IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD

Coram :

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Mr. Justice P. KESHAVA RAO

Writ Petition No.15559 of 2018

Delivered on: 23-04-2019

Between:

1. Satish Tiwari S/o Ranglal Tiwari,
   aged about 48 years, Occ: Business,

2. Santosh Tiwari S/o Ranglal Tiwari,
   aged about 46 years, Occ: Business,

   Both R/o H.No.2-1-302/4, Plot No.65 Part &
   66 Part, Sy.Nos.23 & 24, Mamatha Nagar,
   Nagole village, Uppal Revenue Mandal,
   L.B. Nagar, Ranga Reddy District. .. Petitioners

Vs.

The Authorized Officer, SBI, Stressed Assets
Recovery Branch, Opp.Board of Intermediate
Education, II Floor, Lata Complex, Nampally, Hyd. .. Respondent

For Petitioners : Mr. R. Sushanth Reddy
for Mr. B. Vijaysen Reddy

For Respondent : Mr. M. Srikanth Reddy

Gist :

Head Note :

Cases Referred :

1) (2012) 1 SCC 656

C/15

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.15559 OF 2018

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

Challenging an order of the Debts Recovery Appellate Tribunal (DRAT) confirming the order of dismissal of an appeal filed by them under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), the petitioners, who claim to have independent right, title and interest to the property in question, have come up with the above writ petition.

2. Heard Mr. R. Sushanth Reddy, learned counsel for the petitioners and Mr. M. Srikanth Reddy, learned counsel for the Bank.

3. The brief facts out of which the above writ petition arises are as follows:

i) One Rabindranath Pattnaik obtained a Housing Loan from the Shamsheergunj Branch of the State Bank of India, on 11.01.2017, for the purchase of a house constructed on Plot Nos. 65 and 66 Part, admeasuring 130 square yards in Survey Nos.23 and 24, Mamatha Nagar, Block I, Nagole Village, Uppal Mandal, Ranga Reddy District;

ii) The housing loan sanctioned was Rs.20.00 lakhs;

iii) The borrower purchased the plot with the housing loan sanctioned by the bank, under a sale deed, dated 12.01.2007, from one Meda

Mahender, who had purchased the same under a sale deed, dated 29.11.2016 from his Vendor Mrs. Asifa Akbar Ali and Mohd. Akbar Ali;

iv) After purchasing the plot with the loan sanctioned by the bank, the borrower Rabindranath Pattnaik created an equitable mortgage by deposit of title deeds in favour of the bank on 20.02.2017. The documents deposited by the borrower were the sale deed dated 29.11.2016 by which his vendor purchased the property and the sale deed dated 12.01.2007 by which he himself purchased the property;

v) The borrower failed to repay the loan, forcing the bank to initiate proceedings under SARFAESI Act;

vi) A demand notice under Section 13 (2) of SARFAESI Act was issued on 31.07.2010 followed by a possession notice under Section 13 (4) of SARFAESI Act issued on 08.03.2011;

vii) An order under Section 14 was obtained on 04.06.2011;

viii) When the bank attempted to take possession through the Advocate Commissioner, the writ petitioners herein, who are third parties, filed an application under Section 17 of the SARFAESI Act in S.A. No.175 of 2011 on the file of the Debts Recovery Tribunal (DRT), Hyderabad. The said S.A. No.175 of 2011 was dismissed by the DRT by a judgment dated 19.02.2014;

ix) Challenging the order of the DRT, the petitioners filed an appeal in Appeal No.103 of 2014. But, the DRAT dismissed the appeal by a judgment dated 11.04.2018. Therefore, the petitioners have come up with the above writ petition.

