**(2013) 12 DEL CK 0211**

**In the Delhi High Court**

**Case No :** CS (OS) 1730 of 2010

Ashok Kumar Raizada APPELLANT

Vs

The Bank of Rajasthan and Another RESPONDENT

**Date of Decision :** 09-12-2013

**Acts Referred:**

**Citation :** (2014) 2 AD 641 : (2014) 1 BC 670 : (2014) 207 DLT 10

**Hon'ble Judges :** Jayant Nath, J

**Bench :** Single Bench

**Advocate :** S.C. Singhal, for the Appellant; S.K. Garg, Advocate for D-1 and Mr. Rohit Verma, Advocate for D-2, for the Respondent

**Final Decision :** Disposed Off

# Judgement

Jayant Nath, J.

CS (OS) No. 1730/2010

1. On 8.5.2012, this Court had framed a preliminary issue which reads as under:-

1. Whether the civil Court has no jurisdiction to entertain the present suit on account of Section 34 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002? OPD

Arguments were heard on the said issue.

The present Suit is filed by the plaintiff seeking a decree of declaration holding that the Sale Deeds dated 15.4.2005 and 29.6.2005 in favour of Late Chander Prakash Aggarwal deposited with defendant No. 1/ICICI Bank Limited (previously The Bank of Rajasthan Ltd) and Punjab National Bank/defendant No. 2 respectively and other related documents relating to property No. A-59, Shankar Garden, New Delhi are forged and fabricated and do not pertain to the said property and that the sale deed dated 11.2.1986 of the plaintiff related to the said property are genuine and to declare that the plaintiff is the absolute owner of the said property and has nothing to do with the loan granted by defendants

No. 1 and 2 to late Shri Chander Prakash Aggarwal.

2. As per the plaint it is averred that the plaintiff is the owner and in possession of the said property/land No. A-59, Shankar Garden, New Delhi measuring 216-2/3 sq. yds. which the plaintiff is stated to have purchased vide Registered Sale Deed dated 11.2.1986 from Shri Sarjivan Kumar Sood, Shri Puran Chand Sood, Shri Ashok Kumar Sood and Shri Pradeep Kumar Sood all sons of late Shri Chaman Lal Sood. It is stated that on 18.12.2008 plaintiff received information from the neighbours that a notice has been pasted on its boundary wall whereby a Receiver has been appointed. It revealed that one Shri Alok Gupta had preferred an Appeal and certain orders had been passed in favour of Shri Alok Gupta. The plaintiff claims that on enquiry it was revealed that the said Shri Alok Gupta had produced Sale Deed dated 26.10.1971. The plaintiff claims that on verification from the records of the Sub Registrar Office, no Sale Deed was found to be registered. The plaintiff hence filed FIR No. 88/2009 with the relevant Police Station. It is averred that a challan has been filed by the police. The plaintiff filed an appeal being S.A. No. 474/2008 before the Debt Recovery Tribunal-III and on 23.12.2008 the DRT-III was pleased to quash the order of attachment by the Authorized Officer declaring that the property of the plaintiff cannot be taken as a secured asset of the bank.

3. It is stated that despite the said order from DRT plaintiff was informed by defendant No. 1/Bank of Rajasthan that the property stood mortgaged to them by Shri Chander Prakash Aggarwal who had expired in May, 2009. It was further revealed that the said Shri Chander Prakash Aggarwal had also taken a loan from Defendant No. 2/Punjab National Bank to the tune of Rs. 3.75 crores and mortgaged the said suit property by depositing title deed. Punjab National Bank/ defendant No. 2 proceeded under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) The plaintiff filed WP(C) No. 10510/2009 to restrain the defendants from taking possession of Suit property. Ultimately, it is stated that from the Counter-Affidavit filed by the banks it was revealed that the Sale Deed created in favour of late Shri Chander Prakash Aggarwal, which was deposited with the Bank of Rajasthan is dated 15.4.2005 and is executed by one Shri Jagdish Chander as Attorney of Smt. Mayawati. The Sale Deed deposited with the defendant No. 2/Punjab National Bank by the said late Shri Chander Prakash Aggarwal dated 29.6.2005 is stated to have been executed by one Shri Lehja Singh Yadav as General Power of Attorney of Smt. Mayawati, wife of Shri Sardari Mal Gupta.

4. The Writ Petition was disposed of by this Court on 28.7.2010 observing that disputed questions of facts, cannot be decided in the writ jurisdiction and, therefore, the plaintiff was advised to take appropriate measures including filing of a Civil Suit. Hence, the present Suit is filed by the plaintiff.

