

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.4501 of 2010 (O&M)
Date of Order: 02.11.2017**

Smt. Mojbi

..Appellant

Versus

Subba and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Adarsh Jain, Advocate,
for the appellant.

Mr. Sudhir Aggarwal, Advocate,
for the respondents.

ANIL KSHETARPAL, J (Oral)

Plaintiff-appellant is in appeal against the judgments and decrees passed by the Courts below.

Plaintiff had filed a suit for declaration and permanent injunction.

She had claimed that she is owner to the extent of 29 kanals 1 marlas of land being $\frac{1}{2}$ share of total land of 58 kanals 2 marlas. She further claimed that she had never obtained loan from defendant no.4-bank, however, her property has been auctioned and purchased by defendant nos.1 and 2 who are cunning persons. They had played fraud and impersonation in connivance with the bank officials. Although, plaintiff is owner only to the extent of 29 kanals 1 marla but the Assistant Registrar Cooperative Society on the request of the bank official has auctioned 39 kanals 18 marlas of land for a sum of Rs.62,500/- without notice to the plaintiff.

Defendants on the other hand, contested the suit and pleaded

that the plaintiff did take a total loan of Rs.28,000/- on two occasions separately i.e. 14,000/- each.

Learned trial Court after appreciating the evidence available on the file, held that the auction proceedings were totally illegal. The authorities while auctioning the property did not follow the procedure prescribed under the Punjab Cooperative Agricultural Development Banks Act 1957 and The Punjab Cooperative Agricultural Development Banks Rules, 1959. Learned trial Court apart from other gave the following reasons to set aside the auction:-

- (i) The Assistant Registrar Cooperative Societies admitted that although pamphlets about the publication of notice are available on the record, however, there is no order for distribution of the pamphlets in the record;
- (ii) One of the bidders, namely, Shiv Charan who appeared as PW6 specifically stated that he did not participate in any auction proceedings and his signatures were obtained by the Bank Manager when he went to get a loan for purchase of diesel engine;
- (iii) It is evident from the statement of Subedar, defendant no.2 that defendants no.1 and 2 always wanted to occupy this land and they have been requesting their uncle (father of the plaintiff) to transfer the land in their favour, however, he (father of the plaintiff) did not transfer of the land;
- (iv) It is strange that the bank officials contacted defendant nos.1 and 2 for re-payment of the loan which have been

advanced to the plaintiff but no notice was served upon the plaintiff;

(v) There are material contradictions in the statement of Subedar, defendant in the case, who claimed to have purchased the property in open auction;

(vi) Although, Ex.PW4/1, a notice dated 29.01.1993 and Ex.PW4/2, another notice dated 17.12.1993 addressed to the plaintiff for clearing the loan have been placed on the file, however, a careful perusal of the record proves that none of the notice was served on the plaintiff. A report on the envelope shows that the address mentioned on the envelope was not correct as Mojbi daughter of Sahid Khad, resident of Village Khaika, Post Office Punhana, whereas the post office of the village of plaintiff is Hathin. Similarly in other notice, the Post Office has been shown to be of village Andhop and report is that the plaintiff is not available;

(vii) The proclamation of the auction by way of beat of drum was held on 08.06.1994, whereas charges for the same were deposited on 07.06.1994 i.e. less than 24 hours before the auction proceedings;

(viii) a look at the auction notice shows that 4 acres 7 kanals and 18 marlas of land i.e. 39 kanals 18 marlas have been offered for auction, whereas the plaintiff was only owner of 29 kanals 01 marla. Defendants no.1 and 2 were themselves owners of remaining share i.e. 29 kanals 1

marla. However, defendants no.1 and 2 did not object to auction of the land. The substantive part was already owned by them;

(ix) The procedure as prescribed under the Punjab Cooperative Agricultural Development Banks Act, 1957 and the rules thereunder was not followed.

However, the suit filed by the plaintiff was dismissed on the ground that the plaintiff was claiming property on the basis of civil court decree suffered by her mother which has been set aside.

The first appeal was preferred by the plaintiff. Defendants also filed cross objections.

Learned first appellate Court has set aside the findings of the learned trial Court to the effect that the auction has not been held properly by recording as under:-

“The defendants have also proved that show cause notices were served upon the plaintiff on 29.01.1993 and 17.12.2003 and thereafter the auction was conducted. The defendants have also proved application for loan Ex.D4 and mortgage deed Ex.D5. So, in these circumstances, I am of the considered opinion that the plaintiff Smt. Mojbi had taken loan of Rs.14,000/- on 14.8.1984 and another loan of Rs.14,000/- on 21.09.1984 from defendants no.3 and 4 when she was not able to make payment she was given notices by defendants no.3 and 4 and thereafter the land was put to auction in which defendants no.1 and 2 succeeded and

thereafter they had become owner in possession of the suit land.”

