IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2791 of 2011
Date of decision: September 22, 2015

NIRMALA DEVI & OTHERS

.................APPELLANTS

VERSUS

ANIL NAYYAR & OTHERS

.............RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether the Reporters of the Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest? (Yes√)

Present:- Mr. Dinesh Sharma, Advocate
for the appellants.

Mr. Vikas Mohan Gupta, Advocate,
for respondent No.3.

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JASPAL SINGH, J

By virtue of this appeal, the plaintiffs have challenged the judgement and decree dated April 19, 2011 passed by Additional Judge, Ludhiana whereby the judgment and decree dated January 19, 2007 passed by Additional Civil Judge, Sr. Division, Ludhiana was upheld vide which the suit of the plaintiffs-appellants for grant of permanent injunction restraining the defendants from interfering in the possession of the plaintiffs over House No.3473, measuring 100 sq. yards comprising in Khasra No. 292, 4263/291, Khata No. 1681/1862, 1681/1, 1863/1, J.B. 1987-88, Taraf Saidan, H. B. No. 172, New Madhopuri, Ludhiana, was dismissed.

2. The facts necessary for the disposal of the instant appeal in brief are that Bihari Lal son of Sohan Lal was the owner of the property measuring 100 sq. yards on the basis of registered sale deed dated January 13, 1995. Defendant No.1 purchased the same from defendant No.2 vide registered sale deed dated February 10, 1994. Mutation in favour of Bihari Lal was duly sanctioned in the revenue record. Similarly, the mutation in favour of defendants No. 1 and 2 was also sanctioned. After the purchase of the property in question, Bihari Lal took up his residence and breathed his last on November 08, 1996. After his demise, appellants-plaintiffs being widow, sons and daughters inherited his property. It has further been alleged that plaintiffs No. 1 to 4 are in the possession of the suit property and are residing therein alongwith their families. On October 1, 1997, defendants No. 1 and 2 as well as officials of defendant No.3-Bank came to the spot and extended threats to interfere in the peaceful possession, without having any right or interest therein, which necessitated the appellants-plaintiffs to seek protection from the Court by filing suit for permanent injunction.

3. Upon notice, the suit was resisted by defendant No.3, however, defendants No. 1 and 2 after putting their appearance before the ld. trial court opted to slip away from the proceedings. Accordingly, they were proceeded against ex-parte. Defendant No.3 filed written statement raising preliminary objections *inter alia* on the ground that the suit is not maintainable; that plaintiff have not come

to the Court with clean hands and as such are not entitled to equitable and discretionary relief of injunction; that the property in dispute was mortgaged and no legal and valid title could pass during the pendency of mortgage; and that the passing of the decree for permanent injunction in such a case would be nothing but an attempt to circumvent the provisions of Section 29 of the State Financial Corporation Act (for short, "SFC Act"). On merits, ownership of Bihari Lal has been strongly denied or that he purchased the same from defendant No. 1 vide registered sale deed dated January 13, 1995. It was also denied that defendant No.1 purchased the property in question from defendant No.2 vide registered sale deed dated February 10, 1994 or that the mutation was sanctioned either in favour of Bihari Lal or in favour of defendants No. 1 and 2. It has further been alleged by defendant No.3 that in fact the property is subject to mortgage regarding which defendant No.2 has committed default and the Managing Director of defendant No. 3 is competent to proceed with recovery of the amount outstanding against defendant No.2 by exercising powers conferred upon him under Section 29 of the SFC Act. Since, defendant No. 2 has failed to repay the loan outstanding against him to the tune of ₹2,76,870/- and has committed default, defendant No.3 has every right to take over the property to recover the amount. The remaining averments made in the plaint were denied alleging the same to be wrong. Accordingly, defendant No.3 prayed for dismissal of the suit.

4. Ld. trial court on appraisal of the pleadings of the parties, framed the following issues:-

1. whether the plaintiffs are owners in possession of suit property? OPP

2. Whether the plaintiff is entitled for permanent injunction, prayed for? OPP

3. Whether the suit is not maintainable? OPD

4. Whether the suit property was mortgaged with defendant No.2 and whether defendant No.3 has taken over the mortgaged property in exercise of its power under Section 29 of the State Financial Corporation Act. If so, its effect? OPD.