5. Apart from the above, it is further averred that in the documents created in favour of Smt. Mayawati, the boundaries of the plot are shown as North Plot No.

 

A-60, South Plot No. A-58. The plaintiff submits that he was able to trace out all the particulars of plots A-58, A60 and A62 which are adjoining plots of the plaintiff. It is stated that these plots are also having the same particulars of the land as it exists in the sale deed of the plaintiff, namely, Village Possangipur and Rec. No. 6, Killa No. 23. Hence, it is strenuously urged that the sale deeds in favour of Smt. Mayawati and Late Shri Chander Prakash Aggarwal are fake and do not relate to the suit property.

6. The defendant No. 1 in the Written Statement has claimed that defendant No. 1 has taken action u/s 13(2) of the SARFAESI Act and that under the said Act the plaintiff has a remedy available u/s 17 before the Debts Recovery Tribunal, Delhi. Hence, it is stated that in view of Section 34 of the SARFAESI Act the present Suit is barred. It is further denied that the plaintiff is the owner of the said suit property. It is averred that the same is owned by late Shri Chander Prakash Aggarwal, who had purchased it vide Sale Deed dated 15.4.2005 from Shri Jagdish Chand. The said Shri Chander Prakash Aggarwal as sole proprietor of M/s. Apollo Industries had created a valid equitable mortgage by deposit of title deeds in favour of the said defendant on 1.6.2005 and had also deposited all original title deeds pertaining to the said property.

7. Defendant No. 2/Punjab National Bank has in the Written Statement stated that it has filed an Original Application (O.A.) bearing No. 2134/2009 titled Punjab National Bank versus M/s. Shiva Industries & others of which defendants No. 3 to 6 have been arrayed as Legal Heirs of deceased Late Shri Chander Prakash Aggarwal for recovery of Rs. 3,29,82,681/- before DRT. It is stated that the said Late Chander Prakash Aggarwal mortgaged the said suit property in favour of said defendant No. 2. It is further stated that the said defendant has also initiated proceedings u/s 13(2) of SARFAESI Act by sending a notice dated 04.05.2009 and the remedy available with the plaintiff is u/s 17 of the said Act. It is reiterated that Late Shri Chander Prakash Aggarwal had purchased the suit property vide sale deed dated 29.06.2005 which was executed in his favour by Smt. Mayawati through her attorney Sh. Lehaja Singh Yadav.

8. Defendants No. 3 to 6 have also filed written statement stating that they have no knowledge about the ownership of the suit property and are in no way concerned with the same. Hence, it is averred that the said defendants are liable to be deleted from the array of parties. The said defendants No. 3 to 6 are the legal representatives of late Shri Chander Prakash Aggarwal.

9. Based on the above averments, issues were framed and issue No. 1 was treated as preliminary issue.

10. Learned counsel appearing for the plaintiff has submitted that the present Suit is filed pursuant to a fraud played upon by the defendants on the plaintiff. Various allegations are reiterated, namely, that there cannot be two Sale Deeds of different dates in favour of the same person. It is averred that relying upon the judgment of the Hon''ble Supreme Court in the case of Mardia Chemicals Ltd.

 

Vs. Union of India (UOI) and Others Etc. Etc., that the present Suit would be maintainable as the Hon''ble Supreme Court in the said case has carved out an exception in paragraph 51 where it was stated that to a limited extent jurisdiction of Civil Courts can be invoked where the action of secured creditors is fraudulent for his claim is absurd and untenable.

11. There have been no serious submissions made by the learned counsel for defendants No. 1 and 2. They have, however, relied upon State Bank of India Vs. Smt. Jigishaben B. Sanghavi and Others, and Swati Organics Ltd. and Others Vs. State Bank of India and Others, to claim that the present Suit is barred u/s 34 of the SARFAESI Act.

12. Section 34 of the SARFAESI Act reads as follows:-

34. Civil court not to have jurisdiction.-

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

The Hon''ble Supreme Court in the case of Mardia Chemicals Ltd. vs. Union of India and Ors. (supra) in paragraph 51 held as follows:-

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages.

13. In the present case clearly there are serious allegations of fraud which have been raised. The plaintiff has admittedly nothing to do with defendants No. 1 and 2 inasmuch as neither he is a creditor nor is he a guarantor. He is not a party to any proceedings initiated by defendant Bank before the DRT.

