THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No.2200 of 2020

ORDER: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

This writ petition is filed by the petitioner challenging the order dated 24.01.2020 passed in Crl.MP.No.3570 of 2019 in Crl.MP.No.183 of 2019 on the file of the Chief Metropolitan Magistrate, Nampally Criminal Courts, Hyderabad.

2. The subject property originally belonged to the petitioner, as he had acquired it under a registered gift deed dated 31.05.1983 executed in his name by his father. The petitioner executed a registered sale deed in favour of the respondent No.2 on 26.08.2016 conveying title of the property and also delivering possession thereof to the respondent No.2. The respondent No.2 mortgaged the property to the respondent No.1 – bank and obtained a loan from the respondent No.1 – bank.

3. Since the said loan was not paid, proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') were initiated against the respondent No.2 by respondent No.1. Initially, a notice under Section 13(2) of the SARFAESI Act was issued on 29.01.2018 demanding the respondent No.2 to pay the dues of Rs.1,46,23,880.46 ps. as on 31.07.2018. But the respondent No.2 did not pay it.

4. Thereafter, on 07.07.2018, the respondent No.1 – bank issued another notice under Section 13(4) of the SARFAESI Act indicating that

it would initiate the process to take over possession of the secured asset and sell it under the provisions of the SARFAESI Act, if the respondent No.2 did not pay the said amount and hand over the peaceful possession of the property to it.

5. The respondent No.1 - bank then filed Crl.MP.No.183 of 2019 before the Chief Metropolitan Magistrate, City Criminal Courts, Nampally, stating that it is entitled to take over physical possession of the property from the respondent No.2. The said application was filed on 29.10.2019. It also impleaded two guarantors for the loan, which was taken by the respondent No.2 from the respondent No.1.

6. The petitioner herein filed Crl.MP.No.3570 of 2019 objecting to the said application and requested the said Court to reject Crl.MP.No.183 of 2019.

7. Petitioner contended in the Court below that he is the absolute owner of the property; that he approached the respondent No.2 for arranging Rs.80,00,000/- as hand loan because of financial and business necessities; that respondent No.2 promised to lend the said amount but insisted on the petitioner transferring the property temporarily in his name; that petitioner believed the respondent No.2 and executed a registered sale deed on 26.08.2016 in favour of the respondent No.2; that respondent No.2 paid only Rs.30 lakhs initially and later, paid only a further sum of Rs.15 lakhs, though sale consideration was mentioned in the sale deed as Rs.1,16,70,000/-. The petitioner contended that some of the cheques issued by the respondent No.2 were not honoured. According to the petitioner, there is collusion between the respondent Nos.1 and 2 and the respondent No.1 accepted mortgage without proper valuation of the

property. He also claimed that the respondent No.2 did not retransfer the property to him and so he filed a criminal complaint in CCSR.No.446 of 2018 before the VII Additional Chief Metropolitan Magistrate, Hyderabad against the respondent No.2, which is still pending. He also stated that his daughter and son-in-law filed OP.No.1362 of 2012 before the III Additional Chief Judge, City Civil Court, Hyderabad under the Hindu Minority and Guardian Act, 1959 and the Guardian and Wards Act, 1890 for sale of half share of their minor daughter's property and in that OP, the petitioner being the GPA holder gave an undertaking that the subject property would be transferred in favour of minor daughter of petitioner's daughter, in lieu of transfer of her share in the said duplex building. He contended that he is in physical possession of the suit schedule property and he was unaware about the proceedings under the SARFAESI Act till he received the possession notice dated 07.07.2018. He also claimed to have filed SA.No.330 of 2018 before the Debts Recovery Tribunal, Hyderabad.

8. The respondent No.1 – bank opposed the said application and denied that the petitioner is the absolute owner and possessor of the subject schedule property. It also denied the transaction between the petitioner and the respondent No.2. It contended that civil suit filed by the petitioner is in collusion with the respondent No.2 only to defeat the claim of the bank for payment of the loan amount availed from the bank by the respondent No.2. It contended that there is no privity of contract between the petitioner and the respondent No.1 – bank. It even denied sending any notice to the petitioner. It also stated that SA.No.330 of 2018 was dismissed on 03.09.2019 itself by the DRT. It pleaded that the respondent No.2 created valid mortgage by

depositing title deeds with the bank and the respondent No.2 had valid right, title and interest in the subject property and the respondent No.1 – bank was entitled to take possession of the property from the respondent No.2.

9. The Court below, after referring to the contentions of both sides by order dated 24.01.2020 in Crl.MP.No.3570 of 2019, held that the sale deed dated 26.08.2016 executed by the petitioner in favour of the respondent No.2 clearly mentioned that the delivery of possession was made to the respondent No.2 and the plea of petitioner cannot be therefore said to be bonafide and he cannot be in possession of the subject schedule property as absolute owner.

10. Challenging the same, this writ petition is filed.

11. Though counsel for the petitioner stated that grave prejudice would be caused to the petitioner if the order passed by the Chief Metropolitan Magistrate dated 24.01.2020 in Crl.MP.No.3570 of 2019 in Crl.MP.No.183 of 2019 is not set side, as rightly held by the said Court, the petitioner had conveyed his right, title and interest over the subject property in favour of the respondent No.2 by executing a registered sale deed dated 26.08.2016. There is a clear recital in the said document about the delivery of possession by the petitioner to the respondent No.2. Therefore, we agree with the Court below that the petitioner has nothing to do with the subject property any longer and he is also not in possession thereof and he is not entitled to object to the application filed under Section 14 of the SARFAESI Act by the respondent No.1 – bank.

We, therefore, do not find any merit in the writ petition and it is accordingly dismissed at the admission stage.

As a sequel, the miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

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M.S. RAMACHANDRA RAO, J

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T. AMARNATH GOUD, J

February 4, 2020
DSK