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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 14 of 2002

Judgment reserved on 25-7-2018

Judgment delivered on 27-8-2018

Rajendra Prasad s/o Banarsi Sao Occupation Culativator Resident of village Hasuli Tahsil Ambikapur, District Sarguja (CG)

---- Appellant

Versus

1. The Registrar Co-operative Societies Madhya Pradesh Now State of Chhattisgarh, Raipur
2. The District Co-operative Land Development Bank Limited Ambikapur, District Sarguja (CG)
3. The Sales Tax Officer, District Co-opeartive Land Development Bank Limited, Ambikapur District Sarguja (CG)
4. State of Madhya Pradesh (Now Chhattisgarh) through Collector, Sarguja, Ambikapur (CG)
5. Ashwani Kumar s/o M.N. Singh Resident of Kudarpur Nagar, Ambikapur P.S. and Tahsil Ambikapur District Sarguja (CG)

---- Respondents

For Appellant	:	Shri H.B. Agrawal, Sr. Advocate with Smt.Itu Rani Mukharjee, Advocate
For Respondent 4	:	Shri Sameer Behar, Panel Lawyer
For Respondent 5	:	Shri Manoj Paranjape, Advocate
For other Respondents	:	None

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

CAV Judgment

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 20.12.2001/2.1.2002, passed by the District Judge, Sarguja at Ambikapur (CG) in Civil Suit No. 10A/1999, wherein the said Court had dismissed the suit of the appellant filed for declaring the auction void regarding land bearing Survey Nos.51/1, 254/2, 128/2, area 0.889, 0.200 and 0.450 hectares situated at village Hasuli

Tahsil/District Sarguja and for permanent injunction against the respondents for interfering in possession of the appellant regarding the said land.

2. As per the case of the appellant, he took loan from respondent No.2/Bank to the tune of Rs.12,200/- for digging a Well by mortgaging land Survey Nos.51/1 and 254/2. The balance amount of loan was Rs.9,675/- only. The appellant deposited Rs.3,700/- on various dates and thereafter, the loan of Rs.5,975/- was balance. Since, loan was below Rs.10,000/-, it was not recoverable in view of M.P. Agriculturist Debt Relief Scheme, 1990. As loan standing on 1.1.1990 was time barred, notice of Naib Tehsildar dated 30.1.1993 for recovery of Rs.39,307/- is illegal and auction of the land is also illegal. It is further case of the appellant that land was auctioned which was not mortgaged. Again, interest cannot be recovered more than principal amount as it hit by the principle of 'Dam-Dupat'.

3. Learned counsel for the appellant submits as under :

(i) The loan was granted in the year 1976 for Rs.12,200/- out of which Rs.2525/- was the grant by government and rest of the loan was time barred and not recoverable.

(ii) As Rs.3,700/- was paid against the balance loan of Rs.9,675/-, the balance loan remaining was Rs.5,975/- and notice given by the Naib Tahsildar for Rs.39,307/- dated 30.1.1993, is hit by principle of Dam-Dupat.

(iii) Loan of Rs.5,975/- being below of Rs.10,000/- stands relieved in view of Scheme of M.P. Agriculturist Debt Relief Scheme, 1990.

(iv) Rule 15 of M.P. Land Development Rule is not followed before auction and therefore, the same is void.

4. Now, the first question for consideration is whether the loan amount was Rs.39,307/-or Rs.5,975/- as alleged by the appellant.

5. Ramashray Tripathi is a witness from respondents' side, who was Branch Manager of the Bank at the time of taking loan by the appellant. As per this witness, the appellant had taken loan on 3 counts i.e. for digging well, purchasing diesel pump and again for non-completion of the well. From the statement of this witness, it is established that earlier land bearing Survey Nos.51/1 and 254/2, was mortgaged and for loan on account of non-completion of well land bearing Survey Nos.128/2, 57/3 and 57/4 was mortgaged. It is also established that the account was properly maintained and balance of Rs.39,307/- was there in the account of the appellant.

6. The interest and penal interest is incorporated in Rules and Circulars of the Bank for mortgage and when the same was followed as principle for all loan accounts, the arguments of the appellant is not sustainable that the interest cannot be taken more than the principal amount. When the rate of interest and rate of penal interest is mentioned in the mortgage deed agreed upon by both the sides, the same has to be followed as per agreement by both the sides, therefore, it cannot be held that the interest amount cannot be taken more than the principal amount. Again, from the loan account of the appellant, it is established that the appellant did not repay the loan amount as per agreed installments and that is why the loan amount is increased upto Rs.39,307/-. The arguments regarding M.P. Agriculturist Debt Relief Scheme, 1990 is not acceptable as it is admitted by the appellant that the same Scheme is only for loan upto Rs.10,000/-. In the present case, the loan amount was more than Rs.10,000/-, therefore, the appellant cannot be benefited with any such Scheme.

7. Ex. D11 is the accounts statement of the appellant and Ex. D14 is decision of Board of Directors of respondent No.2/Bank. Ex. D8, Ex.D9 and Ex.D10 are the notices served on the appellant before holding auction. Ex.D6 is receipt of notice served on the appellant to deposit the amount. Again, Ex. D7 is registered notice served on the appellant. When after receiving the notices, the appellant did not respond and due to his inaction, auction proceedings were started to recover the amount. Ex. D1 is the order sheet of auction proceedings. Ex.D2 is proclamation of beating of drums/munadi certificate. Ex.D3 is the certificate of proclamation by village Kotwar. Exs. D8, D9 and D10 are the notices served on the appellant before holding auction. Exs. D15, D16 and D20 is auction notice. Ex. D22 is the notice served on the appellant before conducting auction. All these documents goes to show that the appellant had neither deposited the loan amount even after notice nor taken any action for extending time to deposit the loan amount. It is clear from the conduct of the appellant that he was not willing to repay the loan amount and that is why the auction was conducted and the land was auctioned in favour of the highest bidder. Even after auction, one month notice was given to the appellant that if he will deposit the loan amount, the auction will be cancelled. But, the appellant did not bother and did not deposit the amount due. Before auction, notice Ex.D63 was also served on the appellant for depositing the amount and for availing benefit of any Scheme, but the same was not responded by the appellant that is why the auction was confirmed and sale certificate was issued in favour of the bonafide purchaser. No rule of Land Development is flouted with.

8. The appellant neither disputed the documents filed and exhibited by the Bank and has not denied service of notices, therefore, balance loan was Rs.39,307/- and for that auction of the land is held and even after auction, the loan amount was not deposited. The trial Court is right in concluding that the auction cannot be declared void as the same is done after providing opportunity of hearing to the appellant and there is no legal flaw in auctioning the land. The finding of the trial Court is based on proper evaluation of oral and documentary evidence and the arguments advanced on behalf of the appellant is not sustainable. As the judgment/decree is not liable to be reversed, the same is affirmed.

9. Accordingly, the decree is passed against the appellant and in favour of the respondents as under :

(1) The appeal is dismissed with cost.

(2) The appellant to bear cost of the respondents throughout.

(3) Pleaders' fee, if certified be calculated as per certificate or as per Schedule whichever is less.

(4) A decree be drawn up accordingly.

Sd/

(Ram Prasanna Sharma)
JUDGE

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