(2010) 08 P&H CK 0399

In the Punjab And Haryana At Chandigarh

Case No : CR No. 6635 of 2009

Baljit Singh APPELLANT

Vs

Ramphal and Another RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 60

Citation : (2011) 3 BC 207 : (2011) 161 PLR 385 : (2011) 2 RCR(Civil) 86

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present revision petition is to the order passed by the learned Executing Court on 10.9.2009, whereby the objections filed by Respondent No. 2-Bank have been allowed and it was ordered that by virtue of the doctrine of subrogation, the decree holder would repay the mortgage money, who in his turn can get the same from principal debtor.

2. The Plaintiff-Petitioner filed a suit for specific performance of the agreement to sell dated 12.1.1999 entered with Defendant No. 1 in respect of the land measuring 8 kanals. Such suit was decreed by the learned trial Court on 1.2.2006. Operative part of the judgment of the trial Court reads as under:

For the reasons recorded above on the afore-going issues, I do find merit in the suit of the Plaintiff and the same is hereby decreed with costs. Plaintiff is entitled to the specific performance of the agreement to sell dated 12.1.1999 on payment of remaining sale consideration. Keeping in view the fact that the suit land is the part of the land mortgaged with the Defendant No. 2 PNB Branch Khanda Kheri against a loan of Rs. 1,50,000/- which has accumulated to Rs. 7,69,390/- up till 31.3.2005, the balance sale consideration of Rs. 95,000/- after deducting the costs of the suit is ordered to be deposited by the Plaintiff with the Defendant No. 2 within a period of three months and the Defendant No. 1 is directed to get the sale deed executed and registered in favour of the Plaintiff after deposit of this amount with the Defendant No. 2 within a period of one month, failing which, the Plaintiff would be at liberty to apply to this Court for getting the sale deed executed and registered in his favour through the process of the Court. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.

3. In the execution of the said decree, the Petitioner deposited the balance consideration with the Bank. Thereafter, the sale deed was executed in his favour.

4. The Bank filed objections to the effect that the amount of loan given to the judgment-debtor is to be satisfied from the land in dispute, which was mortgaged with the Bank and this fact be clarified. In the said objections the following order was passed on 10.9.2009:

In this case, no doubt, the property for which the agreement to sell was inked between Plaintiff and Defendant No. 1 has been mortgaged by the judgment debtor No. 1 with judgment debtor No. 2. However, by operation doctrine subrogation decree holder would repay the mortgaged money who in his turn can get the same from principal debtor. With these observations, the objections stands disposed of. Now, decree holder is directed to place on record draft of proposed sale deed strictly in terms of decree and agreement on 22.9.2009.

5. The argument of learned Counsel for the Petitioner is that the Petitioner has purchased specific Khasra Numbers from the Vendor and therefore, the said land cannot be the subject matter of mortgage and in the event that Bank has to sell the property for realization of its debts, then the remaining land of the vendor mortgaged with the Bank has to be put to sale at the first instance. It is also contended that the Executing Court cannot travel beyond the decree passed.

6. I do not find any merit in the arguments raised by learned Counsel for the Petitioner.

7. There is no dispute that the Executing Court can not travel beyond the decree passed. But the decree passed is subject to the land mortgaged with Defendant No. 2. The Petitioner was permitted to deposit the balance sale consideration with the Bank. The mortgage in respect of the suit land does not stand extinguished with deposit of balance sale consideration paid to Bank on account of the principal judgment-debtor. With such sale, the Petitioner derives title over the suit property in respect of land measuring 8 kanals, but title is subject to mortgage.

8. The last para of Section 60 of the Transfer of Property Act, 1882, a person interested in a share only of the mortgaged property is not entitled to redeem his own share only, on payment of a proportionate amount due on the mortgage. Considering the said provision, the Hon''ble Supreme Court in a judgment reported as Chhaganlal Keshavlal Mehta Vs. Patel Narandas Haribhai, has held to the following effect:

17. The first contention is based on the principle of indivisibility of the mortgage. Section 60 of the Transfer of Property Act deals with the rights and liabilities of a mortgagor. It confers a right of redemption. There is, however, a rider to the right of redemption in the section itself, which provides:

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

A perusal of this provision indicates that a co-mortgagor cannot be permitted to redeem his own share of the mortgaged property only on payment of proportionate part of the amount remaining due. In other words the integrity of the mortgage cannot be broken....

