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

WRIT PETITION No.17 OF 2016

O R D E R
(*per* Hon'ble Sri Justice Sanjay Kumar)

Residential Plot No.6 (Eastern and Western portions) in the layout made in Sy.No.56/2C3 admeasuring 122.22 square yards situated at Mamidalapadu Village, Kurnool District, was brought to sale on 11.09.2014 by the Karnataka Bank (*hereinafter*, 'the bank') under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'). The writ petitioner emerged the highest bidder for the said plot at Rs.11,18,000/-. He paid Rs.2,79,500/- on the said date towards 25% of the sale consideration and the balance sale consideration of Rs.8,35,500/- was paid by him on 25.09.2014. It is the petitioner's claim that he thereafter came to know that the borrowers from the bank who had created a security interest in the subject plot did not possess lawful and valid title thereto and that Respondent 11 herein was the true owner of the subject plot. He approached the bank and requested it to refund the sale consideration paid by him with interest. The bank however refused to accede to his request and addressed letter dated 25.11.2014 calling upon him to furnish a date for issuance of the sale certificate and for registration of the same. Thereupon, the petitioner got issued legal notice dated 27.12.2014 to the bank stating that he was no longer interested in proceeding with the sale transaction and requesting refund of the sale consideration paid by him with interest. The bank got issued reply notice dated 04.01.2015 stating that as the petitioner, along with other bidders, had inspected the title deeds and other records before participating in the auction, he was estopped from backing out of the transaction. The bank claimed that as the plot in question was sold on 'as is where is condition', the petitioner was not entitled to a refund owing to alleged defects in the property sold. It is in these circumstances that the petitioner filed this writ petition seeking a declaration that the action of the bank in selling the subject plot for realization of its dues from the borrowers, respondents 3 to 10 herein, was illegal and void; to set aside the sale proceedings held pursuant to the sale notice dated 04.08.2014; and to direct the bank to refund the sale consideration of Rs.11,18,000/- with interest @ 24% p.a.

The bank stated as follows in its counter: M/s.S.K.Agencies, the third respondent, initially availed a loan from the Union Bank of India and the Karnataka Bank took over the existing loan facility of the third respondent from the Union Bank of India, Kurnool, in the year 2010. As the said loan account was classified as a non-performing asset, the bank initiated proceedings under the SARFAESI Act and brought the secured assets mortgaged by the third respondent to sale. The subject plot was one such secured asset and it was sold to the petitioner. The sale publication notice issued by the bank categorically mentioned that the properties thereunder were brought to sale on 'as is where as condition'. The petitioner inspected the relevant records and the connected title deeds and being fully satisfied with the property credentials, he participated in the auction. The petitioner was therefore estopped from resiling and withdrawing from the transaction. Further, as complicated questions of fact regarding title to the property were sought to be raised, this Court was not the proper forum for seeking redressal.

Notices sent by the Registry to Respondents 3 to 6 and 8 to 10 were returned unserved with the endorsement that no such addressee was available in that house number. Respondent 7 refused to receive the notice sent by the Registry and is therefore deemed to have been served. W.P.M.P.No.27204 of 2016 was filed by the petitioner seeking leave to effect substituted service of notice on respondents 3 to 10 by way of publication of such notice in local newspapers and the said petition was ordered on 05.06.2017 permitting substituted service of notice upon respondents 3 to 10 by way of publication of the notice in Indian Express English Daily Newspaper and Andhra Jyothi Telugu Daily Newspaper, Kurnool District Editions. Proof of publication having been filed, substituted service of notice upon these respondents was completed. They, however, did not choose to put in their appearance.