5. Relief.

5. In order to settle the matter in controversy, both the parties were afforded ample opportunities to adduce and conclude evidence in respect of their respective pleadings and they led oral as well as documentary evidence.

6. After hearing learned counsel for the parties and bestowing due consideration to the rival submissions and scrutinizing the evidence, ld. trial court decided issues No. 1 to 4 against the plaintiffs and in favour of defendant No.3 and consequently, dismissed the suit vide judgment and decree dated January 19, 2007.

7. Disheartened from the said judgment and decree, plaintiffs preferred the appeal before the lower appellate court but it also met with the same fate and was dismissed vide impugned judgment and decree dated April 19, 2011.

8. Now, the appellants have approached this Court by way of instant appeal.

9. While assailing the findings recorded by the ld. trial court as well as impugned judgments and decrees, it has been argued with vehemence by learned counsel for the appellants that both the courts below have failed to appreciate the fact that the appellants-plaintiffs are bonafide purchaser for valuable consideration and without notice of any mortgage. It is amply proved on record that Bihari Lal purchased the property in suit vide registered sale deed dated January 13, 1995 and took its possession. He started residing therein. After his demise, appellants-plaintiffs particularly appellants No. 1 to 4 are in actual physical possession thereof as they are residing in the said house along with their families. Neither, Bihar Lal nor present appellants had any knowledge about the mortgage of the property in question with the PFC Bank i.e. defendant/respondent No.3. Moreover, the factum of any mortgage was never brought to the notice of the appellants either by the PFC Bank or defendants No. 1 and 2. Thus, the appellants cannot be fastened with any liability as they are the absolute owner of the property in question. Thus, the findings recorded by ld. trial court on all the issues are not sustainable in the eyes of law and deserves reversal. Consequently, the impugned judgments and decrees are liable to be set aside by way of acceptance of instant appeal.

10. On the other hand, learned counsel for respondent No.3 has supported the judgments and decrees passed by both the courts below contending that the same are absolutely in consonance with the evidence available on file and the settled canons of law and he has prayed for dismissal of the present appeal.

11. This Court has given a deep thought to the aforesaid submission made by learned counsel for the appellants but find the same to be of without any legal or factual substance. It is amply proved on record that the property in question, which is alleged to have been purchased by Bihari Lal, the predecessor-in-interest of the appellants was mortgaged with the PFC Bank-respondent No.3 vide mortgaged deed dated February 09, 1994. Consequent thereto, on January 13, 1995, it was sold to Bihari Lal. When Bihari Lal purchased the property in question, it was already lying encumbered i.e. under mortgage. The defendant No.2, who had taken the financial assistance from defendant No. 3-PFC Bank committed default in repayment of loan, and inheritance of its power under Section 29 of the SFC Act, proceedings were initiated for the recovery of the loan amount. The action of respondent No.3-PFC Bank is absolutely legal and permissible because the property in question was under mortgage when it was purchased by Bihari Lal by way of sale, the mortgage can't extinguish. Rather, it goes with the immovable property. Since, the mortgage of the suit property was prior to its sale to Bihari Lal, lien was created the day it was mortgaged and financial assistance was taken by respondent No.2.

12. It is well settled proposition of law that mortgage goes with the land till it is redeemed like a saddle of horse. Moreover, PFC Bank is taking action in its lawful exercise of powers and can't be estopped to recover lawful amount outstanding against property in question. So, in such circumstances, this Court is of the considered view that no interference of this Court is justified either in the findings

recorded by both the courts below or the impugned judgments and decrees. There is no infirmity, illegality or impropriety in the impugned judgments and decrees. Moreover, there is no question of law what to talk of any substantial question of law involved in the instant appeal.

13. In the light of what has been discussed above, this Court is of the considered view that the instant appeal is absolutely merit-less. As such, the same stands dismissed.

September 22, 2015 **(JASPAL SINGH)**
sonika **JUDGE**