IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2025:PHHC:057698

RSA-4860-2018 (O&M)
Date of decision: 02.05.2025

DHANWANT SINGH AND ANR **..Appellants**

Versus

STATE BANK OF INDIA AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the appellants.

Mr. Aditya Sharma, Advocate
for Mr. Abhinav Gupta, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. The defendant No.5 and 6 assails the correctness of judgment passed by the First Appellate Court, which in turn has modified the trial Court's judgment.

2. The State Bank of India filed a suit for recovery of Rs.8,37,456. It was claimed by the Bank that defendant No.1 by depositing the title deed borrowed the amount by creating an equitable mortgage on 15.06.2005. The defendants contested the suit. It transpired that defendant No.1, the borrower sold the property in favour of defendant No.3 and 4 vide sale deed dated 05.07.2005, which in turn has been sold to defendant no.5 and 6 vide sale deed dated 16.05.2008. The First Appellate Court has held that though the sale in favour of defendant No.5 and 6 is not illegal, however, the Bank has a prior charge and hence it is entitled to recover the amount from the property.

3. Learned counsel for the appellant submits that defendant No.5 and 6 purchased the property after verifying the revenue record where there

is no entry. He further submits that the appellants checked the documents pertaining to title in favour of defendant No.3 and 4.

4. This Court has considered the submissions of learned counsel for the appellant, however, finds no substance therein on the following grounds:-

i. The Bank is a mortgagee. The sale of the mortgaged property is subject to the prior claim of the mortgagee. It is evident that defendant No.1 after mortgaging the property in June, 2005 sold the same to defendant No.3 and 4 in July, 2005.

ii. The title deeds of the property are in possession of Bank, hence, the title in favour of defendant No.3 and 4 is subservient to the rights of the mortgagee.

5. Consequently, defendant No.3 and 4 cannot transfer better title than what they have in favour of defendant No.5 and 6.

6. Keeping in view the aforesaid discussion, no ground to interfere is made out.

7. Dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

May 02nd, 2025 **(ANIL KSHETARPAL)**
Ayub **JUDGE**

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