

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-4038-C-2021 in/and
RSA-356-2021
Date of decision : September 30, 2021

UCO Bank and anotherAppellants

Versus

Santosh GuptaRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nonish Kumar, Advocate for the applicant-appellants.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing
due to outbreak of the pandemic, COVID-19.

CM-4038-C-2021

Prayer in the application is for preponement of hearing of the matter,
which is listed for 23.11.2021.

Heard.

For the reasons mentioned in the application as well as arguments
addressed, hearing of the appeal is preponed from 23.11.2021 for today itself.

Application is disposed of.

RSA-356-2021

Appellants-defendants have filed this regular second appeal
challenging judgment and decree dated 16.05.2017 passed by the learned Civil
Judge (Junior Division), Naraingarh as well as judgment and decree dated
09.03.2021 passed by learned Additional District Judge, Ambala.

Brief facts necessary for adjudication of the case are that plaintiff – respondent filed a civil suit for mandatory injunction for directing the defendants to return the amount of auction as well as cost of construction and other expenses incurred by her for procuring sale certificate in respect to the property detailed in the plaint. Plaintiff also sought damages and compensation for mental pain, agony and harassment. Plaintiff pleaded that she participated in auction conducted by the defendant – bank on 10.07.2012 in respect to a plot as described in the plaint. This plot was purchased by her for an amount of Rs. 6,52,000/-. Sale certificate was issued to her on 21.09.2012 and possession handed over to her. Mutation was delayed by the revenue authorities for about five months. However, in the meantime, she raised construction over the plot by spending about Rs.10 lakhs. It is thereafter claimed that on 05.03.2013, a person namely Shiv Rana trespassed into plaintiff's property and demolished the boundary wall, which caused monetary loss to her. Matter was reported to the police and on further inquiry from the revenue department, it came to light that the plot which was auctioned to her did not even belong to the defaulter of the Bank i.e. Surender Singh son of Prem Singh. Plaintiff, thus, claimed that the bank sold a different plot to her and gave possession of a separate one. Hence, the suit was filed.

Suit was contested by the defendants taking various preliminary objections and denying the claim on merits. It is stated that Surender Singh son of Prem Singh had taken loan from defendant – Bank. He mortgaged the plot in question in favour of the bank by way of an equitable mortgage. He defaulted in payment of loan. Proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) were undertaken. Possession of the plot was taken by the bank and the same was auctioned. Plaintiff purchased this plot. Sale letter dated 21.09.2012 was issued to her and possession of the property handed over. It is further stated that if any other

individual interferes in the possession of the plaintiff or causes any damage to the property, thereafter the bank has no role to play therein. Dismissal of the suit was sought.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled to the relief of mandatory injunction directing the defendants to return the amount of auction, costs of construction alongwith expenses incurred by the plaintiff for getting the sale certificate issued in her favour along with compensation for causing mental pain, harassment and agony or directing the defendants to handover the vacant possession of plot in question as prayed for? OPP
2. Whether suit of the plaintiff is not maintainable in the present form? OPD
3. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
4. Whether plaintiff has concealed the true and material facts from the Court? OPD
5. Whether plaintiff has no cause of action? OPD
6. Relief.

Evidence was led by both the parties.

Learned trial court held that it was the duty of the defendant – bank to ensure that the property being auctioned is free from any defect in the title and it was held on the basis of evidence on record that title of the plot was not clear at the time of auction of property to the plaintiff. Accordingly, plaintiff was held entitled to recover consideration amount paid by her to the Bank i.e. Rs.6,52,000/-. However, as the plaintiff was found to have been in possession of the property and no substantive evidence was found in respect to any other expenses incurred by the plaintiff, therefore, she was not held entitled to any such amount. Appeal was preferred by defendant – appellant and cross objections filed by the plaintiff.

Learned Additional District Judge, Ambala dismissed the appeal filed by the defendant – appellant, however, while partly allowing the cross objections,

modified judgment and decree of the learned trial Court to the extent that the plaintiff was held entitled to interest at the rate of 6% on the amount of Rs.6,52,000/-, vide judgment and decree dated 09.03.2021. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that plaintiff herself did not step into the witness box but it is her husband who deposed as her power of attorney holder, therefore, this ground itself is sufficient to non-suit the plaintiff. Moreover, possession of the property was duly handed over to the plaintiff and she has raised construction thereon. It is due to this very fact that learned trial Court has returned a finding that plaintiff herself had remained negligent and was not entitled to any compensation as she herself did not make necessary inquiries before sale of property in question which was sold by way of auction. Plaintiff is, thus, stated to be guilty of not having exercised due diligence.

Learned courts below, it is submitted, have erred in observing that an entry regarding an equitable mortgage should have been made in the revenue records and that the appellant was, thus, negligent in this regard leading to vesting of any right in the plaintiff. It is, thus, prayed that judgment and decree 16.05.2017 passed by the learned Civil Judge (Junior Division), Naraingarh as well as judgment and decree dated 09.03.2021 passed by learned Additional District Judge, Ambala be set aside.

Heard learned counsel for the appellants and have gone through the file with his able assistance.

It is a matter of record that property in question had been mortgaged with the appellant – bank by one Surender Singh son of Prem Singh when he availed the facility of loan from the appellant bank and the same was admittedly by way of an equitable mortgage. Learned counsel is unable to deny that Surender Singh, who had mortgaged property with the bank had transferred the same during

the period it stood mortgaged with the bank as is reflected in mutation No. 7829 and that possession of the plaintiff was disturbed by one Shiv Kumar, though it is submitted that plaintiff entered into a compromise with him at a subsequent stage. Learned counsel is unable to point out anything on record to indicate that this fact was brought to the fore by the Bank at the time of auction of the plot and the auction purchaser was put to notice of the fact. In such a situation to say that appellant – bank is entitled to retain the consideration amount deposited by the plaintiff qua the property in question, is clearly unjustified. Argument raised by learned counsel for the appellants that the plaintiff has subsequently entered into a compromise with subsequent purchaser is of no avail to the appellant as it is not relevant and can have no bearing on the transaction between the plaintiff and the appellant – bank. It is relevant to note at this stage that there is no such evidence on record regarding compromise or settlement, if any, between the plaintiff and subsequent purchaser or Surender Singh and the plaintiff.

Similarly, I do not find any merit in the argument raised by learned counsel for the appellants that plaintiff should be non-suited on the ground that it is her husband who stepped into the witness box and not the plaintiff herself. There is nothing on record to indicate that the plaintiff's husband was not aware of all the factual aspects of the matter and did not have personal knowledge of the same. Reference in this regard can be made to judgment of the Hon'ble Supreme Court in **Man Kaur (Dead) by LRs versus Hartar Singh Sangha 2010 (4) SCC (Civil) 239**. Learned courts below have correctly returned concurrent findings of fact, based upon proper appreciation of the evidence on record.

Keeping in view the facts and circumstances, there is no question of law, much less a substantial question of law, which is involved for consideration in this regular second appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree 16.05.2017 passed by the learned Civil Judge (Junior Division), Naraingarh as well as judgment and decree dated 09.03.2021 passed by learned Additional District Judge, Ambala, which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

September 30, 2021
Rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No