

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.8242 of 2014
Date of Decision: 15.01.2018

Kulwant Kaur Padda

...Petitioner

VS.

Punjab & Sind Bank & Ors.

... Respondents

Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Shekher Dhawan

Present: Mr. Ranjit Saini, Advocate for the petitioner

Mr. BPS Dhaliwal, Advocate for respondent No.1

Mr. Ghulam Nabi Malik, Advocate for respondent No.5

SURYA KANT J. (Oral)

(1) The question which falls for consideration in this case is whether the property mortgaged with respondent No.1-Bank on behalf of the borrower - M/s Oriental Automobiles Pvt.Ltd. is part of Khewat No.1, Khatauni No.61, Khasra No.13/9/1 min and 12/1min bearing Municipal No.HR-98 and 98-A measuring 1 bigha situated at Guru Kashi, Bathinda-Mansa Road, Bathinda or such mortgaged property is one measuring 835 sq.yards bearing MC No.HR-98 situated within Bathinda revenue estate, Bahdud Arba Zail (R1) which was sold by Dilbhajan Singh s/o Arjan Singh to Smt. Pushpinder Kaur d/o Captain Ranbir Singh vide registered sale deed dated 30.09.1980 (R1)?

(2) The property comprises in Khewat No.1, Khatauni No.61, Khasra No.13/9/1 min and 12/1min bearing Municipal No.HR-98 and 98-A is situated at Bathinda-Mansa road at Bathinda. This property is stated to be a part of Wakf property and was on perpetual lease with one Gurtej Kaur. Gurtej Kaur transferred those rights to Dilbhajan Singh – her son-in-law who

then further transferred such rights to M/s Oriental Automobiles Pvt. Ltd. There is another sale deed dated 30.09.1980 relied upon by the Bank which is executed by Dilbhajan Singh in favour of his wife Smt. Pushpinder Kaur. The question which eventually arises for consideration is whether the property purchased by the petitioner by way of registered sale deed dated 14.10.2002 (P16) is the same property which Dilbhajan Singh had sold to his wife Pushpinder Kaur or it is a different property?

(3) Needless to say that what has been eventually mortgaged in favour of the respondent-Bank is the property which Dilbhajan Singh sold to his wife Smt. Pushpinder Kaur vide registered sale deed dated 30.09.1980. Unfortunately, the question regarding identity of the mortgaged property and the one purchased by the petitioner being one and the same thing or that these are two separate properties, has not been expressly and conclusively determined by DRT or DRAT vide the impugned orders.

(4) The Wakf Board also appears to be the interested party who was not heard by both the Tribunals, referred to above, though has been impleaded as party respondent in these proceedings.

(5) In these circumstances, we deem it appropriate to dispose of this writ petition with a direction to the Recovery Officer of DRT-I to hear all the parties interested; call for the relevant revenue or Municipal records in possession of the parties or otherwise and determine the identity of the property in accordance with Rule 11 of Appendix B of the Second Schedule to the Income Tax Act, as to which property has been specifically mortgaged with the respondents.

(6) The Wakf Board will also be heard and permitted to produce the records for the identity of its properties. The Recovery Officer shall

determine the controversy within a period of three months from the date of receipt of certified copy of this order. The Bank shall thereafter be at liberty to proceed against the property which is found to have been mortgaged. Till such time, *status quo re*: possession or sale of the properties in question shall be maintained.

(7) The writ petition stands disposed of in above terms.

(Surya Kant)
Judge

15.01.2018
vishal shonkar

(Shekher Dhawan)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No