NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 241 of 2005

- Santosh Pujari, S/o late Shri Bulaki Lal Pujari, Pujari Niwas, MG Road, Raipur, Tahsil & District Raipur (CG)

---- Appellant

Versus

- Life Insurance Corporation Of India, Divisional Office "Jeevan Prakash", Jeevan Beema Marg, Raipur Avam Sahela Karyalaya, Raipur, Tahsil & District Raipur (CG)

---- Respondent

For Appellant : Shri Ashish Shrivastava with Shri Anurag Verma, Adv.
For Respondent : Shri Mukesh Sharma, Advocate.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ

Judgment On Board By Prashant Kumar Mishra, J

14/09/2018 :

1. The appellant/defendant has suffered decree for payment of Rs.5,21,237/- with interest @ 9% per annum *pendente lite* as also till payment.

2. The trial Court has also passed decree entitling the plaintiff to recover decretal amount by sale of the mortgaged property bearing House No.332, situated at Sadar Bazar, Ward No.32, Raipur.

3. Learned counsel for the appellant would argue that issue No.2 concerning mortgage, issue No.5 concerning maintainability of the suit

for want of money lender's licence, issue No.7 regarding limitation and issue No.9 as to the effect of the suit property having been mortgaged for 2 different loan accounts, having not been decided properly, judgment and decree deserves to be set aside.

4. The appellant applied for grant of loan of Rs.2,50,000/- in August, 1987, however, loan amount of Rs.1,86,000/- was sanctioned and disbursed on 9.12.1987. The loan was to be repaid in 30 half yearly installments of Rs.13,485/-, each along with interest @ 15% payable at half yearly rest. The defendant repaid only Rs.50,000/-, in addition to the first installment of Rs.13,485/- and as on date of filing of the suit accumulated amount including interest was Rs.5,21,237/-. It was also stated that the defendant created mortgage of his property as mentioned in Schedule A with the plaint, bearing House No.332, situated at Sadar Bazar, Ward No.32, Raipur, 50% of which was owned by the appellant and the remaining 50% was owned by his real brother Rajesh Pujari, who has filed another Appeal challenging similar decree in First Appeal No.60/2003.

5. The appellant/defendant denied existence of any loan transaction. According to him, officers of the Life Insurance Corporation (for short 'the Corporation') prevailed upon him to purchase an insurance policy, assuring that the amount due in the said policy shall be adjusted towards payment of installments of the loan amount. It was also pleaded that the appellant has not deposited any title deed of the property mentioned in Schedule A, therefore, there is no valid mortgage in favour of the Corporation.

6. The trial Court has found that the appellant has created mortgage of the plaint scheduled property and has obtained loan of Rs.1,86,000/- and the suit is not barred by limitation, therefore, the plaintiff is entitled for decree.

7. In support of submission that the suit does not fall under Article 62 of the Limitation Act, it is argued that in the absence of any mortgage by deposit of title deed having been created by the appellant in favour of the respondent/Corporation, the suit should have been preferred within 3 years from the date of accrual of cause of action and the same having not been done, the suit was apparently barred by limitation.

8. Ex.-P/1 is an application for loan carrying out description of property mortgaged by the appellant. Ex.-P/3 is receipt of the loan amount whereas Ex.-P/5 is the deed of partition by which the appellant has received the subject property as his share in a family partition. Ex.-P/7 is memorandum of mortgage whereas Ex.-P/8 is the legal notice.

9. Although Ex.-P/7 was referred to be a document creating mortgage by deposit of title deed but there is no such mention about the nature of the mortgage in Ex.-P/1 which only mentions about particulars of the property or property offered as mortgage security. It is not mentioned therein that mortgage is created by deposit of title deed. The appellant has also executed promissory note vide Ex.-P/2 whereas Ex.-P/4 is the deed by which the appellant has accepted the receipt of loan amount.

10. By virtue of the documents and the nature of recital in the agreement as well as application for mortgage, there exists relationship of mortgagor and mortgagee between the parties in relation to plaint scheduled property. Therefore, the suit could have been preferred within 12 years from the date of accrual of cause of action as provided under Article 62 of the Limitation Act. Much emphasis has been laid on the document Ex.-P/7 where the mortgage is said to be created by deposit of title deed, with further submission that the deed of partition is not deed of title. However, even if there was no separate title deed, the plaintiff having created a mortgage by deposit of partition deed evidencing his tittle to the property a valid mortgage was created as security for repayment of loan and the suit would be covered under Article 62 of the Limitation Act.

11. The objection that same property having been mortgaged under two different loan accounts, one belonging to the appellant and the other belonging to loan transaction of his brother Rajesh Pujari, therefore, mortgage is not validly created in either of the loan account is mentioned only to be rejected for the simple reason that in both the loan papers, it is clearly mentioned that 50% of the property is mortgaged in one transaction and the remaining 50% in another transaction. Even if the same may create problem for the respondent-Corporation in execution of the decree, the mortgage itself would not become invalid. It was at the discretion of the Corporation to have accepted the same property in mortgage in two different loan account. Creation of mortgage of one property in multiple loan transactions depends upon potency and solvency of the property and not the unit.

A valuable property having market value of Rs.1 crore may be used for creation of mortgage in more than one transactions, at the discretion of the Corporation. In any case, there is no bar under any provision of law that one property cannot be used for mortgage in two different loan transactions.

12. The next argument is in relation to the plaintiff having not obtained money lender's licence for doing business of advancement of loan. However, Section 6 of the Life Insurance Corporation Act, 1956 (for short 'the Act') clearly empowers the Corporation to enter into business of advancement or lending of money upon security of movable or immovable property or otherwise. The provisions contained in Section 14 of the Moneylenders Act, 1934 also provides that provisions of the said Act shall not apply to the Life Insurance Corporation of India constituted under the Act. The argument is thus unsustainable in view of the express provision of law.

13. The plaintiff has duly proved the loan transaction by producing papers as well as ledger and books of account. Therefore, the plaintiff has proved its case for repayment of loan and to recover the same by sale of mortgaged property in the event the defendant fails to repay the loan.

14. For the foregoing, the Appeal has no substance, the same deserves to be and is hereby dismissed.

Sd/-	Sd/-
Judge	**Judge**
(Prashant Kumar Mishra)	(Vimla Singh Kapoor)

Barve