In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4534 of 2016(O&M)
Date of Decision:14.9.2016

Syndicate Bank, Kurukshetra

---Petitioner

vs.

Ajay Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.S.S.Momi, Advocate
for the petitioner

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Rekha Mittal, J.

The present petition has been directed against order dated 5.1.2016 (Annexure P-1) passed by the Executing Court whereby application filed by the decree holder/respondent No. 1 under Section 52 of the Transfer of Property Act (in short "TPA") was allowed.

Ajay Kumar, respondent No. 1 filed a suit for specific performance of contract dated 12.1.2004 qua land measuring 24 kanals against Mam Chand and Rishi Pal son of Mam Chand. The suit was partly decreed vide judgment and decree dated 31.10.2009 passed by the Additional Civil Judge (Junior Division), Kurukshetra and the respondent/plaintiff was held entitled to specific performance of contract only qua land measuring 6 kanals 16 marlas. The respondent/plaintiff filed an appeal against the judgment and decree passed by the trial court and the same was allowed by the Additional District Judge, Kurukshetra vide judgment and decree dated 1.9.2011. Mam Chand transferred the land in favour of Rishi Pal his son vide civil court decree dated 24.9.2005 and some land vide sale deed. The Regular Second Appeal No. 4753 of 2011 filed by the judgment debtor was dismissed by the High Court vide order dated 26.2.2015. During pendency of the Regular Second Appeal, judgment debtor No. 2 (Rishi Pal) obtained a loan of Rs. 1,75,000/- from the Sybdicate Bank, Kurukshetra and mortgaged land measuring 8 kanals i.e 160/1256th share of land measuring 62 kanals 16 marlas in favour of the bank.

Respondent No. 1 filed the instant application on the premise that the decree holder is not bound by the entry existing in favour of Syndicate Bank as judgment-debtor had no title to the land mortgaged by him after the civil court decree dated 24.9.2005 was set aside and during pendency of the Regular Second Appeal before the High Court.

After reply to the application was filed and having heard counsel for the parties, the Executing Court allowed the application with the following observations:-

> "..........doctrine of lis pendence Section 52 of TPA is applicable. For the purpose of this Section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or other has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in

force.

10. Further, there is no documentary evidence available on record which goes in favour of the J.Ds. The main suit had been finally decided by the court after taking into consideration the evidence led by the parties. The decree has become final and judgment debtor is bound to comply with the same. It is well settled principle of law that the executing court cannot go beyond the decree. In the given set of circumstances, decree holder is not bound to make the payment of mortgage amount raised by J.D No. 2 illegally from the bank. As such application under Section 52 of the Transfer of Property Act is hereby allowed and decree holder is not bound to make the payment of mortgage amount raised by J.D.No. 2 illegally from the bank."

Counsel for the petitioner has not disputed that Rishi Pal created mortgage qua land measuring 8 kanals after the decree dated 24.9.2005 suffered by Sh. Mam Chand his father in favour of Rishi Pal had already been set aside. He has further not disputed that Rishi Pal did not have the title qua the property in regard whereof, he created mortgage in favour of the bank for securing repayment of loan advanced to him. It appears that Rishi Pal made a misrepresentation to the bank in regard to his entitlement to mortgage the land in question in order to obtain loan from the bank. As mortgage created by Rishi Pal in favour of the bank is clearly hit by the principle of lis pendence, no error much less illegality can be found in the impugned order. I would hasten to add that since Rishi Pal has been successful in obtaining loan from the bank by concealing certain facts, the petitioner bank is at liberty to take recourse to appropriate proceedings, in accordance with law for seeking recovery of the loan amount from balance sale consideration that may be deposited by the decree holder in pursuance of the decree passed in his favour.

With the aforesaid observations, finding no merit, the petition fails and is accordingly dismissed in limine

(Rekha Mittal)
Judge

14.9.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No