

(2006) 02 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4464 of 2002

Ajaib Singh and Another

APPELLANT

Vs

Bank of Punjab Ltd. and Others

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 39 Rule 1, Order 39 Rule 2, 151

Income Tax Rules, 1962 — Rule 60

Citation : (2006) 4 BC 555 : (2006) 143 PLR 13

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : H.S. Mattewal, sisted by Gurveen H. singh and H.S. Awasthi, for the Appellant; R.S. Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present revision petition is to the order passed by the Courts below on an application filed by the petitioners under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, restraining the defendants from getting the property in suit auctioned during the pendency of the suit. The said application was dismissed by the learned trial Court on 27.7.2002. The appeal against the said order was also dismissed on 17.8.2002.

2. The plaintiff-petitioners filed a suit for declaration that plaintiffs and defendant No. 3 are owner in possession of the equal shares in the building of cold storage along with machinery, factory and other superstructures existing on land measuring 8 bighas and for decree of permanent injunction restraining defendant No. 1 from getting the auction proceedings conducted from the Debt Recovery Tribunal. The said suit was filed on the ground that the plaintiffs have purchased the property vide registered sale deed dated 29.10.1971 in equal shares with defendant No. 3. Earlier the plaintiffs and defendant No. 3 constituted a

partnership and the land was mortgaged to the Punjab Financial Corporation but vide deed dated 24.4.1991, the partners have decided to dissolve the partnership firm with effect from 31.3.1991. According to the terms of dissolution, the business of cold storage along with land, building and machinery was given to defendant No. 3 but the ownership in the land building, machinery was to remain in the name of all the three partners in equal shares. It is further stated that defendant No. 3 was given the option that he could purchase the same at a market price within four years of dissolution of the firm. The plaintiffs and defendant No. 3 entered into an agreement dated 4.10.1994 and the price of the land building and machinery was fixed at Rs. 90.00 lacs with the result that the share of the plaintiffs and defendant No. 3 was fixed at Rs. 30.00 lacs each.

3. The plaintiffs executed a sale deed on 24.1.1994 in favour of defendant No. 2 M/s Toor Farms Pvt. Ltd. But the balance amount of Rs. 30.00 lacs is still payable to the plaintiffs and on such payment, the plaintiffs are to transfer rights in favour of defendant No. 3. It is further claimed that the amount of Rs. 30.00 lacs was payable in a period of three years and if not paid, interest @ 12% p.a. would be payable.

4. M/s Toor Farms Pvt. Ltd. defendant No. 2 has taken financial loan to run cold storage and had mortgaged the land so purchased from plaintiffs and defendant No. 3 on 1.8.1995. The Bank has obtained Recovery Certificate on 8.9.1998 to recover a sum of Rs. 38,99,753.26 from defendant Nos. 2 and 3 under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Since the plaintiffs have neither signed any document of loan nor had consented the same therefore, the property could not be sold in pursuance of the Recovery Certificate issued against defendant Nos. 2 and 3. The objections filed by the petitioners before the Debt Recovery Tribunal, were dismissed on 19.2.1999. The appeal against the said order was also dismissed as not maintainable by the Debt Recovery Appellate Tribunal on 3.4.2000. The Tribunal found that the remedy of the plaintiffs is to file a civil suit to establish their right, title or interest. The operative part of the order dated 3.4.2000, reads as under:-

Having regard to the aforesaid provisions and when the appellants were not party to the original proceedings. I find that their remedy is to file civil suit to establish their right, title and interest and not by way of this appeal.

Accordingly, this appeal is dismissed as not maintainable with liberty to appellants to file civil suit. Interim order is vacated.