4. In essence, the devolution of title in favour of the petitioners, as claimed by them, runs as follows:

i) One Mr. K. Venkatesham and others were the owners of Plot Nos.65, 66, 67 and 68, each admeasuring 220 square yards (thus totalling to 880 square yards) in Survey Nos.23 and 24 of Nagole Village;

ii) Mr. K. Venkatesham and others sold plot No.65 to one Smt. Najma Sulthana under a registered sale deed dated 16.02.1980 and she in turn sold the said plot to Mrs. Asifa Akbar Ali, under a sale deed dated 02.12.1989;

iii) Mr. K. Venkatesham and others sold Plot No.68 in favour of Mr. Ahmed Abdul Muneem Hazari under a sale deed dated 16.12.1980 and he in turn sold the said plot to Smt. Asifa Akbar Ali under a registered sale deed dated 02.12.1989;

iv) Mr. K. Venkatesham and others sold Plot Nos.66 and 67 to Mr. Ahmed Abdul Quadeer Hazari under a sale deed dated 16.12.1980 and he in turn sold them to Mr. Md. Akbar Ali, under a sale deed dated 12.10.1991;

v) Thus, Mrs. Asifa Akbar Ali became the owner of Plot Nos.65 and 68 and Mr. Md. Akbar Ali became the owner of Plot Nos.66 and 67;

vi) Under a registered Agreement of Sale - cum – GPA with possession dated 12.12.2005, all the four plots were joined together and handed over to one Mr. V. Krishna Reddy, for development;

vii) Mr. V. Krishna Reddy in turn sub-divided the plots and sold one portion of Plot Nos.65 and 66 admeasuirng 133.50 square yards to one P. Sreeharsha under a sale deed dated 03.03.2006;

viii) Mr. Sreeharsha started constructing a dwelling house and sold the semi-finished house to Rabindranath Patnaik under a registered sale deed dated 08.12.2006;

ix) Mr. Rabindranath Patnaik obtained a loan from M/s. Sundaram BNP Paribas Home Finance Limited on 28.11.2006 and created a mortgage on the said property;

x) Later Mr. Rabindranath Patnaik executed a registered Agreement of Sale - cum - GPA with possession dated 28.05.2008 in favour of Mr. Sodishetty Nageswara Rao, who in turn sold the same to one Kota Navneet Kumar under a registered sale deed dated 30.06.2008;

xi) Mr. Kota Navneet Kumar sold the property to the petitioners under a registered sale deed dated 17.03.2010, after having the mortgage redeemed by M/s. Sundaram BNP Paribas Home Finance Limited; and

xii) For purchasing the said property from Mr. Kota Navneet Kumar, the petitioners obtained a loan from State Bank of Hyderabad, Nagloe Branch. In fact, the loan payable to M/s. Sundaram BNP Paribas Home Finance Limited by Kota Navneet Kumar was discharged from out of the loan sanctioned by the State Bank of Hyderabad.

5. The devolution of title in favour of the borrower, Mr. Rabindranath Patnaik, on the basis of which, the respondent bank granted the loan runs as follows:

i) One Meda Mahendar purchased a house constructed on Plot Nos.65 and 66 admeasuring 130 square yards, from Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali under a sale deed dated 29.11.2006; and

ii) Mr. Rabindranath Patnaik purchased it from Mr. Meda Mahender under a registered sale deed dated 12.01.2007, with the housing loan sanctioned by the bank. After purchase he created a mortgage on 20.02.2007.

6. From the manner in which the petitioners and the respondent bank projected the devolution of title, it could be seen that the crucial question that arose for consideration before the DRT and DRAT was whether as on 29.11.2006, Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali had title to the property, so as to convey it to Mr. Meda Mahender, enabling him to sell it to the borrower, Mr. Rabindranath Patnaik.

7. We have straight away come to the question of the existence or otherwise of the title of Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali to the property in question as on 29.11.2006, for the simple reason that (i) the original ownership of Mr. K. Venkatesham and others to the four plots bearing Nos.65, 66, 67 and 68 is not disputed by any one; and (ii) the sale either directly or through intermediate sales by Mr. K.

Venkatesham and others, of all the four plots, eventually in favour of Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali is also not disputed.

8. Therefore, what is important to see, is as to what Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali did. They seem to have done two things; (i) to execute a registered Agreement of Sale - cum - GPA with possession dated 12.12.2005 in favour of one Mr. V. Krishna Reddy; and (ii) to create a sale deed in favour of Mr. Meda Mahender on 29.11.2006.

