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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Judgment: 23.11.2022***

\+ RFA 597/2022

BIJENDER SINGH AND ORS ..... Appellants
Through: Mr. Neeraj Kumar, Advocate

versus

M/S RELIGARE HOUSING DEVELOPMENT FINANCE CORPORATION LTD AND ORS ..... Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

CM APPL. 50412/2022 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

RFA 597/2022 & CM APPL. 50411/2022 (Stay)

3. The appellants (original plaintiffs) in the present appeal are assailing the impugned judgment and decree dated 17.08.2022 passed by learned ADJ-04, Central, Tis Hazari Courts in Civil Suit No. 837/2022 titled as Bijender Singh And Ors. vs. M/s. Religare Housing Development Finance Corporation Ltd And Ors.
4. Vide the impugned judgment, the learned Trial Court was pleased to dismiss the suit filed by the appellants herein with a cost of

Rs.50,000/-.

5. It is the case of the appellants that they had jointly purchased the built-up property measuring 45 square yards bearing House No. 75 with roof rights, out of Khasra No. 40, situated in Lal Dora area of village Jharoda Mazra, Burari, Delhi-84 (suit property) from respondent No.3 vide GPA, Agreement for sale and Purchase, Receipts, Will, Affidavit and Possession letter dated 15.01.2021 respectively, for a sale consideration of Rs.10 lacs.

6. According to the appellants, the respondent No.3 was the absolute owner by virtue of sale transfer documents comprising of GPA, Agreement to Sell, Affidavit, Receipt and Possession Letter and Will dated 15.01.2021 executed by respondent No.2 in favour of respondent No.3. The appellants remained in continuous occupation of the suit property since its purchase. Electricity connection was taken in the name of appellant No.3 and clearly earmarking the suit property bearing House No. 75 Village Jharoda Mazra, Burari, Delhi-84.

7. On 27.07.2022, a notice got pasted in the suit property by respondent No.5 in pursuance of the order passed by the court of learned CMM (Central), Tis Hazari Courts, Delhi in M.A. No. 164/22 whereby the respondent No.5 was to take possession of the suit property as "*Receiver*" appointed by the said Court. The appellants filed various complaints to the police station Wazirabad. However, the police officials failed to take any action against respondent No.5. Later on inquiry, it came to the knowledge of the appellants that respondent No.1 had granted loan in the year 2015 to

the erstwhile owner of the suit property based on some 'illusory and fictitious' documents. According to the appellants, the property which was mortgaged to the respondent No.1 does not bear any municipal. Hence, it is the allegation of the appellants that respondent No.1 obtained the orders from the court of learned CMM by playing fraud upon them.

8. The appellants claiming themselves to be the bona fide purchasers of the suit property, filed the suit for declaration and permanent injunction against the respondents with the following prayers:-

> *"i) Pass a decree of declaration, declaring the plaintiffs to be the owners and occupier of the suit property bearing H. N.75, with roof rifths, out of Khasra No.40, situated in Lal Dora Area of village Jharoda Mazra, Burari, Delhi-84 as shown red in site plan.*
> *ii) Pass a decree of declaration, declaring order dated 13.07.2022 passed by Sh. Siddhartha Malik, CMM (Central), Tis Hazari, Delhi in MA No. 164/2022 in case tilted M/s Religare Housing Development Finance Corporation Ltd Vs. Dharmender Gopiram & Ors to be null and void and non-est, as it does not clearly earmark the property mortgaged / pledged or to be attached in respect of loans extended by Defendant company, which is vague and evasive, despite the properties in and around the suit property had been bearing municipal numbers since last 20-30 years.*
> *iii) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants, their agents, associates, attorneys, solicitors, etc. from attaching the suit property in execution of order dated 13.07.2022 passed by Ld. CMM (Central), Tis Hazari, Delhi."*

9. The suit was listed before the learned Trial Court on 17.08.2022 and the learned Trial Court vide the impugned judgment dismissed the suit with costs of Rs.50,000/-. The impugned judgment, *interalia,* reads as under:-

> *"At the outset, it is contended by the Ld. Counsel appearing for*

defendant no.1 bank that present suit is not maintainable as plaintiffs being the aggrieved by the any of the measures taken under Section 30 of the Securitization and Reconstruction of Financial Assets and Enforcement of the Security Interest Act, 2002 (hereinafter referred as the SARFAESI Act) by the repsondnet bank had the remedy to approach the Debt Recovery Tribunal (DRT) and not the present Civil Court. Ld Counsel for defendant also referred the Section 34 of the SARFAESI Act to stress upon the point that the Civil Court has no jurisdiction to entertain any suit or proceedings in respect of which Debt Recovery Tribunal is empowered.

The contention is vehemently opposed on behalf of the plaintiffs. It is contended by the Ld counsel for the plaintiffs that as per ratio of the judgment in ***Mardia Chemicals Ltd and Others vs Union of India and others, (2004) 4 SCC 311****, wherein it was held that "even though jurisdiction of civil court was barred for the most part, it could be invoked to a very limited extend: precisely to the extent permissible in cases of English mortgages, that is, for example, where the action of the secured creditor is alleged to be fraudulent or his claim so absurd and untenable as to not require any probe whatsoever."*

Heard. Record perused.