5. In view of the liberty granted, the plaintiffs have filed the present suit for declaration.

6. It has been pointed out by the respondents that earlier, the plaintiffs filed an application for restraining the Bank from getting the auction proceedings conducted by the Debt Recovery Tribunal, but the same was dismissed by the learned trial Court on 30.8.2001. While dismissing the appeal on 30.1.2001, the learned First Appellate Court held to the following effect:-

Even on merits the appellants have no case. The magna carta of the appellants are the two documents of sale, one dated October 4, 1994 and the other May 3, 2000. The former is sought to be pressed into service to show that the building and machinery was to vest in the appellants and third respondent Naginder Singh until each one of them was paid Rs. 30,00,000/- and the later goes to reiterate the right of ownership of the appellants over the building and machinery to the extent of 2/3rd share. However, both these agreements cannot be of any help to the case of the appellants because the agreement dated October 4, 1994 loses its significance in the wake of the sale deed dated April 24, 1994 while the other agreement dated May 3, 2000 cannot be interpreted to mean to supplement the terms of the sale-deed dated April 24, 1994, because the terms of the said sale deed are very specific and unambiguous. A perusal of the sale deed dated April 24, 1994 brings out that what was sold by the present appellants to M/s Toor Farms was land measuring 8 Bighas, Khewat/Khatauni No. 1/6, Khasra Nos. 146(3-0), 148(3-10), 419 min (1-10), situated in village Rampur Kalan, Gair Mumkin Cold Store. All this was done by them in their full senses and in sound disposing mind. The appellants, thus, cannot be allowed to be heard to say that the building of the Cold Store and Machinery was not part of the said sale deed.

11. Further the sale deed in question carries a presumption of truth it being a registered document. The presumption is not available as far as the two agreements dated 4.10.1994 and 3.5.2000 are concerned.

12. Still further the sale deed dated April 24, 1994 and the deed of mortgage dated August 1, 1996 not been challenged by the appellants in these proceedings. Also, the auction dated January 25, 1999 and the fresh auction stated to have been ordered now by the Debt Recovery Tribunal, Chandigarh have not been challenged. In the absence of any challenge to the auction proceedings, the appellants cannot be allowed to make any grievance about the proceedings before the Recovery Officer.

7. After the dismissal of the said application, the plaintiffs have filed the present application again, which has been dismissed by the Courts below, as mentioned above.

8. As per the admitted facts on record, a sale deed was executed by the plaintiffs and defendant No. 3 in favour of defendant No. 2-a Company incorporated under the Companies Act, 1956 and, thus, a juristic person on 24.4.1994. Thereafter, defendant No. 2, the Company, has executed a mortgage deed dated 1.8.1995 through its Managing Director for taking loan from defendant No. 1. i.e. the Bank.

9. The entire claim of the petitioners is based on the allegation that an agreement was executed on 4.10.1994 in terms of dissolution deed dated 24.4.1991, permitting defendant No. 3 to purchase the shares of the plaintiffs at Rs. 30.00 lacs each. Such payment was to carry interest if the amount is not paid within a period of three years @ 12% per annum. The said fact leaves no

manner of doubt that the agreement propounded by the petitioners is bogus and is only to delay the execution of the decree passed in favour of the Bank. Once, the plaintiffs have conveyed their right, title or interest in the suit property by executing a registered sale deed in favour of a separate juristic entity i.e. defendant No. 2 on 24.4.1994, any agreement entered into between plaintiff and defendant No. 3 cannot now affect the title of defendant No. 2, who has been conveyed complete title by virtue of the aforesaid sale deed. In fact, such was the finding recorded by the Courts in an earlier application for ad-interim injunction. It goes beyond any comprehension that even after execution of the sale deed, the plaintiffs or defendant No. 3 would retain some interest so as to enter into an agreement in respect of the land which has already been conveyed by an undisputed registered document.

10. Learned Counsel for the petitioner has vehemently argued that in pursuance of the orders passed by this Court on 6.9.2002, the petitioners have deposited a sum of Rs. 20,11,550/- which is the amount on which the property has been put to auction by the Bank and, therefore, the plaintiffs have a right to seek the setting aside of the said auction on such deposit. He has relied upon *Kharaiti Lal Vs. Raminder Kaur and Others*, and *Challamane Huchha Gowda Vs. M.R. Tirumala and Another*, to contend that having deposited the auction price, the petitioners are entitled to seek the setting aside of the decree forthwith.