9. If nothing had happened between the two dates viz., (i) 12.12.2005 when Mrs. Asifa Akbar ali and Mr. Md. Akbar Ali created a registered Agreement of Sale - cum - GPA with possession in favour of Mr. V. Krishna Reddy and (ii) 29.11.2006, when Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali sold the property to Mr. Meda Mahender, then probably the case of the bank would have been strengthened. But, unfortunately for bank, Mr. V. Krishna Reddy, the holder of the registered Agreement of Sale - cum - GPA with possession sold the plots of land in favour of one Mr. P. Sreeharsha under a registered sale deed dated 03.03.2006 bearing document No.3148 of 2006. This Sreeharsha also constructed a house and agreed to sell the same to Mr. Rabindranath Patnaik (the very same borrower). This Rabindranath Patnaik obtained a loan from M/s.Sundaram BNP Paribas Home Finance Limited on 28.11.2006 and purchased the property under a sale deed dated 8-12-2006 from Sreeharsha and mortgaged the same in their favour. Thereafter, the property changed hands twice, eventually landing up with the writ petitioners herein who took a loan from State Bank of

Hyderabad and cleared the loan to M/s. Sundaram BNP Paribas Home Finance Limited.

10. Therefore, it is clear that on 29.11.2006, when Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali executed a registered sale deed in favour Mr. Meda Mahendar (the borrower's vendor), they (viz., Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali) did not have title to the property, as their power agent appointed under the document dated 12.12.2005 had sold it under a registered sale deed dated 03.03.2006 in favour of Mr. P. Sreeharsha. It is a fundamental rule of the Law relating to Transfer of Property that no-one can confer a better title than what he himself has. Therefore, Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali did not have title on 29.11.2006 to convey the property to Mr. Meda Mahender. As a consequence, Mr. Meda Mahender did not have title to convey it to Mr. Rabindranath Patnaik. Therefore, the creation of the mortgage by Mr. Rabindranath Patnaik as though he had title to the property, is not valid in the eye of law.

11. Unfortunately, both the DRT and DRAT did not even analyse the flow of title to arrive at a proper finding. Due to the fact that the very same borrower, Mr. Rabindranath Patnaik, also bought it from Mr. P. Sreeharsha, to whom the Power Agent of Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali sold another portion, both the Tribunals were misled to think that the holder of the Agreement of Sale could not have sold it.

12. Interestingly, the DRAT actually prepared a chart containing the flow of title. But, without looking into the crucial date 29.11.2006 and finding out whether the property was available on that date, the

DRAT went into the question whether the Tribunal is competent to decide the question of title. The Tribunal came to the conclusion that the Agreement of Sale - cum - GPA will not confer title.

13. But, what was omitted to be seen by the DRAT is that though the agreement of sale cannot confer title, the sale deed dated 03.03.2006 created on the basis of the Power of Attorney was actually a valid document, which created title in favour of the predecessors of the petitioners, even before 29.11.2006.

14. In fact, the learned counsel appearing on both sides relied upon the judgment of the Supreme Court in **Suraj Lamp and Industries Private Limited v. State of Haryana**[1]. But, we need not even go into the question about the manner in which an immovable property had to be conveyed. The sale deed dated 03.03.2006 executed by the holder of a registered Agreement of Sale - cum - GPA with possession, is a registered sale deed, by which the property had already been conveyed. Therefore, there was nothing available on 29.11.2006 for Mrs. Asifa Akbar Ali and Mr. Md. Akbar Ali to sell to Mr. Meda Mahender, so as to enable him to sell it to the borrower.

15. It was sought to be contended by Mr. M. Srikanth Reddy, learned counsel for the bank that disputed questions of title ought to go before the Civil Court. But, it appears that the petitioners did in fact go to the Civil Court and the Civil Court held the suit as not maintainable in view of Section 34 of the SARFAESI Act. Moreover, when the flow of title based upon registered documents is clearly established, the

---
[1]. (2012) 1 SCC 656

Tribunal had a duty to look into the same and appreciate the same in an appropriate manner. The Tribunal failed to do so and hence, the writ petition deserves to be allowed.

16. Accordingly, the Writ Petition is allowed and the impugned orders are set aside. The application filed by the petitioners before the DRT in S.A. No.175 of 2011 shall stand allowed. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 23, 2019
Mgr