

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 12th May, 2017**

+ **WP(C) No. 3046/2017**

MUNISH GROVER

..... Petitioner

Through: Mr. Sanjeev Bhandari, Ms. Kanika
Agnihotri and Mr. Harshvardhan
Rathore, Advs.

Versus

STATE BANK OF INDORE & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India and impugning the order dated 1st April, 2017 of the Debt Recovery Tribunal – III, Delhi (DRT) as well as the orders dated 9th March, 2017 and 16th March, 2017 of the Debt Recovery Officer - I of DRT-III and seeking to restrain the respondent No.1 State Bank of Indore (Bank) from taking any coercive step in pursuance thereto was listed on urgent mentioning on 1st April, 2017 (holiday) and the counsel for the petitioner heard and the following order was passed.

" Learned counsel for the petitioner has submitted that none other than the petitioner and his family members are in possession of the property in question.

We have heard learned counsel for the petitioner.

Order reserved.

Till the order is pronounced, the Receiver may proceed to take the juridical possession of the property in question i.e., the Ground Floor of E-20, Anand Niketan, New Delhi, however, the actual physical possession of the petitioner may not be disturbed, subject to the condition that the petitioner shall not alienate or part with the possession and deliver possession to any third party till the pronouncement of the order.

This order shall not come in the way of continuation of the proceedings, if any, pending before the DRT.

Order Dasti under the signatures of the Court Master."

2. A perusal of the paper book shows the case of the petitioner is:

(i) that M.L. Grover and Sumitra Grover being the father and mother respectively of the petitioner were the perpetual lessee of the land admeasuring 285.80 sq. yrd. underneath E-20, Anand Niketan, New Delhi and the owners of the house constructed thereon;

(ii) that M.L. Grover, father of the plaintiff, died on 28th May, 1974 leaving Sumitra Grover as his widow, petitioner Munish Grover as his son and Suchita Bhambri and Ruchita Mehra as his daughters as his only legal heirs;

(iii) that the mother of the petitioner Sumitra Grover vide unregistered agreement to sell dated 21st November, 1987 agreed to sell the entire property to her daughter Suchita Bhambri for a total sale consideration of Rs.5,50,000/- and undertook to get relinquishment executed in her own favour from the petitioner and Ruchita Mehra and in part performance thereof delivered possession of the property to Suchita Bhambri and also authorised Suchita Bhambri to raise further construction on the property and executed a General Power of Attorney in favour of the said Suchita Bhambri;

(iv) the petitioner, Suchita Bhambri and Ruchita Mehra executed and registered on 12th September, 1988 a registered deed relinquishing the shares inherited by each of them out of the share of their father M.L. Grover in the said property in favour of their mother Sumitra Grover, making their mother Sumitra Grover the sole absolute owner of the property;

(v) Suchita Bhambri vide unregistered agreement to sell dated 21st August, 1989 agreed to sell the ground floor of the property to the petitioner

for a sale consideration of Rs.2 lakh and delivered vacant, peaceful and physical possession of the said ground floor of the property to the petitioner;

(vi) Sumitra Grover, mother of the petitioner instituted suit No. 1805/1995 of this court against the petitioner and his sisters Suchita Bhambri and Ruchita Mehra for partition of the aforesaid property;

(vii) vide interim order dated 30th May, 1997 in the said suit, the application of the petitioner to restrain his mother Sumitra Grover from dealing with the property was disposed of on the statement of the counsel for Sumitra Grover that she was not going to sell, alienate or create any third party rights in the property;

(viii) the mother of the petitioner Sumitra Grover on 30th October, 2013 withdrew CS(OS) No. 1805/1995 stating that she did not want to pursue the suit, being of old age;

(ix) the petitioner for the first time on 11th December, 2007 became aware of the claim of the Bank, of Sumitra Grover having created equitable mortgage of the property when the Bank pasted a possession notice under Section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) upon property in question;

