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

Decided on : May 01, 2015

+ W.P.(C) 4318/2015, CAV 431/2015, CM No. 7830-31/2015

RAJENDER PRASAD

...Petitioner

Through : Mr. D.V. Khatri, Adv.

Versus

PUNJAB NATIONAL BANK

...Respondents

Through: Mr. S.S. Katyal and Mr. Rajesh,
Advs. for Caveator/PNB

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE R.K.GAUBA,J:

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CAV 431/2015

Learned counsel for the Caveator has put in appearance. Caveat No. 431/2015 is accordingly discharged.

W.P.(C) 4318/2015

The writ petition at hand is directed against the order dated 24-02-2015 passed by Debt Recovery Appellate Tribunal, Delhi (hereinafter referred to as "the DRAT") in Misc. Appeal No.452/2014 which had been preferred by the petitioner to assail the order dated 20-11-2014 of Debt Recovery Tribunal-III, Delhi (hereinafter referred to as "the DRT") rendered on the application of the petitioner under Section 17 of the Securitization

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”, for short), registered as SA No 51/2006.

2. The petitioner claims to be bonafide purchaser of property described as bearing no. A-127, IInd floor, Majlis Park, Delhi (hereinafter referred to as “the subject property”), on the strength of documents in the nature of registered Power of Attorney, Agreement to Sell, Receipt, Undertaking and registered Will, all dated 16-08-1999 executed by Mrs. Kala Devi wife of late Mr. Ganpat Rai Goel. The SA was moved by the petitioner in the wake of notice dated 17-07-2006 issued, under Section 13(4) of the SARFAESI Act, by the respondent bank in respect of the subject property. The SA was dismissed by the DRT holding that Mrs. Kala Devi did not have any legal right to transfer the subject property in favour of the petitioner in 1999 since she had relinquished her rights therein in the year 1992. The appeal before DRAT remained unsuccessful with the afore-mentioned finding of fact having been affirmed.

3. It is necessary to take note at this stage of the facts found by the DRT in the inquiry arising out of the Securitization Application of the petitioner.

4. The subject property (IInd floor) is part of the larger property A-127, Majlis Park, Delhi which consists of three floors. Admittedly, the entire property was owned by late Mr. Ganpat Rai Goel, on the strength of Sale Deed dated 03-05-1972. The said original owner died on 27-03-1990. He was survived by his widow Mrs. Kala Devi (wife), sons Girdhari Lal Goel and Gopal Goel and daughter Usha. On 24-03-1992, Mrs. Kala Devi (wife) and Usha (daughter) executed two separate Relinquishment Deeds in respect of the said property in joint favour of Girdhari Lal Goel and Gopal Goel

(sons), the said Relinquishment Deeds being registered with the Sub-Registrar, Delhi vide document no. 1885, Addl. Book No. I, Volume No. 5682 at pages 168 – 169 and document no. 1884, Addl. Book No. I, Volume No. 5682 at pages 165-167 respectively. The DRT has also found it as a fact that later, on three different dates (15-01-2000, 28-09-2004 and 04-02-2005), Mr. Girdhari Lal Goel for self and as Attorney of his brother Gopal Goel executed three separate Sale Deeds in respect of the ground, first and second floor of the said property. By virtue of these Sale Deeds, the right, title and interest of Mr. Girdhari Lal Goel and Mr. Gopal Goel in respect of ground floor was transferred in favour of Mr. Ashish Goel (son of Girdhari Lal Goel) while the right, title and interest of the other two floors (first and second) was transferred in favour of Pradeep Goel (other son of Girdhari Lal Goel).

5. It has been shown by the respondent bank to the satisfaction of the authorities below that in order to secure facilities of cash credit (hypothecation) of ₹7 (seven) lacs and cash credit (B.D.) of ₹8 (eight) lacs availed in the name of M/s. Uma Shankar Constructions, Pradeep Goel had created equitable mortgage in respect of the subject property (second floor) in favour of the respondent bank on 21-05-2005 depositing the Sale Deed dated 04-02-2005. It may be added that similarly the ground and first floor of the property were also mortgaged with the respondent bank in the context of account of another entity namely M/s. Shri Tirupati Impex Agency availing overdraft facility of ₹40 (forty) lacs.