It is clear that the learned first appellate Court did not even advert to the findings of fact arrived at by the trial Court. Learned first appellate Court did not discuss the findings of the trial Court and after analyzing such findings on critical examination found that the findings were erroneous. The first appellate Court just went on to hold that notices were served on the plaintiff on 29.01.1993 and 17.12.1993. Learned trial Court had given various reason while recording a finding that auction of the land was not in accordance with law. The first appellate Court clearly overlooked this fact.

Learned counsel for the respondents before me could not point out any error in the finding of learned Trial Court on the issue of validity of the auction. He has submitted that since the plaintiffs is not the owner, therefore, she has no locus-standi to challenge the same. He has further submitted that defendant nos.1 and 2 are bonafide purchasers of a public auction and, therefore, the auction cannot be set aside due to procedural lapse on the part of the official of the Assistant Registrar.

It may be significant to mention here that the first appellate Court has reversed the findings of the trial Court on issue no.1 and has held that the plaintiff has a locus standi to file the present suit. The first appellate Court has also held that when the property was auctioned, plaintiff Mojbi was owner in possession of the property.

I have considered the submissions of counsel for the parties and with their able assistance gone through the judgments passed by the Courts below as well as record.

In my considered opinion, following substantial questions of law arise for consideration:-

- (i) Whether the judgment passed by the learned first appellate Court is result of non-reading and misreading of evidence available on the file?
- (ii) Whether the first appellate Court being the last Court of fact is required to appreciate the evidence available on record and after discussing the same, the Court is to arrive at a finding?
- (iii) Whether the first appellate Court while reversing the findings of fact arrived at by the trial Court is required to atleast discuss the findings and after critical analysis, return a finding that such finding is erroneous?

QUESTION NO.(i)

Whether the judgment passed by the learned first appellate Court is result of non-reading and misreading of evidence available on the file?

Learned first appellate Court has clearly misread the evidence available on the file. Learned first appellate Court has relied upon the notices allegedly served upon the appellant dated 29.01.1993 and 17.12.1993. Learned first appellate Court has recorded a findings of fact that in fact these notices were not served on the plaintiff as on both the notices the address of the plaintiff was not correct and the report on the envelope shows that notices have not been served on the plaintiff.

Still further, learned first appellate Court has overlooked various other reasons, some of them have been noticed above, to hold that the auction proceedings were not held in accordance with the procedure

prescribed. Learned first appellate Court has not dealt with those reasons.

Learned counsel for the respondents was given opportunity to establish that various other reasons given by the learned trial Court are not sustainable. However, learned counsel for the respondents could not point out any error in the findings of fact arrived at by the trial Court.

Still further, learned counsel for the appellant has pointed out that in the auction notices even particulars of the land were not correctly given. He has pointed out that khasra numbers 9, 10 and 11 are part of Rect. No.28, whereas these have been shown to be part of Rect. No.29. Normally every rectangle has 25 acres and each number is known as khasra number, which normally is from 1 to 25. In each rectangle there exist khasra numbers 1 to 25 unless correct rectangle is given, the auction purchaser would not come to know which particular piece of land is being put to auction. Therefore, the findings of the first appellate Court is found to be result of non-reading and misreading of evidence available on the file.

QUESTION NOS.(ii) & (iii)

Whether the first appellate Court being the last Court of fact is required to appreciate the evidence available on record and after discussing the same, the Court is to arrive at a finding?

Whether the first appellate Court while reversing the findings of fact arrived at by the trial Court is required to at least discuss the findings and after critical analysis, return a finding that such finding is erroneous?

The first appellate Court is the last Court for appreciation of evidence available on the file. The first appellate Court is required to critically analyze the findings of fact arrived at by the learned trial Court and if the first appellate Court arrives at a conclusion that such finding is

required to be reversed, the first appellate Court is duty bound to critically analyze such finding and give its reason as to why such findings are erroneous. The first appeals can not be decided casually. First appeals are to be decided after dealing with each and every reason given by the trial Court for arriving at a different conclusion.

In view of the aforesaid discussion, all the three questions framed above are answered in favour of the appellant.

For the reasons recorded above, the judgment passed by the first appellate Court with respect to validity of the auction sale is set aside.

As per the interim order passed by this Court, the plaintiff has already deposited a sum of Rs.62,500/-. The bank shall be entitled to adjust the amount against the loan and if anything further is found due, the bank would be at liberty to intimate the plaintiff in this regard.

Defendant nos. 1 and 2 would be entitled to refund the auction amount from the bank.

The regular second appeal is allowed.

November 02, 2017
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(ANIL KSHETARPAL)
JUDGE

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