- (x) the petitioner approached in CS(OS) No. 1805/1995 aforesaid to restrain the Bank from taking possession of the property from the petitioner but the Court could not exercise its jurisdiction in view of the explicit bar on the jurisdiction of the Civil Court and directed the petitioner to take his remedies before the DRT;
- (xi) the petitioner filed securitisation application being SA No. 04/2008 which has been finally decided vide order dated 20th May, 2016 whereby the said application has been dismissed;
- (xii) the petitioner filed a review application being RA.No.05/2016 which is still pending consideration and listed next on 13th April, 2017;
- (xiii) the Bank claims that the property was mortgaged to secure the dues of Japdeep Exim Pvt. Ltd.; the petitioner has no relationship with the said Japdeep Exim Pvt. Ltd.;
- (xiv) the petitioner and Suchita Bhambri and Ruchita Mehra were impleaded by the Bank in O.A. instituted by it before the DRT only at the stage when the Recovery Certificate was issued against the property in question and upon being so impleaded, filed objections before the Recovery Officer-I in RC.No.08/2014;

(xv) initially the Recovery Officer allowed the objections vide order dated 21st January, 2016;

(xvi) however the Recovery Officer vide order dated 9th March, 2017, without there being a review by any party and without assigning any legal justification, has come to the conclusion that the order dated 21st January, 2016 allowing the objections of Suchita Bhambri deserves to be recalled and recalled the same and dismissed the objections;

(xvii) subsequently the Recovery Officer has passed an order dated 16th March, 2017 on the objections of the petitioner and has appointed a Court Receiver to take possession of the ground floor of the property;

(xviii) the Bank has served a notice on the petitioner intimating the petitioner that possession would be taken over on 3rd April, 2017;

(xix) impugning this action of the petitioner the petitioner filed an appeal being Appeal No.15/2017 before the DRT-III and of which the notice was issued and which was listed for hearing on 1st April, 2017;

(xx) on 1st April, 2017, the DRT – III refused to grant interim protection in the matter, being of the view that without depositing 50% of the amounts claimed by the Bank the appeal itself was not maintainable; the appeal was adjourned to 3rd April, 2017.

3. We may record that the petition having been filed in a hurry, is replete with mistakes with the name Sumitra Grover and Suchita Bhambri being used interchangeably and we have on our own, after reading the annexures to the petition, narrated the facts with the clarity aforesaid.

4. The counsel for the petitioner contended – (i) that when the appeal was still pending, interim protection should have been granted; (ii) that Sumitra Grover, mother of the petitioner, having on 21st November, 1987 agreed to sell the property to Suchita Bhambri and having in part performance of the agreement to sell delivered possession of the property to Suchita Bhambri, was not left with any rights therein to be able to create equitable mortgage of the property in favour of the Bank; (iii) not only so, the mother of the petitioner Sumitra Grover, in the suit for partition filed by her had given a statement on 30th May, 1997 that she will not alienate, encumber or part with possession of the property or create third party rights with respect thereto and the mortgage is in violation of the said order in the suit and bad for this reason; (iv) that though after the amendment w.e.f. 24th September, 2001 to the Indian Stamp Act, 1899 as applicable to Delhi and the Registration Act, 1908, possession in part performance cannot be given without a registered agreement to sell but the agreement to sell of entire

property by Sumitra Grover in favour of Suchita Bhambri on 21st November, 1987 and the agreement to sell of ground floor of the property by Suchita Bhambri in favour of the petitioner on 21st August, 1989, are prior thereto and rights under Section 53A of the Transfer of Property Act, 1888 have accrued to the petitioner and which rights cannot be permitted to be defeated by the Bank; (v) reliance was placed on the judgment of the Division Bench of this Court in *Swaraj Kishore Arora Vs. Indian Bank* 230 (2016) DLT 269

5. Having considered the controversy, we are of the view that the petitioner, for the reasons hereinafter given, is not entitled to any equitable relief in exercise of powers under Article 226 of the Constitution of India:

- A. The petitioner admittedly does not have any registered conveyance of the ground floor of the property in his favour. Without such registered conveyance, the petitioner cannot acquire any title to the property.
- B. The Agreement to sell by Sumitra Grover in favour of Suchita Bhambri and the agreement to sell of the ground floor by Suchita Bhambri in favour of the petitioner are highly suspicious, contrary to ordinary course of human conduct and contrary to the other documents on record.

