which provide for a complete procedure relating to sale of mortgage property.

17. The basic facts between the parties is not disputed; inasmuch as it is admitted case that the plaintiff had taken a loan in pursuance whereof he had mortgaged the property with the Bank which is governed by the Act of 1964 and the Rule of 1971.

18. The only issue which has been raised is regarding the procedure adopted by the Bank for sale of mortgage property. As per the plaintiff, there has been gross violation, however as per the defendant-Bank all the necessary procedure was duly adopted.

19. It is in this context, if the record is seen, it would indicate that the basic plea raised by the plaintiff regarding non-compliance of Rules 24, 26 and 28 as no notice was issued by the Bank nor received by the plaintiff. In this regard, the record indicates that Parash Nath Singh examined himself as D.W.2 who was the Branch Manager of the Bank. He specifically referred to paper Nos.98/2, 98/1, 98/3, 98/4 and clearly connected the notices sent in compliance of Rules 24, 26 and 28 respectively. It was also stated that the registered receipts were also placed on record as well as the acknowledgement which had the signature of the plaintiff. It was also stated that in so far as the notice under Rule 28 is concerned, since the

plaintiff was unwell, the same was received by his son Ram Raksha. Once the aforesaid positive statement was made by the Branch Manager the initial burden had been discharged and it was the duty of the plaintiff who have established that the statement given by the defendant was incorrect and that no such notices were ever issued on record by the plaintiffs.

20. In this context, if the statement of the plaintiff who was examined himself as P.W.1, it would reveal that in his cross-examination he admitted the fact that prior to filing of the instant suit, his son had filed a suit. He further stated that he had sought time from the Branch Manager to deposit the installment upon which Branch Manager got furious and thereafter he initiated the proceedings. A specific question was put to him as to whether he got the record relating to auction available with the Bank summoned to which he answered in the negative.

21. It is in this context where the initial burden was on the plaintiff to have established irregularities in the sale which was alleged by him and the same could have been easily established if the plaintiff would have summoned the record. However, the same was not done. In contrast, the Branch Manager had appeared and gave positive statements and indicated that the notices were issued to the plaintiff which were received and one of the notice was also received by the son of the plaintiff. These facts could not be disputed. The plaintiff did not have courage to state that the signatures were not present on the acknowledgement nor he could muster the courage to produce his son Ram Raksha as witness to deny that the notice under Rule 28 was not received by him. It is in the aforesaid backdrop that the trial court found that the plaintiff could not establish the irregularities as alleged and dismissed the suit. This aspect has also been considered by the lower appellate court and it has accepted the findings returned by the trial court.

22. The aforesaid findings are pure findings of fact and do not suffer from any perversity; inasmuch as it cannot be said that the findings are

based on inadmissible evidence or is based on no evidence and even it is not the case that the findings arrived at by the two courts are such that no reasonable person could have arrived at such a conclusion. It is in this context, if the submission of the learned counsel for the appellant is tested, it would be found that though assertions have been made regarding violation of the provisions of the Act and the Rules but they were not adequately substantiated. Merely because the disputed property was auctioned for a sum of Rs.12,000/- cannot be seen as inadequacy of the consideration in an auction sale per se is not a ground for setting aside the sale.

23. Learned counsel for the appellant could not dispute the fact that the best evidence to establish the fact whether the provisions of the Act and the Rule were violated could have been easily establish if the record could have been summoned. However, the plaintiff had missed boat.

24. Considering the aforesaid facts and circumstances, this Court is satisfied that the findings recorded by the two courts do not suffer from any error which may persuade this Court to interfere in exercise of power under Section 100 CPC. Accordingly, this Court of the clear view that the appeal is sans merit and is accordingly **dismissed**.

Order Date :- 22.12.2023

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