6. It is the case of the respondent bank that since the accounts in question had become non-performing assets (NPA), the respondent bank had

taken recourse to the provisions of the SARFAESI Act by issuing notice under Section 13(2) & (4). It is this notice dated 17-07-2006 which prodded the petitioner to raise objections through the Securitization application under Section 17 of the SARFAESI Act before DRT.

7. The case of the petitioner has been that Mr. Ganpat Rai Goel at the time of his death on 27-03-1990 had left behind his last Will dated 22-12-1988, admittedly not a registered document, bequeathing the subject property in favour of his wife Mrs. Kala Devi. The petitioner claims that the title in the subject property was transferred in his favour by Mrs. Kala Devi through the documents in the nature mentioned above executed on 16-08-1999 which were attested (as witnesses) by her sons Girdhari Lal and Gopal Goel. It is his contention that since the property had been inherited on account of bequest through Will by Mrs. Kala Devi, she or her daughter Usha Devi could not have relinquished any right in favour of the other two legal heirs, both sons of Mr. Ganpat Rai Goel. The petitioner alleged that documents were created pursuant to a criminal conspiracy by the legal heirs of Mr. Ganpat Rai Goel so as to create a false mortgage in respect of the subject property in favour of the respondent bank which could not bind the petitioner in any manner inasmuch as he had acquired the right, title and interest in the property on the basis of valid documents properly executed.

8. The DRT on the basis of enquiry held by it rejected the contentions, objections and claim of the petitioner, *inter-alia*, holding that Mrs. Kala Devi having executed the Relinquishment Deed on 24-03-1992 did not have any subsisting right in the subject property and thus could not have conveyed any title or interest in favour of the petitioner through the

documents purportedly executed on 16-08-1999. It has been noted that the Will dated 22-12-1988, statedly left behind by Mr. Ganpat Rai Goel at the time of his death, is admittedly an unregistered document which would be of no consequence in the face of the two Relinquishment Deeds executed on 24-03-1992. The DRAT has concurred with DRT in the findings of fact and the conclusions reached.

9. The petitioner, while challenging the view taken by the two forums below, only seeks to reiterate his claim to be the bona fide purchaser of the subject property on the basis of documents dated 16-08-1999. It was fairly conceded by the learned counsel that for conferring a proper title, documents purporting to transfer interest in an immovable property must be registered in accordance with the provisions of the Registration Act, 1908. There is no explanation offered as to why the petitioner did not get the documents executed by Mrs. Kala Devi on 16-08-1999 properly registered. Further, there is no explanation worth the name as to why the petitioner did not follow up on the Agreement to Sell entered upon by Mrs. Kala Devi with him to press for specific performance.

10. We agree with the conclusions reached by the DRT and DRAT that the Will dated 22-12-1988 allegedly left behind by Mr. Ganpat Rai Goel is of no consequence. It was not a registered Will nor ever acted upon by any legal heir. Mrs. Kala Devi by executing on 24-03-1992 a Relinquishment Deed in respect of the estate of her late husband in favour of her two sons left no room for doubt that she was not claiming any inheritance on the basis of Will, if any, left behind by the original owner in her favour. The said Relinquishment Deed of Mrs. Kala Devi would govern her share in the

estate left behind by her husband at the time of his death. Noticeably the said Relinquishment Deed, as also the Relinquishment Deed executed on same date by Ms. Usha, the daughter of the deceased owner, were duly registered under the Registration Act. By virtue of these two documents, the right, title and interest inherited by the two executants stood released in favour of the other two legal heirs, namely, Girdhari Lal Goel and Gopal Goel.

11. Since Mrs. Kala Devi had relinquished her share in the estate of her late husband in favour of her sons on 24-03-1992, she was left with no surviving interest in the subject property thereafter. With this factual background having been found and affirmed by the documentary proof submitted before the two forums below, it naturally follows that Mrs. Kala Devi did not have any right, title or interest subsisting for it to be conveyed through the documents on which the petitioner relies.

12. For the above reasons, we find no merit in the writ petition. It is, therefore, dismissed. It is open to the petitioner to apply to the bank for a mutually acceptable settlement by making payments of such amount as he is willing to offer. The petitioner is also at liberty to seek remedies, if any available, against Mrs. Kala Devi in accordance with law.

R.K. GAUBA,J

S. RAVINDRA BHAT,J

MAY 01, 2015/sh