IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3323 of 2008
DATE OF DECISION: September 23,2016

S.Surjit Singh Sood (deceased through LRs) and another

…Appellants

versus

Punjab and Sind Bank and others

…Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sudhir Mittal, Advocate for the appellants.
Mr.I.P.Singh, Advocate for respondent No.1.

AMIT RAWAL, J.

The appellant-defendants are the legal representatives of the guarantor Shant Kaur who had allegedly mortgaged the property in respect of the loan advanced by the bank to defendant No.1 i.e. principal borrower.

The bank had filed a suit for recovery of the amount by selling the mortgaged property.

The trial Court decreed the suit for the amount of Rs.8,56,493.14 but held that the mortgagor had not intended to mortgage the property by holding the liability of defendants joint and several. The bank filed the appeal and the learned first Appellate Court reversed the findings.

Mr.Sudhir Mittal, learned counsel appearing for the appellants submits that Sant Kaur did not intend to execute the equitable mortgage in favour of the Bank. There has to be intention. Affidavit Ex.P31 has not been proved in accordance with law and rightly so, the Courts below after appreciating the evidence decreed the suit. He further submits that the Bank has already proceeded against the principal borrower by attaching the property situated at Jalandhar and in case that property is sold, the entire amount along with interest shall be satisfied, much less there shall be plenty of amount.

Mr.I.P.Singh, learned counsel for respondent No.1 does not dispute the attachment of the property of principal borrower. He submits that in case it is so, it will proceed for the realization of the amount against the property of the principal borrower situated at Jalandhar.

I have heard learned counsel for the parties. I am not in agreement with the argument of Mr.Mittal as affidavit Ex.P31 itself shows the intention to mortgage the property that in case the amount is realized, there will no necessity to proceed against the mortgaged property which is dwelling house. If the bank is not able to realize outstanding amount, it shall be at liberty to seek execution of the decree in accordance with law by putting the property on sale.

With these observations, the judgments and decree of the Courts below are affirmed

This order is to pass keeping in view the peculiar facts and circumstances of the case and shall not be treated as precedent for other cases.

RSA stands disposed of.

September 23,2016 (AMIT RAWAL)
KD JUDGE