11. However, I am unable to accept the arguments raised by the learned Counsel for the petitioner. The recovery certificate in pursuance of which the property has been put to auction is more than Rs. 33.00 lacs. The property has been put to auction in the sum of Rs. 20,00,000/-. Thus, the deposit of Rs. 20,11,550/- in pursuance of the orders passed on 6.9.2002 is beyond 30 days available to the defaulter or to any person, whose interests are affected by sale to deposit the amount in terms of Rule 60 of Schedule II i.e. procedure for recovery of tax i.e. the provisions under which the properties are put to sale by the Debt Recovery Tribunal. The Hon'ble Supreme Court in *P.K. Unni Vs. Nirmala Industries and others* [OVERRULED], while considering pari-materia provisions of setting aside of sale on deposit of the decretal amount contained in Order 21 Rule 89 of the Code of Civil Procedure, held to the following effect:-

7. Rule 89 postulates an application on deposit. It says "may apply to have the sale set aside on his depositing in Court". These words show that deposit is a condition precedent to the making of an application to set aside a sale.

12. Though there is some debate on the question whether the deposit is required to be made within 30 days in terms of Rule 92(2) of the CPC or within 60 days as prescribed by Article 127 of the Limitation Act, 1963. But the said debate is not relevant under the sale regulated by Schedule II of the Income Tax Act, 1961, as Rule 60 provides that the deposit has to be made within 30 days from the date of sale.

13. Rule 60 of the rules in the Second Schedule to the Income Tax Act, 1961

reads as under:-

60(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at anytime within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing.

(a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of fifteen per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a person makes an application under Rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

14. A perusal of the said Rule would show that the right to deposit the amount has been given to the defaulter or any person, whose interests are affected by sale. Such deposit is required to be made within 30 days from the date of sale. Deposit is of the amount specified in the proclamation of sale as that for recovery of which sale was ordered with interest @ 15% p.a. calculated from the date of proclamation of sale to the date when the deposit is made and further deposit of 5% of the purchase money as penalty for payment to the purchaser.

15. In the present case, the deposit has not been made within 30 days. The payment has not been made in respect of the amount specified in the proclamation of sale along with interest thereon till the date of deposit. The amount for which the property has been sold along with 5% as penalty for payment to the purchaser in terms of Rule 60(i)(b) alone has been deposited. The amount in terms of Rule 60(i)(a) has not been deposited. Therefore, the deposit made by the petitioners is not in terms of the Rule 60 which may entitle them to seek the setting aside of the sale.

16. Even the petitioners have no locus standi to move an application to set aside the sale of immovable property. Even if the allegations of the petitioners are taken on their face value, the case is based upon an agreement for sale dated 4.10.1994. The petitioners have already conveyed their right, title or interest in favour of defendant No. 2 vide sale deed dated 24.4.1994. The petitioners are not the defaulters as, the recovery certificate has been issued against defendant No. 2. It is required to be examined whether the petitioners are the persons whose interest are affected by the sale and would have thus locus standi to file objections to seek setting aside of sale on deposit of due amount.

17. The Hon"ble Supreme Court in K. Basavarajappa Vs. Tax Recovery Commissioner, Bangalore and others, , held that under Rule 60, the defaulter or his power of attorney can move the application for setting aside of the sale and

not a person, who is posing his claim as a prospective purchaser on the basis of an agreement of sale. In the aforesaid judgment, it was held that by mere agreement to sell, the appellant gets no interest in the property put to auction to enable him to apply for setting aside of such auction under Rule 60 of the Income Tax Rules.

18. No other point is urged.

19. In view of the above, I do not find any illegality or irregularity in the findings recorded by the Courts below, which may warrant interference by this Court, in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.