

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.117

Case No. : CR-3735-2023 (O&M)

Date of Decision : July 28, 2023

Pushpa Rani Petitioner
vs.
State Bank of India and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rajesh Lamba, Advocate
for the petitioner.

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GURBIR SINGH, J. :

- CM No.12385-C-II of 2023** : This is application under Section 151 CPC for placing on record written statement as Annexure P-7. For the reasons mentioned in the application, the same is allowed and written statement is taken on record as Annexure P-7. The application stands disposed of.
- Main Case** : Challenge in this revision petition filed under Article 227 of the Constitution of India is to order dated 10.02.2020 (Annexure P-4), passed by learned Civil Judge (Junior Division), Gurugram, whereby application dated 23.01.2020 (Annexure P-2), under Order 6 Rule 17 CPC, has been dismissed.
- Learned counsel for the petitioner submits that the petitioner filed suit for declaration (Annexure P-1) that the petitioner is owner in

possession of the suit property and online auction notice dated 12.05.2014 and auction proceedings may be declared null and void.

4. During pendency of the aforesaid suit, an application under Order 6 Rule 17 CPC, for amendment of the plaint was moved. The said application was dismissed. The petitioner challenged the sale deed bearing no.19919 dated 15.10.2010 and sought amendment by adding para no.8-A and by amending the prayer clause, which reads as follows :-

“8-A: That the Plaintiff came to know that Smt. Anju illegally and unlawfully by using the name as Saroj Tiwari sold the suit property fraudulently by way of Sale Deed bearing Vasika No. 19919 dated 15.10.2010 in favour of Sh. Arpit Gulati S/o Late Sh. Vishnu Dutt, Resident of House No. 837, Mukherjee Nagar, New Delhi illegally and unlawfully during the pendency of the suit and as such the said sale deed is liable to be declared null-void, ab-initio, nonest, nullity, inoperative and not binding upon the Plaintiff in any manner whatsoever. Due to inadvertent mistake the above said particulars of Sale Deed No. 19919 dated 15.10.2010 have not been mentioned in the above noted suit but later on at the time of preparation of argument the above said facts came to know on 18.01.2020. The said Arpit Gulati is now adamant to alienate/sell the above said property to any other person and also wants to create third party interest over the same.

PRAYER CLAUSE : *pass a decree of declaration in favour of the plaintiff and against the*

defendants, declaring the Sale Deed bearing Vasika No. 19919 dated 15.10.2010 null-void, ab-initio, nonest, nullity, inoperative and not binding upon the Plaintiff in any manner whatsoever and also restrained the Defendants from alienating/selling or transferring the above said property to any other person.”

5. It has further been submitted that the plaintiff has expired and his son Vijay Kumar has been impleaded as necessary party to the suit but in para no.1 of the plaint, the word “widow” has wrongly been mentioned. Apart from this, in para no.2, mutation no. 50344 be amended and now be written as 56563.

6. Learned counsel has further submitted that the law of amendment is very liberal and this power can be exercised at any stage of the proceedings. All the amendments, which are necessary for the purpose of determining the real controversy between the parties, are required to be allowed. Since the proposed amendment is necessary, therefore, the application for amendment of plaint be allowed.

7. Heard.

8. The instant suit has been filed by Smt. Pushpa Rani, for declaration along with consequential relief of permanent injunction, on the ground that plaintiff is owner in possession of the house mentioned in the plaint, on the basis of sale deed dated 24.01.2013 and mutation no.50344 is already sanctioned in the name of the plaintiff and has also been entered in the record of Municipal Corporation, Gurgaon. The plaintiff is owner in

possession of the suit property. Defendant no.1 never issued any notice to the plaintiff. Defendant no.2 is neither owner nor in possession of the suit property. Defendant no.1, without verifying the ownership and possession, disbursed the loan to defendant no.2. The plaintiff, on receipt of letter dated 09.06.2014, came to know about the auction of the suit property at the instance of the Bank.

9. Learned Trial Court, dismissed the application on the ground that the plaintiff was well aware of the sale deed, for which declaration is sought. The suit against defendant no.2 has already been dismissed. The trial of the case is almost complete. The amendment is inter alia with regard to seeking declaration that sale deed of defendant no.2 is illegal, null and void but suit against defendant no.2 is dismissed. The proposed amendment to that effect cannot be allowed, simply on this short ground. The respondent Bank has already initiated proceedings against the secured creditor under the SARFAESI Act. A party can definitely take a recourse under the said Act.

10. It is debatable whether plaintiff is entitled to the relief sought in the instant suit since suit against defendant no.2 is already dismissed. The plaintiff was having knowledge about the sale deed. It is not a case where in spite of due diligence, the plaintiff-petitioner could not raise the said plea. The remedy available to the plaintiff is to agitate the matter under the SARFAESI Act.

11. The Trial Court has passed a well reasoned speaking order.

There is no ground to interfere in the same. So, the present revision petition, being without any merit, is hereby dismissed.

12. Pending applications, if any, shall stand disposed of along with this judgment.

July 28, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.