Respondent 11 filed a counter affidavit stating that she was the owner of Plot No.6 by virtue of the registered settlement/gift deed dated 01.06.2010 executed in her favour by her mother, Byreddy Susheelamma. She however admitted that there was a mistake in the survey number in her documents and that the correct survey number was Sy.No.56/2C3. Rectification of the survey number was effected under Document Nos.9202 of 2015 dated 04.10.2015 and 9174 of 2015 dated 02.12.2015. She referred to the transactions between Karanam Veeranna & four others and Pushpavalli Thayaramma and the sales effected thereafter by her. She asserted that purchase of the subject plot by S.Abdul Rehman was fabricated and pointed out that though the land in question was situated within the jurisdiction of the Kurnool Sub-Registrar, the Document bearing No.4632 of 2009, whereunder S.Abdul Rehman claimed title, was registered before the Sub-Registrar, Guntur. She asserted that the loan transaction forming the basis for the auction was a scam and that the bank had no right to bring her property to sale.

The land in Sy.No.56/C1 originally belonged to Karanam Veeranna and four others. Under registered sale deed bearing Document No.2111 of 1973 dated 20.07.1973, an extent of Ac.5.00 cents in Sy.No.56/C1 of Mamidalapadu Village, Kurnool District, was sold by Karanam Veeranna and the four others to Pushpavalli Thayaramma. Pushpavalli Thayaramma laid out plots in the land, which was then demarcated as Sy.No.56/2C3. Pushpavalli Thayaramma executed a registered GPA bearing Document No.139 of 1981 dated 21.11.1981 in favour of her husband, N.Subba Rao, and pursuant thereto, he sold Plot Nos.18, 22 and 31 to third parties. Subsequently, Pushpavalli Thayaramma herself sold Plot Nos.2, 3, 6, 7 and 10 to Byreddy Susheelamma under sale deed bearing Document No.1001 of 1994 dated 16.02.1994. Byreddy Susheelamma, in turn, gifted the vacant plots bearing Nos.2, 3, 6 and 7 in Sy.No.56/C1 of Mamidalapadu Village, Kurnool District, to her daughter, K.Jayanthamma, Respondent 11 herein, under registered gift deed bearing Document No.7642 of 2010 dated 01.06.2010.

On the other hand, respondents 5 to 7, who mortgaged the subject plot in relation to the loan availed by the third respondent, claimed title over it through one S.Abdul Rehman. Significantly, S.Abdul Rehman claimed ownership over the subject plot through N.Rama Mohana Rao, who is none other than the son of Pushpavalli Thayaramma. N.Rama Mohana Rao not only executed a sale deed in favour of S.Abdul Rehman in respect of Plot No.6, but also Plot Nos.18, 22 and 31 which were already sold away by Pushpavalli Thayaramma through her General Power of Attorney holder, N.Subba Rao.

Significantly, rectification deed dated 16.09.2009 executed by Pushpavalli Thayaramma demonstrates that she was very much alive as on the date of execution of the sale deed by N.Rama Mohana Rao in favour of S.Abdul Rehman on 11.05.2009. This Document, bearing No.4632 of 2009 dated 11.05.2009, reflects that N.Rama Mohana Rao sold Plot Nos.6 and 18 in Sy.No.56/2C3 of Mamidalapadu Village to S.Abdul Rehman. Significantly, this document did not even contain a recital as to how N. Rama Mohana Rao claimed interest in the plots sold thereunder. The Special Power of Attorney dated 26.05.2009 executed by N.Rama Mohana Rao in favour of S.M.Jilani Basha authorized him to get the sale deed executed by him in favour of S.Abdul Rehman registered with the Sub-Registrar, Kurnool, and the same also did not indicate as to how N.Rama Mohana Rao claimed right and title over the plots in Sy.No.56/2C3 of Mamidalapadu Village. The sale deed was registered on 14.07.2009 at Kurnool and was the basis for the registration of the title deed executed by S.Abdul Rehman in favour of respondents 5 to 7. Under registered Document bearing No.5048 of 2009 dated 28.07.2009, S.Abdul Rehman sold the subject plot (Eastern portion) to S.K.Shanaz Begum and S.K.Najiya Begum, respondents 5 and 6 herein. Under registered Document bearing No.5047 of 2009 dated 28.07.2009, S.Abdul Rehman sold the Western portion of the subject plot to G.M.Subhan Vali, the 7th respondent herein.

