HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.2910 of 2017
Date of decision:14.7.2017

Punjab Khadi & Village Industries Board and another

...Appellants

Versus

Gurbachan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK, J. (Oral)

Defendants are in the regular second appeal against the judgment of reversal passed by the learned first appellate court, whereby first appeal of the plaintiff was allowed and his suit for mandatory injunction was decreed, directing the defendants-appellants to issue No Due Certificate in favour of the plaintiff-respondent.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that the plaintiff took a loan of Rs.5,60,000/- from the defendants for marble house and he equitably mortgaged his land measuring 24 kanals with the defendants to secure the repayment of said loan amount with interest. Plaintiff opened marble business, but same failed and crops in the area too were not good in those days, resulting thereby plaintiff could not pay the repayment in installments in time. It was further submitted that due to failure of plaintiff to repay the loan amount, the defendants secured recovery certificate No.227 dated

6.3.2002 under Section 3(1) of Punjab Land Revenue Act, 1890 for recovery of Rs. 7,23,497/- against the plaintiff from Collector, Chandigarh and got marked the said recovery notice to the Collector Bathinda vide memo No.227 dated 6.2.2002 for recovering the said amount from the plaintiff as land revenue along with future interest. It was further stated that on receipt of said recovery certificate, the Collector, Bathinda marked the same to Tehsildar, Rampura Phul for doing the needful and on the basis of recovery certificate, Tehsildar, Rampura Phul issued summons to plaintiff for realisation of said amount. Thereafter, plaintiff appeared before the Tehsildar, Rampura Phul and moved an application dated 10.7.2002 for allowing him time to repay the said amount in small installments, because he was unable to pay the loan amount in lumpsum. He also stated that he had paid Rs.1,99,943/-i.e. Rs.30,000/- on 9.2.2001, Rs. 25,000/- on 16.4.2002, Rs. 39,000/- on 21.5.2002, Rs. 28,115/-, Rs.27,828/- and Rs. 50,000/- and that he can pay Rs.60,000/-per year, but said request was not adhered by the authorities. Plaintiff also paid Rs.35,000/- on 14.11.2002, Rs.35,000/-on 28.2.2003 and Rs.48,000/-on 8.5.2003 against receipts issued by the officer. It was further submitted that as the request of plaintiff for repayment of the amount in installment has not been proved, so plaintiff has paid Rs.40,000/-vide DD No.964120 dated 11.11.2003 drawn on Punjab & Sind Bank RCC Chandigarh, Rs.48,000/- vide DD No.964250 dated 12.1.2004 drawn on Punjab & Sind Bank RCC Chandigarh, Rs.2000/- vide DD No.080198 dated 23.1.2004 drawn on State Bank of Patiala, Chandigarh, Rs. 50,000/-vide DD No. 964456 dated 17.4.2004 drawn on Punjab & Sind Bank, Chandigarh, Rs.2,40,500/-vide DD No.210355 dated

1.11.2004 drawn on State Bank of India, Sector 22, Chandigarh and even paid the minor due amount of Rs.60/- vide DD No.965137 dated 9.11.2004 drawn on Punjab & Sind Bank, Chandigarh to Tehsildar, Rampura Phul. It was further stated that besides the above said payments, plaintiff also paid amount to the defendants on account of repayment of loan amount. The Collector, Bathinda wrote to Collector Chandigarh vide letter No.2486 dated 18.11.2004 that as per report of Tehsildar, Rampura Phul, the entire amount has been recovered from the plaintiff and enclosed receipt and these documents received in the office of Collector Chandigarh vide receipt No. 16633 dated 23.11.2004 and same was dispatched to the defendants vide Endst. No.998 dated 29.11.2004 by Collector, Chandigarh and defendants received the same at receipt No.3628 dated 9.12.2004. Plaintiff had paid the entire amount and nothing was due towards the plaintiff, but inspite of these facts, defendant had not issued No Due Certificate. Thereafter, legal notice dated 21.8.2009 was issued, but inspite of legal notice, No Due Certificate was not issued.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

i. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP.

ii. Whether plaintiff has no locus standi to file suit? OPD

iii.Whether plaintiff has no cause of action to file suit?OPD

iv.Whether suit is not maintainable in present form? OPD

v. Whether plaintiff has not come to the court with clean hands and its effect?OPD

vi.Whether the plaintiff is estopped from filing the suit?OPD

vii.Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, suit of the plaintiff for mandatory injunction was dismissed by the learned trial court, vide its judgment and decree dated 27.5.2014. Feeling aggrieved, plaintiff filed his first appeal, which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 16.2.2017. Hence this regular second appeal, at the hands of defendants.

Heard learned counsel for the appellants.

It is a matter of record and not in dispute that defendants-appellants advanced a loan of Rs.5.60 lacs to the plaintiff. Plaintiff got his land measuring 24 kanals mortgaged with the defendants to secure the repayment of loan amount with interest, as equitable mortgage. Dispute between the parties was that the plaintiff was asserting repayment of total loan amount along with interest and as a consequence thereof, seeking issuance of No Due Certificate, whereas the case set up by the defendants was that the plaintiff has not paid the total amount due against him because of which he was not entitled for issuing No Due Certificate.