- C. In the agreement to sell by Sumitra Grover in favour of Suchita Bhambri it is recorded that Sumitra Grover and her husband M.L. Grover had jointly acquired leasehold rights in land underneath the property and on demise of M.L. Grover on 28th May, 1974 all his right, title and interest in the property devolved upon Sumitra Grover and that none else had succeeded to the rights of M.L. Grover in the property; notwithstanding the same the agreement to sell also provides that Sumitra Grover would get relinquishment deed executed in her favour from the petitioner and Ruchita Mehra “in order to enable” Sumitra Grover to transfer a clear title of the property. The said agreement to sell does not provide for relinquishment deed to be executed by Suchita Bhambri also in favour of Sumitra Grover.
- D. However the registered relinquishment deed of 12th September, 1988 is not only by the petitioner and Ruchita Mehra but also by Suchita Bhambri; it is inexplicable that if prior to the date of relinquishment deed Sumitra Grover had already agreed to sell her share as well as the shares of the petitioner and Ruchita Mehra in the property to Suchita Bhambri, why should Suchita Bhambri also relinquish her share in the property in favour of Sumitra Grover.

- E. Agreement to sell of the ground floor by Suchita Bhambri in favour of the petitioner is of soon thereafter. If the petitioner was also to be the owner of the ground floor of the property, it is again inexplicable as to why the relinquishment deed should have been executed by him in favour of the Sumitra Grover. If the intent was that the petitioner alone should become the owner of ground floor and Suchita Bhambri alone should become the owner of upper floors of the property, Sumitra Grover, Suchita Bhambri and Ruchita Mehra would have executed relinquishment deed of their share in ground floor of the property in favour of the petitioner and Sumitra Gorver, petitioner and Ruchita Mehra would have executed relinquishment deed of their share in upper floors in favour of Suchita Bhambri.
- F. The version, of Agreements to Sell and owing whereto the rights in property created for consideration in favour of Bank are sought to be defeated, is contrary to the normal human conduct and behaviour. It cannot be lost sight of that the land underneath the property was leasehold and leases granted by Government of India or its instrumentalities of such land normally contain a clause prohibiting sale without permission of the L&DO and/or the DDA as the case may be,

and obtaining such permission entails payment of unearned increase. If ultimately the property was to be owned by the petitioner and Suchita Bhambri who already had inherited 1/8th share each in the property from their father M.L. Grover, there was no need for petitioner and Suchita Bhambri to execute relinquishment deed.

- G. There is no proof of payments of sale consideration by Suchita Bhambri to Sumitra Grover or by the petitioner to Suchita Bhambri. No document is shown that Suchita Bhambri and the petitioner since 1987 and 1989 respectively have been declaring themselves as owners of the property or have reflected the transaction in their income tax records or have otherwise dealt with the property as owners thereof.
- H. Copy of the plaint in Suit No. 1805/1995 filed alongwith the writ petition shows the address of Sumitra Grover as well as of the petitioner of the subject property only and of Suchita Bhambri of 3 Azmal Khan Park, Karol Bagh, New Delhi and of Ruchita Mehra of 37/18, Old Rajinder Nagar, New Delhi. The same belies delivery of possession by Sumitra Grover to Suchita Bhambri, as mentioned in the agreement to sell dated 21st November, 1987.

- I. Sumitra Grover in the plaint aforesaid has pleaded that the land underneath the property was allotted in her exclusive name and sub-lease in her exclusive name was executed and registered; subsequently, the said sub-lease was cancelled and another sub-lease of the land was executed on 26th March, 1971 in her favour and in favour of M.L. Grover; however on or about 20th March, 1974, the sub-lease was transferred exclusively in her name and since then she is the exclusive owner of the property. However the plaint also mentions the relinquishment deed executed by the petitioner, Suchita Bhambri and Ruchita Mehra.
- J. It is further mentioned in the plaint aforesaid that at the time of demise of M.L. Grover, Sumitra Grover was the exclusive sub-lessee and only the superstructure comprising of ground floor belonging equally to Sumitra Grover and M.L. Grover, of the share of M.L. Grover, devolved on the four heirs aforesaid.
- K. It is further mentioned in the plaint aforesaid that on or about 12th September, 1988 Suchita Bhambri obtained General Power of Attorney from Sumitra Grover representing that the same was necessary to effect improvements in the property and Suchita Bhambri constructed first

and second floors above the existing ground floor and was only entitled to cost thereof and in lieu thereof she was permitted to realise the rent but had not furnished the accounts.

