

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.17880 of 2017

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Challenging a judgment of the Debts Recovery Tribunal dismissing the recovery appeal arising out of a claim petition by a third party, the present writ petition has been filed by that third party.

2. Heard Mr. S. Sridhar, learned counsel for the petitioner, Mr. Ambadipudi Satyanarayana, learned counsel for the bank and Mr. Hari Hara Kumar learned counsel for the fifth respondent.

3. The third respondent herein filed OA.No.740 of 2001 on the file of the DRT, against respondents 4 and 5 herein and obtained a certificate of recovery on 11.03.2004. Claiming that after the issue of certificate of recovery, they also got the house property of the fifth respondent attached by an order dated 24.05.2005, the bank brought the property to sale through the Recovery Officer. The sale was successful and a sale certificate was issued on 29.05.2017.

4. Challenging the attempted sale of the property, the petitioner herein, who is a third party to the proceedings, filed a claim petition in CP.No.28 of 2015 contending that they have purchased the property in question under a registered agreement of sale cum GPA with possession on 31.01.2007. The claim petition was dismissed by the Recovery Officer. The petitioner then filed a recovery appeal in RA.No.1 of 2107. The same was dismissed by the Tribunal, by order

dated 17.05.2017. It is against the said order that the present writ petition is filed.

5. The main ground on which the petitioner opposed the sale of the property through the Recovery Officer was that the property in question was not mortgaged to the third respondent bank and that to his knowledge and to the knowledge of the fifth respondent there was no order of attachment. The petitioner claimed that the alleged order of attachment dated 24.05.2005 was never served either on the petitioner or on the fifth respondent. According to the petitioner, the fifth respondent mortgaged the property to the Bank of India. The fifth respondent negotiated for a One Time Settlement with the bank pursuant to which the fifth respondent claims to have entered into a registered agreement of sale cum GPA with possession with the petitioner. It is claimed further by the petitioner that the sale proceeds under the agreement of sale were directly paid to the Bank of India and the loans of the fifth respondent and his company were discharged.

6. Thus, in effect, the contentions of the petitioner and his vendor, the fifth respondent, are two fold viz. (1) that the property was sold to the petitioner for discharging the loan secured by the very same asset with the Bank of India and (2) that the order of attachment claimed to have been passed in favour of the third respondent bank never saw the light of the day and was never served.

7. But, unfortunately for the petitioner, the alleged discharge of the loan to the Bank of India and the release of the said property from

being a secured asset, did not happen through a tripartite agreement between the petitioner, fifth respondent and Bank of India. If it had happened so, the petitioner could have at least stepped into the shoes of the mortgagee viz. Bank of India.

8. The transaction of the alleged sale (through a registered agreement cum GPA with possession), was not made with the Bank of India (mortgagee) being a party. Therefore, all that could be inferred from this transaction is that the mortgage-debt to the Bank of India was cleared, without the Bank of India being a party to the transaction between the petitioner and the fifth respondent. Once this is clear, it follows as a corollary that the property was available for attachment to any other bank including the third respondent bank. If the mortgage had continued, the third respondent bank could have secured an attachment only subject to the mortgage. By the transaction between the petitioner and the fifth respondent, they paved way for the third respondent bank to have an attachment, without the same being subject to any mortgage.

9. On the question as to whether the order of attachment was served or not, two events have actually overtaken the contentions of the petitioner and the fifth respondent. Pursuant to the order of attachment said to have been passed by the Recovery Officer, the sale is already effected and sale certificate issued. Raising the very same point as has been raised by the petitioner herein, in these proceedings, the fifth respondent also filed a claim petition in CP.No.55 of 2009. The claim petition was dismissed and the fifth respondent did not pursue the matter by way of an appeal to the DRT. Therefore,

a person, claiming under the fifth respondent, is also bound by the order passed on the claim petition filed by the fifth respondent. The law on this aspect is very clear, as the case is one of 'cause of action estoppel' as held by the Supreme Court in *ISHWAR DUTT v. LAND ACQUISITION COLLECTOR*¹.

10. As a matter of fact, the fifth respondent continued to be the lawful owner of the property in question both on the date of the order of attachment passed in favour of the third respondent and on the date of the sale by the Recovery Officer. What the writ petitioner holds is only a registered agreement of sale cum GPA with possession under which the petitioner is said to have paid the entire sale consideration to the fifth respondent and the fifth respondent is said to have delivered the actual physical possession of the property to the petitioner. In other words, 99.9% of all that is required to be done in a sale transaction, has already been done. But under the Transfer of Property Act, 1882 what remains to be done is the conveyance, which is yet to take place. Therefore, in law, the fifth respondent continued to be the owner of the property and the order that he has suffered at the hands of the Recovery Officer will also bind a person claiming under him.

11. We do not think that any citation is required to say that a person holding an agreement of sale with possession will not become the lawful owner of the property unless a deed of conveyance is executed and registered. The mere entitlement of a person to the benefits of Section 53-A of the Transfer of Property Act, 1882 and the

¹ (2005) 7 SCC 190

mere fact that the petitioner will surely be entitled to a decree of specific performance will not make him lawful owner as on date. Therefore, the Tribunal is right in rejecting the recovery appeal and we find no justification to interfere with the same.

Hence, the writ petition is dismissed. Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 25, 2019
DSK

