Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 35 OF 2019

The Goa State Cooperative Bank Ltd., Rep. By its
M.D. Suresh V. Lotlikar ...Appellant

Versus

1. Sagar Shripad Narvekar & anr. ...Respondents

Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Gajanan Rivankar, Advocate *for the Appellant.*
Mr. S. D. Padiyar, Advocate *for Respondent No. 1.*

CORAM: M. S. SONAK, J
DATED: 28th July 2021

ORAL ORDER

1. Heard Mr. S. R. Rivankar, learned Senior Advocate for the Appellants, and Mr. S. D. Padiyar learned Counsel for Respondent no.1.

2. This Second Appeal is directed against the Judgments and Decrees dated 15.12.2015 and 23.02.2017 made by the learned Trial Court and the First Appellate Court in Regular Civil Suit No. 79/2008/A and Regular Civil Appeal No. 69 of 2016. Both the Trial Court and the First Appellate Court have decreed the suit instituted by Respondent no.1 and restrained the Appellant herein from interfering with the suit premises being LG-3 and UG-3 or attempting to sell the suit premises by auction.

3. Mr. S. R. Rivankar, the learned Senior Advocate for the Appellant, submits that the two Courts have mis- construed the most relevant and vital document i.e. the Deed of English Mortgage dated 14.08.2000. He submits that this document makes it clear that the entire property together with the hotel premises under construction was mortgaged to the Bank. He submits that from the Schedule to the Mortgage Deed, it is apparent that the suit premises form a part of the mortgaged property and, therefore, the Bank was very much within its rights to insist upon an auction of the suit premises. He submits that the two Courts have unduly emphasized upon the valuation report dated 27.06.2000. He submits that the valuation report is only for valuation and, based on the same, the two Courts could not have held that the suit premises did not form part of their mortgaged property.

4. Mr. Rivankar, learned Senior Advocate, submits that the following substantial question of law arises in this appeal :

> *"Whether the Lower court and the first Appellate Court have erred in ignoring the vital document i.e. the Deed of English mortgage whereby the landed property was under mortgage with the Appellant Bank towards loan liability justifying attachment of shops in the building constructed on the said land under mortgage?"*

5. Mr. S. D. Padiyar, learned Counsel for Respondent no.1, defends the impugned judgments and decrees based on the reasoning reflected therein. He submits that there are concurrent findings of fact and there is no perversity whatsoever in the record of such concurrent findings of fact. He submits that the two Courts have evaluated the evidence on record including the Deed of English Mortgage and have quite correctly concluded that the suit premises were never a part of the mortgaged premises. He further submitted that Respondent no.1 is neither a borrower nor a guarantor. He submitted that Respondent no.1 was only a tenant in the earlier premises which were demolished and the Respondent no.1 was allotted the suit premises in place of his tenancy rights. He submits that Respondent no.1 has nothing to do with the loan and/or the mortgage and the document of English Mortgage does not even remotely refer to the suit premises. He, therefore, submits that this appeal raises no question of law, much less any substantial question of law, and, therefore, the same be dismissed.

6. Having considered the rival contentions and perused the material on record, even I believe that this Appeal raises no question of law much less any substantial question of law as proposed by the Appellant.

7. The Deed of English Mortgage dated 14.08.2000 describes the mortgaged property in some detail and at the end, states the following :

> *"The said Plots of land together with Hotel Premises under constructions therein is mortgaged."*

8. Mr. Rivankar's contention is based upon the aforesaid line in the Schedule to the English Mortgage Deed. Now, according to me, the aforesaid line at the highest creates some ambiguity. However, based on the aforesaid line, it is not possible to conclude that the suit premises which were yet to be constructed at the time when the Deed of English Mortgage was entered into were intended to be a part of the mortgaged property.

9. Faced with such ambiguity, both the parties led evidence before the learned Trial Judge. It is in the course of this evidence that the valuation report was produced and tendered in evidence. The valuation report is quite clear in that it does not include the suit premises. Even Dw.1, the witness on behalf of the Appellant-Bank, was unable to state with any level of certainty that the suit premises were indeed to form a part of the mortgaged premises. There is an admission on the part of Dw.1 that the suit premises were certainly not referred to in the valuation report. Though the valuation report may have been prepared by the party which sought the loan, there can be no dispute that it is this valuation report which was considered by the Bank for extending the loan.

10. Thus, this is only a case of evaluation and appreciation of evidence on record. Both the Trial Court and the First Appellate Court have assessed and evaluated both the documentary and oral evidence on record and decreed the suit. The findings of fact recorded by the two Courts concurrently do not suffer from any perversity. This is not a case where some vital document i.e. the Deed of English Mortgage has not been considered at all or has been grossly misconstrued. As noted earlier, the mortgaged Deed is by no means clear whether it included the suit premises or not. Therefore, the two Courts quite rightly considered the documentary and oral evidence to interpret the same. There is no error or in any case perversity in the interpretation to raise a substantial question of law.

11. For all the aforesaid reasons, this appeal is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

M. S. SONAK, J.

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