It is also brought on record that by virtue of the sale deed bearing No.4634 of 2009 executed by N.Rama Mohana Rao in his favour, S.Abdul Rehman executed sale deed bearing No. 5655 of 2009 in favour of one Illuri Vijaya Kumar Reddy in relation to Plot 31 which had already been sold by Pushpavalli Thayaramma through her General Power of Attorney. These subsequent sales were challenged by her vendee, Batchu Sasikala Devi, in O.S.No.309 of 2011 on the file of the learned Principal Senior Civil

Judge, Kurnool. By judgment dated 15.02.2016, the said suit was decreed declaring that the sale deeds bearing Nos.4634 of 2009 and 5655 of 2009 dated 11.05.2009 and 24.08.2009 respectively were null and void and restraining the defendants in the suit, N.Rama Mohana Rao, S.Abdul Rehman and Illuri Vijaya Kumar Reddy, from interfering with her possession and enjoyment over the plot.

It appears that the Union Bank of India called for a title report from its Advocates in relation to the properties offered as security interest by the third respondent-borrower and its guarantors. The Title Report dated 13.08.2009 furnished by the said Advocates is placed on record. Therein, the Advocates noted that the Eastern portion of the subject plot was purchased by S.K.Shahnaz Begum and S.K.Nazia Begum, respondents 5 and 6 herein, on 28.07.2009 from S.Abdul Rehman who traced his title through the registered sale deed bearing Document No.4632 of 2009 dated 14.07.2009. As regards the title of N.Rama Mohana Rao, the vendor of S.Abdul Rehman, the Advocates did not even choose to mention his name but stated that he traced his title through his ancestors and that the recitals as to the origin were believable. As regards the Western portion of the subject plot, the Advocates noted that the same was sold to G.M.Subhan Vali, the seventh respondent herein. Thereafter, the Advocates baldly summed up that all the title deeds manifestly made it clear that the conveyances were supported by consideration and physical delivery of possession was effected and that title was thus traced and established, possession and ownership of each of the items proved to be that of the respective proposed mortgagers and it could be concluded that they were the legal owners and persons having absolute, clear, valid and saleable title to the respective properties. Significantly, the list of documents perused by the Advocates, appended to this title report, does not indicate that any approved layout was placed before them in evidence of N.Rama Mohana Rao, the vendor of S.Abdul Rehman, having secured the same. Though encumbrance certificates were mentioned, no revenue records were examined by the Advocates in proof of the ancestors of N.Rama Mohana Rao, the vendor of S.Abdul Rehman, being recognized as the pattadars and possessors of the subject land.

Source for the controversy probably stems from the fact that the land was originally shown as being in Sy.No.56/C1. The said survey number seems to have been revised as Sy.No.56/2C3 thereafter. The statement of encumbrance of property dated 27.11.2017, in relation to the land in Sy.No.56/2C3, was produced by the bank itself and surprisingly, it mentions not only the transactions of S.Abdul Rehman but also those of Byreddy Susheelamma. This is sufficient to indicate that the earlier Sy.No.56/C1 was thereafter revised as Sy.No.56/2C3.

There is no evidence of any ancestral land being available in Sy.No.56/C1 or Sy.No.56/2C3 which could have been sold by N.Rama Mohana Rao, the son of Pushpavalli Thayaramma. In any event, he could not have sold the self-acquired land of Pushpavalli Thayaramma, purchased by her from Karanam Veeranna and four others, during her life time without having title to the same. The material placed on record clearly brings out the fact that Pushpavalli Thayaramma was very much alive at the point of time N.Rama Mohana Rao executed the sale deed dated 11.05.2009 in favour of S.Abdul Rehman, which was thereafter registered on 14.07.2009. The creation of these sale deeds in May/July, 2009, just before the third respondent availed a loan from the Union Bank of India, indicates the highly suspect nature of these transactions.

Significantly, the Karnataka Bank did not undertake fresh title verification in relation to the security interest when it took over the loan of the third respondent from the Union Bank of India in the year 2010.