The only contention on behalf of which plaintiffs is allegedly fraud is that municipal number of the property has not been mentioned in the application for appointment of the receiver or not in the order of the appointment of receiver. Only on this basis it is claimed that fraud it being played by the bank. It is claimed that property of the plaintiffs is bearing number 75 while there is no number mentioned in the order of appointment of receiver.

On perusal of the case record it is reflected that persons who had taken loan from the respondent No.1 bank were namely Dharmender Gopi Ram S/o Gopi Ram, Sarita Devi w/o Sh. Dharmender, all residents of 76 village Jharoda Mazra, Burari, Delhi. The loan was taken in the year 2015 at the time of taking loan these persons had mentioned their property without any municipal number. It is interesting to note that present plaintiffs had purchased the property from debtor Satbir Singh S/o Sh. Gopi Ram on 15.01.2021 by way of GPA, Agreement of Sell, affidavit etc. It is to be noted that loan was declared Non-performing assets (NPA) on 31.10.2020. Apparently, only after being declared the account NPA, the borrower Satbir Singh sold the property by way of GPA and other documents to the present plaintiffs in order to prevent action under the SARFAESI Act, in such circumstances, apparently it is not the respondent bank but the plaintiffs who had acted in connivance with borrower Satbir

Singh to prevent the legal action under the SARFAESI Act."

10. Being aggrieved by the impugned judgment, the appellants preferred CM (M) 1060/2022. However, vide order dated 22.10.2022, the said CM (M) No. 1060/2022 was withdrawn with liberty to approach competent appellate authority. Hence, the appellants preferred the present appeal.

11. This Court has heard the arguments advanced by the learned counsel for the appellants and perused the documents on record relied upon by the appellants.

12. The erstwhile owner of the suit property i.e. respondent Nos. 2 & 3 mortgaged the suit property to the respondent No.1 by depositing the title documents and hence a valid equitable mortgage was created in favour of the respondent No.1. Owing to the non-payment of the loan amount, respondent No.1 initiated appropriate proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of the Security Interest Act, 2002 (SARFEASI Act). Vide order dated 13.07.2022, learned CMM was pleased to appoint respondent No.5 as Receiver to take possession of the secured asset i.e. the suit property. Hence, in compliance of the order dated 13.07.2022, the respondent No.5 who was appointed as Receiver by the learned CMM took possession of the suit property.

13. It is pertinent to mention here that before passing the order dated 13.07.2022, the learned CMM examined the original title documents and original loan agreement and recorded his satisfaction regarding the identity of the suit property. The relevant portion of the order

dated 13.07.2022, *interalia*, reads as under:-

> *"The property (secured asset) is an immovable property described as "All that piece and parcel of property bearing Double –Storey Built-up property, area measuring 45 sq. Yds., (i.e. 37.63 Sq. Mtrs.,) with roof rights upto sky rights, out of the total area measuring 100 Sq. Yards, Part of Kh. No.40, situated in the abadi / Lal Dora of village Jharoda Mazra Burari, Delhi-110084, North: Property of Amar, South" Road, East: Property of Sunder, West: remaining Road". The description is same in security agreement and the title documents. It is within territorial jurisdiction of this Court. It is within territorial jurisdiction of this Court. It is stated to be in the name of respondent. The original title documents and copies of previous chain of documents in respect of said property are with the petitioner thereby creating an equitable mortgage."*

14. This Court has examined the alleged title documents on the basis of which the appellants purchased the suit property. According to the appellants, the respondent No.3 executed the GPA, Agreement to Sell and Purchase, Receipt, Will, Affidavit and Possession Letter all dated 15.01.2021 in favour of the appellant for the sale consideration of Rs. 10 lacs. Respondent No.3 is alleged to have obtained the suit property from respondent No.2 by virtue of GPA, Agreement to Sell and Purchase, Receipt, Will, Affidavit and Possession letter dated 03.01.2018 respectively. The appellants have no documents to show how the respondent No.2 became the owner of the suit property. In view of Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908 title of an immovable property can be transferred only through a registered documents. All these documents are un-registered documents. In any event, it is well settled position of law that transaction carried in the name of SPA, GPA, Will does not convey any interest in immovable property as laid down by the Apex Court

in the case of ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana*** reported as ***2012 (1) SCC 656.***

15. No suit can be filed for declaring the orders passed by a Court of law as null and void. The present suit is purely barred by time under Section 34 of the SARFEASI Act. This Court is in agreement with the findings of the learned Trial Court. There is no perversity or infirmity in the impugned judgment and hence no interference is called for.

16. In view of the same, the present appeal is dismissed. Pending application is accordingly dismissed. No order as to costs.

GAURANG KANTH, J

NOVEMBER 23, 2022
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