

(2011) 03 KL CK 0209
In the High Court Of Kerala
Case No : WA. No. 2882 of 2009

Archana. N.

APPELLANT

Vs

Pathanamthitta District Co-Operative, The Authorized Officer
and P.G. Anil kumar

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0209

Hon'ble Judges : Jasti Chelameswar, C.J;Antony Dominic, J

Bench : Division Bench

Advocate : S. Sudheeshkar, for the Appellant; P.C. Sasidharan, for the Respondent

Final Decision : Dismissed

Judgement

1. Chelameswar, C.J.—Aggrieved by judgment dated 31st March, 2009 in W.P.(C) No. 10005 of 2009 the Petitioner therein preferred the instant writ appeal.

2. The first Respondent Bank advanced some money to the erstwhile husband of the Appellant herein against the security of certain property. A mortgage was created by the husband of the Appellant towards the security of the above mentioned loan.

3. Subsequently there was some difference between the Appellant and her husband and the Appellant obtained a decree dated 18.12.1992 against her husband by which the husband was directed to return 40 sovereigns of gold or equal value of the same to be paid to the the Appellant within two years from the date of the decree. The property in dispute in the instant appeal was brought to sale during the course of execution of the above mentioned decree. Admittedly the Appellant became the purchaser of the property. The sale certificate is dated 4.4.2005.

4. In the meanwhile the above mentioned mortgage was created against the property on 21.8.2001. As eventually the borrower failed to repay the debt, the

first Respondent invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and proposed to bring the property in question to sale towards the amount due to the Bank. Therefore, the Appellant approached this Court by way of the writ petition out of which the instant appeal arises with the prayers as follows:

(i) Declare that Respondents 1 and 2 are not entitled to proceed against the Petitioner or her property covered by Exhibit P-3 for any debts of the 3rd Respondent.

(ii) Issue a writ in the nature of prohibition or any other appropriate writ, order or direction commanding the Respondents 1 and 2 not to proceed against the Petitioner's property covered by Exhibit P-3; and (iii) To issue such other appropriate writ order or direction, which this Honourable Court may deem just and fit under the circumstances of the case.

5. By the judgment under appeal a learned Judge of this Court declined to grant the relief to the Appellant holding that there was no error of jurisdiction or legal infirmity in the action of the Respondents.

The operative portion of the order reads as follows:

In the result, having regard to the totality of the facts and circumstances while affirming the impugned proceedings as one without any blemish of jurisdictional error or legal infirmity, this writ petition is ordered directing that the bank will defer any sale proceedings or actual dispossession to let the Petitioner have three months time to find an alternate purchaser for the whole of the property or a purchaser who could take a portion of the property and pay off to the bank the total outstandings and thereby settle the transaction. On payment of the said amounts, the bank will release the property from the security interest so that the documentation could be done swiftly. If the Petitioner makes appropriate request, the bank will consider her case sympathetically for waiver of any portion of the total out standings, having regard to the peculiar facts and situation.

Writ petition ordered accordingly. It is also clarified that this judgment will not stand in the way of the Petitioner herself paying off the entire amounts in any manner and clearing the transaction.

6. Another Division Bench of this Court during the pendency of the appeal by its order dated 17.12.2010 took a sympathetic view of the matter and directed as follows:

The first Respondent is directed to grant OTS benefit to the Appellant by allowing her to settle the liability with simple interest at contract rate, without charging compounding and penal rate of interests, and in this regard balance liability will be communicated to the Appellant by the first Respondent within two weeks from now. Appellant is granted another one week's time to come forward with suggestion for settling, failing which the matter will be considered on reopening of Court.

7. Today when the matter is taken up, learned Counsel for the first Respondent Bank submitted that pursuant to the above mentioned order the first Respondent Bank examined the matter again. According to the Bank the amount outstanding towards the debt due from the Appellant's husband as on 31.12.2010 is Rs. 5,10,826/-. In obedience to the order of this Court referred to above the first Respondent Bank is willing to give certain concessions to the Appellant. After taking such concessions into account, the first Respondent Bank is willing to settle the matter in case the Appellant is willing to pay an amount of Rs. 3,91,171/- and subsequent interest calculated from 1st January, 2011.

8. In the circumstances, we are of the opinion that the first Respondent Bank is more than fair in its dealing with the Appellant. However, the Appellant declined to take the opportunity and insisted that the property of the Appellant is not amenable to proceedings initiated by the first Respondent under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.

9. We see no basis for the submission of the Appellant. We are in total agreement with the judgment under appeal which held that there is neither any error of jurisdiction nor any legal infirmity in the impugned proceedings. The Appellant purchased the property which is subjected to a mortgage encumbrance by the date of purchase and it is well settled in law that the purchaser even in a court auction does not get any better title than the vendor has at the time of sale of the property.

In the result, we see no merit in the writ appeal and the same is dismissed.