18. ...It is a well-recognised principle that even if all the mortgagees are not before the court in a suit filed by the mortgagor for redemption of the property, but the mortgagor is prepared to pay the entire amount due at the foot of the mortgage to such mortgagees as are before the court and gives up his right under the mortgage as against those mortgagees who are not before the court, the court can pass a decree for redemption directing that the entire mortgage amount should be paid to the mortgagees who are actually before the court. This principle was recognised in a Full Bench decision in Motilal Jadav Vs. Samal Bechar, ...

9. The Hon''ble Supreme Court in another judgment reported as State of Kerala and others Vs. Koliyat Estates, has held to the following effect:

14. The question whether the mortgagor can claim pro tan to reduction of mortgage liability can now be considered. Section 60 of the TP Act deals with the right of a mortgagor to redeem, on payment or tender of the mortgage money. The mode of effecting such redemption is prescribed in the section. The last paragraph of Section 60 reads thus:

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

15. The said paragraph can be vivisected into two segments. The first part contains a negation to the holder of part of equity of redemption to redeem that part alone on payment of the proportionate debt. The second limb of the paragraph provides the solitary exception to the aforesaid negativing edict. The words in that second limb "except only where" are a pointer that the said exception would strictly be confined to the one situation envisaged therein.

16. In order to invoice the solitary exception to the disentitling fiat of the last

paragraph of Section 60 of the TP Act there must be a conjunction of two postulates. One is that the share of the mortgagor in the property should have been "acquired". The second is that the person who so acquired should have been the mortgagee.

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22. The principle behind the exception to the prohibition clause in the last paragraph of Section 60 of the TP Act is, if the mortgagee is satisfied of a part of the mortgage debt by becoming the owner of a part of the mortgaged property it is only equitable to allow the mortgagor to get pro tan to reduction of the mortgage debt, otherwise it would be unjust to allow the entire mortgage debt again to be borne by the remaining mortgaged property. By becoming the owner of a part of the mortgaged property it is not necessary that the mortgage money would have been discharged even proportionately. It depends upon how the mortgagee got a share in the mortgaged property.

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24. Learned Judges of the Calcutta High Court relied on a Full Bench decision of the Bombay High Court in Jasodha Kumar Dey Vs. Kali Kumar Dey and Others, . In that case the mortgagee had purchased one of the properties in an auction-sale in execution of a decree. The Full Bench held that:

If the mortgagee purchased the equity of redemption he must allow proportionate reduction of the value of the property purchased by him; but where the circumstances under which the purchase was made show that it was purchased free from all encumbrances, the Plaintiff can enforce his entire security against the remaining property.

25. A Division Bench of the Madras High Court in Eswara Krishna Iyer v. Mariya Susai Reddiar AIR 1940 Mad 498 held: (AIR Headnote)

The principle underlying the last clause of Section 60 applies only in cases where the mortgagee in the character of a mortgagee acquires the equity of redemption outstanding in the mortgagor.

26. We concur with the said views which the High Courts of Calcutta, Bombay and Madras have adopted in the aforesaid decisions, on the interpretation of the last paragraph of Section 60 of the TP Act.

27. The upshot of the above discussion is this: vesting of portion of the mortgaged property with the Government and the subsequent assignment of mortgage right in favour of the Government are not sufficient to formulate the exception provided in the last paragraph of Section 60 of the TP Act. So the Plaintiff is not entitled to pro tan to reduction in the mortgage money. Hence the judgment of the trial court which was confirmed by the High Court, would stand modified to the above extent. Appeal is disposed of accordingly.

10. The said principal has also been recognized by this Court in a judgment

reported as Surjit Kaur etc. v. Kewal Singh (1990)98 PLR 527, wherein it has been held that on payment of part of mortgage debt, the said mortgagor is not entitled to redeem proportionate mortgage property. Thus, the integrity of mortgage cannot be permitted to be broken. Therefore, the Petitioner having paid part of the mortgage amount directly to the mortgagee is not entitled to redeem part of the land to the extent of the mortgage amount paid by him.

11. The arguments that the land purchased by the Petitioner should be put to sale after the remaining land of the mortgager is put to sale again not tenable. The entire land stands mortgaged with the Bank and the entire land can be put to sale by the Bank to realize its security.

12. In view of the above, I do not find any patent illegality or irregularity in the orders passed by the learned Executing Court which may warrant any interference in the revisional jurisdiction of this Court.

13. Consequently, the same is dismissed.

