IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

ESA 231 of 2016
Date of decision: 05.12.2016

Darshan Singh and others .... *Appellants*

Versus

State Bank of India and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. S K Arora, Advocate
for the appellants

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against orders dated 27.10.2016 passed by the Additional Civil Judge (Senior Division), Zira and dated 15.11.2016 passed by the Additional District Judge, Ferozepur whereby objection petition filed by the appellants was dismissed by the executing Court and the order passed by the executing Court has been affirmed in appeal.

Counsel for the appellants has submitted that as the appellants are bona fide purchasers of land attached for realization of the decretal amount in favour of State Bank of India, Basti Machhian Zira, Old Talwandi Road, Zira, District Ferozepur (in short, 'the Bank'), the appellants cannot be put to loss by attachment and sale of land purchased by them from its previous owner after making due enquiry (ies) as there was no entry in the revenue record with regard to land being mortgaged with the Bank. It is

Mohan Lal Bimbra
2016.12.07 10:32
I attest to the accuracy and
authenticity of this document
Chandigarh

further submitted that under Order 21 Rule 58 of the Code of Civil Procedure (in short 'CPC'), the executing Court was obligated to frame issue (s) and then permit the objector(s) to adduce evidence before deciding the objection petition.

I have heard counsel for the appellants and perused the paper book particularly the orders impugned.

A plain reading of the orders passed by the Courts below would indicate that Jhanda Singh son of Buta Singh, Sampuran Singh and Bakhshish Singh sons of Jhanda Singh obtained loan from the Bank and mortgaged the land in question in favour of the Bank as a security for repayment of loan amount. As the loanee became defaulter, the Bank filed suit for recovery by way of sale of the mortgaged property and the same was decreed vide judgment and decree dated 16.02.1999.

Indisputably, the land against which an encumbrance was created by the erstwhile owner by creating security in favour of the Bank later changed hands and the appellants are purchasers thereof vide sale deeds executed after the decree was passed in favour of the Bank. As the original owner created a security in favour of the Bank by mortgaging the land in question, in view of the settled position in law, the land could be transferred subject to rights of the mortgagee i.e. the Bank. As the mortgagor created a charge over the land in favour of the Bank, the appellants cannot escape their liability by raising a plea of bona fide purchasers for value without notice of mortgage or decree of the Court.

So far as the plea that the executing Court was required to frame issue(s) and permit the objector(s) to adduce evidence, it is not

Mohan Lal Bimbra
2016.12.07 10:32
I attest to the accuracy and
authenticity of this document
Chandigarh

incumbent for the executing Court to frame issues in each and every case irrespective of merits of the objection petition. In view of legal position discussed hereinbefore, no useful purpose would be served by setting aside the impugned orders and directing the executing Court to frame issue(s), allow the objectors to adduce evidence and thereafter to dispose of the objection petition except causing wastage of time and energy of all the stake-holders and to delay execution of a decree passed as back as in the year 1999 in favour of the bank dealing with public money.

For the abovestated reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

05.12.2016
mohan bimbra

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

Mohan Lal Bimbra
2016.12.07 10:32
I attest to the accuracy and
authenticity of this document
Chandigarh