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

Date of Decision: 02.02.2015

\+ CS(OS) No.1931 of 2011

SUNITA DEVI ..... Plaintiff
Through: Mr. S.C. Singhal, Adv.

versus

THE CORPORATION BANK & ORS ..... Defendants
Through: *Ex parte* vide order dated 10.10.2013.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The defendants have already been proceeded *ex parte* on 10.10.2013. The plaintiff's evidence was concluded on 25.7.2014.
2. The plaintiff's case is that she is the owner and in lawful possession of suit premises bearing No.1/204 (Ground Floor), Sadar Bazar, Delhi Cantt., having purchased it through a registered Sale Deed dated 10.5.2011 from defendant No.3, Smt. Praveen Verma. The property exists on a land which formed a part of a leased area of 5610 sq.ft. Through subsequent series of transfers it came to the plaintiff. A lease deed was created in favour of Shri Waziri Lal and Shri Hari Singh Goel on 28.03.1946. Upon equitable distribution of lease land, 50% of it came to Shri Hari Singh Goel. The legal heirs of late Shri Hari Singh Goel sold half of that share, i.e. an area measuring 1402.5 sq.ft. to Mr. Kuldeep

Verma vide Sale Deed dated 21.11.2003. The latter built four floors thereon and sold its ground floor to Mr. Neeraj Saxena (defendant No. 2) vide a registered Sale Deed on 21.03.2005, who in turn sold it to Smt. Praveen Verma (defendant No. 3), i.e., the wife of Mr. Kuldeep Verma on 19.11.2009. Ultimately she sold the suit premises to the plaintiff vide registered Sale Deed dated 26.05.2011 (Ex.PW1/4).

3. The plaintiff's case is that the property was never a subject matter of any lien, mortgage or encumbrance as is evidenced from the successive Sale Deeds, the first one being registered on 22.11.2003 (Ex.PW1/1). He submits that when Mr. Neeraj Saxena had bought the property from Mr. Kuldeep Verma vide registered Sale Deed dated 21.3.2005 (Ex.PW1/2), it was clearly recorded that the property was free from all encumbrances such as " ....prior sale, mortgage, gift or any kind of litigation of title...." Likewise, when Mr. Neeraj Saxena sold it to Smt. Praveen Verma (defendant No.3) on 19.11.2009, the Sale Deed (Ex.PW1/3) clearly stipulated an identical clause as aforesaid stating that that the property was free from all encumbrances.

4. The plaintiff states that she was surprised to receive on 25.6.2011 a letter dated 4.6.2011, from defendant No.1 – Corporation Bank, claiming that the said property had been subject of an equitable mortgage in respect of a loan of Rs.15.00 lacs taken by Mr. Neeraj Saxena in his account No.40048 on 12.5.2004 against which a balance of Rs.12,10,981.40 payable. The subsequent correspondence between the plaintiff and defendant No.1 yielded

no results. The plaintiff sought to explain to defendant No.1 that she was in possession of the original Sale Deed, therefore, i) an equitable mortgage could not have been created, ii) there was evidently a serious legal flaw in the documents purporting to create an equitable mortgage on the suit property and iii) perhaps the bank was the victim of a fraud played upon it by some persons.

5. The plaintiff further claims that in the absence of any document which could create an equitable mortgage or the existence of other circumstances such as the possession of the Sale Deed and other original transfer documents by the Bank, there could be no encumbrance upon the suit property by way of an equitable mortgage. Hence, the suit property can neither be attached nor be subjected to sale for recovery of any loans which may have been taken by Mr. Neeraj Saxena. The learned counsel for the plaintiff submits that, even for the sake of arguments, if it is assumed that the loan was created on 12.5.2004, the charge should have been on the subsequent sale of the property to Smt. Praveen Verma, who purchased the property from Mr. Neeraj Saxena on 29.11.2009 by way of a registered Sale Deed, and not upon the plaintiff as she is the second purchaser after Smt. Praveen Verma.

6. The evidence of the plaintiff has been recorded and it is stated that the original title deeds are in the possession of the plaintiff. When the original title deeds are with the plaintiffs and do not find a whisper of any equitable mortgage having been created with respect to the ground floor of property bearing No.1/204, Sadar Bazar, Delhi Cantt., nor is any other document brought on record

by the defendant that an equitable mortgage has been created on the suit property, it would have to be concluded that no such encumbrance could either have been or was ever created with respect to the property.

7. Furthermore, although the bank claimed that an equitable mortgage had been created in May, 2004 the property has been sold twice over thereafter. The Court notices that the bank has kept quiet all this while and had not proceeded against the first purchaser viz. Smt. Praveen Verma, who had purchased the suit property from Mr. Neeraj Saxena, the alleged borrower of the defendant-bank. In such circumstances, no case can be made out of any encumbrance on the suit property in favour of the bank.

8. The suit is accordingly decreed in favour of the plaintiff.

9. The suit and the application stand disposed off.

10. The decree sheet be drawn up in terms of the prayer clause.

FEBRUARY 02, 2015 NAJMI WAZIRI, J.

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