Different payments made by the plaintiff by way of bank drafts could not have been disputed by the defendants. A voluminous evidence was brought on record by the plaintiff in this regard which was Ex.P6 to Ex.P19. These were either the receipts of bank drafts followed by letter written by the District Collector and reply of the notice. Defendants-appellants produced Deepak Kumar, Assistant, State Bank of India as DW-2, so as to prove their pleaded case. Ledger No.431 Ex.PX, ledger No.464 ExPY and ledger No.466 were pertaining to account of the plaintiff. On all the three pages of the ledger, first entry was with regard to cheque No.836929. On page No.431, there were cuttings in the column of debit and credit account. In fact, entries in all the three columns were different and contradictory with each other.

When the learned counsel for the appellants was confronted with this discrepancy in the official record of the appellant, which was not possible to be reconciled, learned counsel for the appellants had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree, which deserve to be upheld. Once the plaintiff has discharged his onus to prove that whatever was his financial liability, he has discharged the same by making different payments by way of bank drafts, it was for the defendants-appellants to prove their pleaded case, if they were still asserting that some amount was yet to be paid by the plaintiff.

Defendants-appellants failed to prove their pleaded case and it was not possible to reconcile their relevant official record particularly the above-said three pages of the ledger on which there were cuttings in the coulum of debit and credit account. Since the ledger book was the part of official record and it remained in the custody of the appellants-defendants throughout, it was for the defendants-appellants to explain about those cuttings. But the learned counsel for the appellants had no answer in this regard and he could not furnish any kind of explanation about the cuttings in the column of debit and credit account on three pages of the ledger. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 18 of its impugned judgment, which deserve to be noticed here, read as under:-

> "*As per the record, the appellant had made request for issuance of duplicate draft and not for cancellation of the draft. Ledger No.431 Ex. PX, Ledger No.464 Ex. PY and Ledger No.466 filed on record shows that on all the three pages the account is in the name of Gurbachan Singh son of Partap Singh. On all these three ledger pages, the first entry is same with regard to cheques No. 836929. On page No.431 there are cuttings in the Column of debit and credit account. Page No.431 shows that the last amount on 12.06.2012 is Rs. 6,98,503/- and ledger No.464 is showing Rs.6,98,503/-credit amount on 31.01.2014 and balance has been shown as Rs. 14,28,382/- as on 31.01.2014. Similarly, the ledger No.466 is*

showing the amount in debit column is Rs.25,414/- showing the amount in credit column is Rs. 6,98,503/- as on 25.04.2014 and the amount of Rs.13,19,597/- as balance as on 25.04.2014. The entries in all the three documents are different and clearly show that the proper accounts have not been maintained by the Department. They themeselves do not know about the amount received from the appellant. As per Ex. DW2/5, the interest rate has been shown as 17.80% whereas as per the documents which is the application moved by the appellant for loan, the rate of interest has been mentioned as 13%. As per the admission of the respondents witnesses and as per the documentary record the entire amount has been paid by the appellant through District Collector. It has been proved on record that all the original documents alongwith recovery certificate with the report that the entire recovery has been made, was sent to the office of the respondents. If they have not got the same, it is the matter inter see between the District Collector and the respondents and the appellant is not liable for that. The learned Lower Court has not appreciated the entries in the ledger and no explanation has come forward as to why three accounts have been opened by the respondents regarding the one loan taken by one and the same person as is proved but the learned Lower Court has not appreciated these facts. The learned Lower Court has also not appreciated that there is a report of senior Officer supported by documentary evidence to the effect that the entire recovery has been made, still the respondents are claiming the amount from the appellant. Thus, the observation of the learned Lower Court and the findings of the learned Lower Court on Issue No.1 are wrong and illegal. The findings on issued No.2,3 and 4 are also wrong and illegal. The appellant has locus standii and cause of action to file the present suit. The rights of the appellant has been prejudiced, therefore, he has locus standii to file the present suit. He was the loanee and amount has *been demanded from him whereas he is alleging the repayment of amount. Thus, he has cause of action to file the present suit. Since, the rights of the appellant are involved and his property has been mortgaged by the respondents and has not been released despite after receiving the entire amount, therefore, the present suit is maintainable. The judgment passed by the learned Lower Court is accordingly set aside. The appeal of the appellant is accepted and the suit of the plaintiff for mandatory injunction is decreed with costs directing the defendants to issue him No Due Certificate against CBD/Lime Account No.60163 in the name of the plaintiff and also for issuing relevant letter/certificate enabling the plaintiff from getting redeemed his land measuring 24 kanals bearing khasra No.433//14(6-7), 15(7-8), 23(8-0), 24/1 min (2-5) situated within the revenue limits of village Bhai, Rupa, Distt. Bathinda."*

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

14.7.2017 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No