L. The petitioner, save for the plaint and the orders dated 30th May, 1997 and 30th October, 2013, has not filed any other records of the suit aforesaid.

M. Even though the petitioner and Suchita Bhambri had only agreements to sell in their respective favour but inspite of Sumitra Grover pursuing the suit from 1995 till 2013 on the premise that there was no agreement to sell and the petitioner and Suchita Bhambri therefore having notice that Sumitra Grover was refusing to perform her part of the agreement to sell, neither the petitioner nor Suchita Bhambri are pleaded to have instituted any suit for specific performance of the agreement to sell or made any counter claim to the said effect in the Suit No.1805/1995.

N. Even after 2007, since when the petitioner claims knowledge of the claim of the Bank, no such suit has been instituted and the limitation therefor provided in Article 54 of the Schedule to the Limitation Act, 1963 has long since lapsed.

- O. The only claim which the petitioner as per his pleaded case, as an agreement purchaser can have is the right of seeking specific performance of the said agreement and which claim of the petitioner is now barred by time.
- P. As far as the contention of the counsel for the petitioner of the petitioner being entitled to the benefit of the doctrine of part performance enshrined in Section 53A of the Transfer of Property Act is concerned, neither are there any necessary pleadings of the petitioner therefor nor can benefit be given to the petitioner thereof in writ jurisdiction as such a claim requires adjudication of factual disputes. Though mere expiration of the period of limitation for bringing a suit for specific performance does not debar a person in possession of an immovable property by way of part performance from setting up a plea as contemplated therein in defence to protect his possession of the property, as recently reiterated by Supreme Court in *Vasanthi Vs. Venugopal* 2017 SCC OnLine SC 270, but it was further held that to avail the benefit of such protection, all the prerequisites therefor would have to be obligatorily complied with.

- Q. Moreover, the proviso to Section 53A also provides that nothing contained in the section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof. The Bank, as a mortgagor, is a transferee for consideration and there is no plea that the Bank had notice of the agreement to sell claimed to have been executed by Sumitra Grover or part performance thereof. As aforesaid, Sumitra Grover till the institution of the suit in the year 1995 was residing in the property and the occupation thereof by the petitioner as the son of Sumitra Grover could not have put anyone to notice of part performance.
- R. The argument on the basis of Section 53A of the Transfer of Property Act is even otherwise misconceived and without regard to law. Supreme Court, in ***Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra*** (2004) 8 SCC 614 held that protection provided under Section 53A to the proposed transferee is shield only against the transferor; it has nothing to do with ownership of the proposed transferor who remains full owner of the property and that such a right to protect possession against proposed transferor/vendor cannot be pressed in service against a third party. The protection was held to be not

available in facts of that case to the agreement purchaser (in possession) from the agreement purchaser put in possession in part performance, against the owner, holding that there was no privity of contract between the owner and the person claiming protection. Similarly here, the petitioner has no privity of contract with Sumitra Grover who is claimed to have put Suchita Bhambri in possession in part performance of agreement to sell; the petitioner claims privity with Suchita Bhambri only.