14. Reference may be had to the judgment of the Madras High Court in the case of V. Thulasi Vs. Indian Overseas Bank, . In para 29 of this judgment, the Court held as follows:-

29. By clever and astute drafting, the Plaintiff might create an illusion of cause of action by trying to bring civil suit within the parameters laid down by the Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . Pointing that Court has duty to see if such allegations of fraud are thrown just for the purpose of maintaining a suit, in Punjab National Bank v. J. Samsath Beevi 2010 (3) CTC 310, Justice V. Ramasubramanian held as under:

8. But at the same time, the Court has a duty to see, if such allegations of fraud are thrown, just for the purpose of maintaining a suit and ousting the jurisdiction

 

of the Tribunal and to keep the Banks and Financial Institutions at bay. If by clever drafting, the Plaintiff creates an illusion of a cause of action, the Court is duty bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the plaint not formally, but in a meaningful manner. So is the dictum of the Apex Court i T. Arivandandam Vs. T.V. Satyapal and Another, . It was again reiterated by the Court in I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, by holding that clever drafting, creating illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unraveled and exposed by the Court while dealing with an application under Order VII, Rule 11(a).

15. Similarly this Court in the case of Ritu Gupta & Anr. vs. Usha Dhand & Ors. in CS(OS) 188/2011 in para 16 held as follows:-

16. Without expressing any final view on the above contentions of the parties, the Court, prima facie, is satisfied that the pleas urged by the parties raises triable issues. Prima facie, it also does appear that the Sale Deeds executed by defendant No. 1 in quick succession in respect of the same property are of doubtful validity and that the plea that they are vitiated on account of fraud would require evidence to be led by the parties before a final view can be taken in the matter. The Court is of the view that the case falls within the exceptional category pointed out by the Supreme Court in the Mardia Chemicals vs. Union of India (supra), with the caveat that it is premature for the Court to express any view as to which of the parties has been party to the fraud that prima facie appears to have been committed.

16. The facts of the present case undoubtedly show that there is an arguable case of fraud having been done as there are various sale deeds floating for the same property. Prima facie it appears that Chander Prakash Aggarwal appears to have been in possession of two separate sale deeds for the same property and appears to have created separate mortgages in favour of defendant No. 1 and in favour of defendant No. 2 respectively. The plaintiff also claims ownership of the said suit property. There is another person by the name of Alok Gupta who also appears to be claiming title to the suit property. An FIR being FIR No. 88/2009 also appears to have been registered against the said Alok Gupta and appropriate proceedings are pending. Clearly, the facts of this case would fall within the exceptional category pointed by the Supreme Court in the case Mardia Chemicals vs. Union of India (supra). Hence, I hold that this Court would have the territorial jurisdiction to try the present case.

17 The reliance of learned counsel for defendants No. 1 and 2 in the case of State Bank of India versus Jigishaben B. Sanghavi & Ors., (supra) is misplaced as that was a case in which the Court held that mere raising of a bald plea of fraud is not sufficient to bring the case within the exception carved out by the Hon''ble Supreme Court in Mardia Chemicals Ltd. v. Union of India and Ors. (supra). In that case the entire grievance was with respect to validity of the mortgage which was executed in favour of the bank.

 

18. Similarly, in the case of Swati Organics Ltd. & Ors. versus State Bank of India & Ors. (supra), on the facts of that case, the relationship between the plaintiff and the defendant of a Creditor and a borrower was not denied. Hence, the Court held that Section 34 of the SARFAESI Act was squarely applicable. The present issue is decided accordingly. This Court has the jurisdiction to decide this case.

19. List before the Joint Registrar on 03.02.2014 for further proceedings.

IA No. 11308/2010 (u/O 39 R 1 & 2 CPC)

20. This is an application under Order 39 Rules 1 and 2 CPC. This Court on 27.08.2010 has directed status quo of possession and title of the suit property to be maintained.

21. In view of my decision above while giving a decision on the preliminary objection it is apparent that there are seriously disputed questions of facts as to whether any valid mortgage has been created regarding the suit property in favour of defendant No. 1 or defendant No. 2 and about the title of the suit property. Clearly the plaintiff has made out a prima facie case. The balance of convenience is also in favour of the plaintiff. In case the property is allowed to be sold/transferred, irreparable loss and injury is likely to be cause to the plaintiff.

22. Accordingly, the parties to the suit are directed to maintain status quo of possession and title of the suit property till further orders. The application stands disposed of.