HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.21298 of 2017

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioners, being husband and wife, claim title to the property in question on the strength of their purchase thereof from the fourth respondent herein. On the other hand, the Indian Overseas Bank, the first respondent herein, claims that the said property was mortgaged to it by way of an equitable mortgage by deposit of title deeds by the fourth respondent in relation to the loan facilities availed by him. The bank further claims that it instituted O.A.No.216 of 2015 on the file of the Debts Recovery Tribunal, Hyderabad, for recovery of its loan dues, apart from initiating proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It appears that these proceedings culminated in the order dated 18.01.2017 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in Crl.M.P.No.63 of 2017 in exercise of power under Section 14 of the SARFAESI Act. At this stage, the petitioners approached this Court by way of the present writ petition assailing the said order claiming independent title to the property over which the Indian Overseas Bank claims security interest.

As Sri D.V.Ramana Sarma, learned counsel for the petitioners, claimed that his clients purchased the subject property under registered sale deed dated 18.09.2012 from the fourth respondent and were also furnished the link document of their vendor, he was asked to produce the original thereof. However, despite taking many adjournments for this purpose, the original document was not produced.

Today, the learned counsel would inform this Court that the petitioners mortgaged the subject property with the HDFC Limited and that they have now applied for the original documents. The letter dated 16.07.2018 addressed by the petitioners to the Manager, HDFC Limited, Kothapet, Hyderabad, is produced and perusal thereof reflects that the petitioners are not even aware as to what were the documents that were furnished by them to the HDFC Limited at the time of creating mortgage.

On the other hand, Sri M.V.K.Viswanadham, learned counsel for the Indian Overseas bank, would produce before this Court the evidence affidavit of the Chief Manager of the Indian Overseas Bank at its Dilsukhnagar Branch, who was examined as a witness in O.A.No.216 of 2015 on the file of the Debts Recovery Tribunal, Hyderabad, and point out that Ex.A18, which was marked through him, is the original sale deed bearing document No.40 of 1979 dated 03.01.1979 under which the fourth respondent claims ownership. Significantly, this very document finds mention in the sale deed dated 18.09.2012 under which the petitioners claim title. Sri M.V.K.Viswanadham, learned counsel, would further state that the mortgage in relation to the subject property was created by the fourth respondent as long back as on 11.10.2011.

In the light of the aforestated facts, it is clear that even if the petitioners seek to claim title under the registered sale deed dated 18.09.2012, it is subsequent to the date of creation of the mortgage by the fourth respondent and would be subject thereto. As matters stand, any number of disputed questions of fact would arise in the context of the petitioners' grievance and they cannot be decided by this Court in exercise of writ jurisdiction.

The writ petition is accordingly dismissed on this short ground leaving it open to the petitioners to avail appropriate remedies before the proper forum in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Dt: 17.07.2018.
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