- S. The invocation of Section 53A is misconceived for another reason. Supreme Court, in *State of U.P. Vs. District Judge* (1997) 1 SCC 496 held that Section 53A cannot be pressed in service against a third party like the State acting under the U.P. Imposition of Ceiling on Land Holdings Act, 1960. Similarly here, the plea of Section 53A cannot be pressed in service against the Bank under the SARFAESI Act, provisions whereof, vide Section 35 thereof have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

T. The stand of the Bank as recorded in para 8 of the order dated 20th May, 2016 of the Presiding Officer, DRT-I, Delhi in SA.No.04/2008 preferred by the petitioner is, that original perpetual sub-lease deed, the original correspondence, the original substitution letter dated 28th November, 1988 of the DDA, the original NOC from DDA to mortgage the said property had been delivered to the Bank at the time of creation of equitable mortgage and that the house tax, water, electricity payment receipt/bills also show that Sumitra Grover was the exclusive and absolute owner of the property and the agreements to sell relied upon by the petitioner are collusive and that the Bank was never informed about the pendency of the Suit No.1805/1995. The Bank, before the DRT, also produced the no dues certificate dated 31st July, 2000 issued by the MCD in the name of Sumitra Grover with respect to the property. The Bank also stated that on the basis of the said mortgage and other securities furnished, the Bank had sanctioned credit limit of Rs.100 lakhs and enhanced the same from time to time. The order dated 20th May, 2016 also records that the petitioner had not filed any other documents before the DRT also to prove his ownership of the ground floor.

- U. As far as the contention of the petitioner, of the mortgage created by Sumitra Grover on 30th June, 2003 in favour of the Bank is bad for the reason of being in violation of the interim order in Suit No. 1805/1995, the remedy of the petitioner therefor is by taking appropriate action and not by interfering in the proceedings under the SARFAESI. As aforesaid, the right if any of the petitioner to claim specific performance is barred by time and was barred by time on 30th June, 2003 also and for such technicalities, especially when the parties are family members and appear to be colluding with each other, the just dues of the Bank cannot be defeated.
- V. The courts have to be vigilant that their process, specially of equitable nature as under Article 226 of Constitution of India, is not abused by land grabbers and evaders of public dues, as the dues of the Bank are. The Division Bench of this Court in *Vikas Singh Vs. Lieutenant Governor* (2016) 227 DLT 333, relying on *Chandra Singh Vs. State of Rajasthan* (2003) 6 SCC 545 and *Taherakhatoon Vs. Salambin Mohammad* (1999) 2 SCC 635 held that if in the totality of circumstances it is found that interference is not required in public interest or to do substantial justice, the writ court may refuse to exercise

jurisdiction. Supreme Court in *United Bank of India Vs. Satyawati Tondon* (2010) 8 SCC 110 reminded that while dealing with petitions challenging action taken for recovery of public dues, the High Court must keep in mind that legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves.

- W. As far as the contention of the counsel for the petitioner with respect to the review of the order by the Recovery Officer –I is concerned, not only does the order dated 9th March, 2017 give cogent reasons therefor but even otherwise the grievance if any with respect thereto cannot be of the petitioner inasmuch, as, the petitioner is not affected thereby.
- X. The order dated 9th March, 2017 also records that the filing of the suit aforesaid by Sumitra Grover is also suspicious inasmuch, as, Sumitra Grover vide relinquishment deed being the absolute owner of the property, there was no need for her to file a suit for partition.
- Y. As far as the reliance on para 110 to 113 on *Swaraj Kishore Arora* supra is concerned, not only did the Division Bench therein did not consider *Rambhau Namdeo Gajre* and *State of U.P. Vs. District Judge* supra but even otherwise, the writ petitioners in that case were found to have shown sufficient interest including protectable possession.

However as aforesaid, here the petitioner has not been found to have any right to the property. Moreover, the Division Bench therein relied on *Asha M. Jain Vs. Canara Bank* 94(2001) DLT 841 (DB) without noticing that the same has since been held to be not good law, in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana* (2012) 1 SCC 656 and in *DDA Vs. Gaurav Kukreja* (2015) 14 SCC 254.

6. Resultantly the petition is dismissed.
7. The petitioner is directed to forthwith deliver actual physical possession of the ground floor of the property no.E-20, Ground Floor, Anand Niketan, New Delhi, to the respondent No.1 State Bank of Indore.
8. Since notice was not issued to the respondent No.1 Bank, no costs.

RAJIV SAHAI ENDLAW, J.

VIPIN SANGHI, J.

MAY 12, 2017
‘M’.