During the course of the hearing, as Sri Kartik Pavan Kumar, learned counsel representing Sri S.Vivek Chandra Sekhar, learned counsel for the bank, insisted that the plot claimed by Respondent 11 was altogether different from the plot sold by the bank, being in different sub-divisions of Sy.No.56, by order dated 07.02.2018, this Court directed the petitioner to approach the bank which was asked to indicate the location of the plot sold to him in the presence of the petitioner and Respondent 11. Having undertaken this exercise, it is now fairly conceded that what was sold by the bank is the plot presently in possession of Respondent 11. Sri Kartik Pavan Kumar, learned counsel, would however contend that as the bank sold the subject plot on an 'as is where is condition', it is not open to the petitioner to now back out of the transaction, having failed to detect these irregularities prior to his participation in the auction sale.

Sri Virupaksha Dattatreya Gouda, learned counsel for the petitioner, would however point out that this Court had occasion to consider this very issue recently in MANDAVA KRISHNA CHAITANYA V/s. UCO BANK[1]. This decision was rendered by a Bench comprising one of us, SK,J. Dealing with a like argument to the effect that when a bank sells a secured asset on an 'as is where is' and 'as is what is' basis, it is for the intending purchaser to make enquiries to satisfy himself about the title before submitting his bid, this Court observed that the statutory scheme of the SARFAESI Act and the Rules framed thereunder made it clear that though a secured creditor may sell a secured asset which is not free from

---

[1] 2018 (3) ALD 266 (DB)

encumbrances, such secured creditor could not blindly accept any property as a security and go on to sell the same without even enquiring as to what encumbrances attached to it. It was held that it was not open to a bank to baldly state that it obtained a property as security for a loan sanctioned by it to a borrower and that once it is proposed to sell it on an 'as is where is' and 'as is what is' basis, it is freed from all responsibility. Finally, it was concluded that a secured creditor owes a duty to the auction purchaser to verify the encumbrances that attached to the mortgaged property proposed to be sold so as to inform the intending bidders of the same. In these circumstances, this Court directed refund of the sale consideration paid by the auction purchaser in that case with interest thereon at 18% per annum. Special Leave Petition (Civil) No.8022 of 2018 filed by the bank involved therein against this judgment was dismissed by the Supreme Court on 09.04.2018.

In the case on hand also, though a title search seems to have been initiated by the Union Bank of India through its Advocates, the same was blatantly defective as no endeavour was made to properly trace the title or even verify the claims put forth by the mortgagors/guarantors. No steps were taken to examine the claim of N.Rama Mohana Rao, the vendor of S.Abdul Rehman, that the subject property was an ancestral property which he could sell. Further, no enquiry was made as to how the subject land was plotted, as no approved layout was even produced. No revenue records were verified by the Advocates in relation to the subject land. More significantly, when the bank took over the loan from the Union Bank of India in the year 2010, it did not even venture to verify the security interest offered for the said loan and blindly accepted the title search undertaken by the Advocates of the Union Bank of India. In consequence, what is now sought to be sold as a secured asset is not even available, as the sale transaction in so far as the subject plot is concerned seems to have been fraudulent. Further, despite the fact that the bank claims to have completed the sale transaction, it is not in a position to complete the transfer as it cannot deliver vacant possession of the plot allegedly sold by it, as the plot sold is none other than the plot lawfully claimed by Respondent 11. In that view of the matter, the bank cannot be permitted to appropriate the sale consideration tendered by the petitioner when it is not in a position to complete the transfer under the purported sale effected by it.

The writ petition is accordingly allowed directing the bank to refund the sale consideration paid by the petitioner with interest @9% p.a. Given the fact that the defect in the title search is attributable more to the Advocates of the Union Bank of India and an honest endeavour was made by the said bank to at least verify the title in relation to the subject plot, the petitioner would be entitled to lesser interest at 9% p.a from 25.09.2014 till the date of payment. As a sale certificate has not been issued, the question of cancellation of the same does not arise.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

______________________
SANJAY KUMAR,J

______________________
T.AMARNATH GOUD,J

19th JUNE, 2018
PGS