
(2013) 05 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4241 of 2012 (O and M)

Daljit Kaur

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2014) 3 BC 271 : (2014) 1 PLR 65

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner has invoked the writ jurisdiction of this Court for issuance of a writ in the nature of Mandamus directing the respondent-Bank to remove locks and for setting aside of possession notice Annexure P.3. The petitioner claims to be purchaser of House No. 2039-40, Kucha Ramgarhia Chowk Baba Bhoriwala, Amritsar from Smt. Manpreet Kaur wife of Shri Gurinder Singh and Shri Gurinder Singh son of Shri Balwinder Singh on the basis of Power of Attorney and agreement to sell. However, subsequently, the petitioner relies upon a decree of the Civil Court in support of her title.

2. It is also pointed out that the said house was mortgaged with respondent No. 2-Bank i.e. the Punjab National Bank and the petitioner has paid the balance due amount to the said Bank. The petitioner had filed a civil suit against her sellers and also the Bank. During the pendency of the suit, the officials of respondent No. 1-Bank pasted a possession notice. The assertion of petitioner is that respondent No. 1-Bank has no concern with the property as the property purchased by the petitioner is mortgaged with respondent No. 2, whereas the property mortgaged in favour of respondent No. 1-Bank is House No. 2411/15, Kucha Ramgarhia Baba Bhoriwala, Amritsar.

3. The petitioner claims that she has made number of representations to the officials of respondent No. 1-Bank, but they have refused to admit the claim of

the petitioner, which led to the filing of the present petition.

4. In the written statement filed initially, it was pleaded that the property in question bears municipal number 2411/15, which was owned by Smt. Amandeep Kaur wife of Manwinder Singh and Smt. Jaswinder Kaur wife of Shri Balwinder Singh, purchased by them on 18.1.1991. It is the said owners, who have taken loan from the Bank on 24.9.1999. Therefore, the Bank is rightly proceeding against the property mortgaged with it. In support of such plea, the Bank has attached the documents of loan, which show that it is House No. 2411/15, Kucha Ramgarhia Baba Bhoriwala, Amritsar, which has been mortgaged as a third party guarantee.

5. The petitioner filed a rejoinder asserting that the property in question owned by the petitioner bears Number 2039/40 measuring 45 square yards and is different from the property bearing No. 2411/15 measuring 30 square yards. From the description of the property mortgaged in favour of respondent-No. 1, it is asserted that the boundaries of the property mortgaged in favour of respondent No. 1 do not tally with the boundaries of property in possession of the petitioner.

6. Today, Shri Doabia, has filed a counter to the rejoinder filed by the petitioner along with a communication from the Municipal Corporation, Amritsar, to the official of the Bank to the effect that the property No. 2039/5-15 is shown in the tax assessment list at Serial No. 3212 at Babiksar Road in the name of Amolak Singh Tirath Singh; property No. 2040/5-15 is shown in the tax assessment list at Serial No. 3213 at Babiksar Road in the name of Smt. Parminder Kaur wife of Sh. Joginder Singh and that the property No. 2411/5-17 is shown in the tax assessment list at Sr. No. 3611 in the area of Uttamgarh in name of Smt. Kulwant Kaur wife of late S. Harbans Singh.

7. We have heard, learned counsel for the parties.

8. In view of the respective contentions of the parties, we find that there is a dispute regarding identification of the property. A conclusive decision on the identification and title of the property may require evidence. Though, prima-facie from the documents Annexure R. 1/8 produced by the respondent-Bank, it appears that the two properties are separate and distinct. The petitioner claims title from Smt. Manpreet Kaur wife of Shri Gurinder Singh and Shri Gurinder Singh son of Shri Balwinder Singh, whereas the property was mortgaged by Smt. Amandeep Kaur wife of Manwinder Singh and Smt. Jaswinder Kaur wife of Shri Balwinder Singh in favour of respondent No. 1. The petitioner is not deriving title from the borrowers of respondent No. 1. Therefore, we dispose of the present writ petition with a direction to respondent No. 1 to hand over possession of the property sealed within 15 days to the petitioner subject to adjudication of the title of the property from the competent Debt Recovery Tribunal. On the other hand, the petitioner shall file an application before the competent Debt Recovery Tribunal, in terms of Section 17 of the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (for short the Act") within 15 days. The Debt Recovery Tribunal shall examine the evidence to be ted and/or the documents produced by the parties to identify the property mortgaged in favour of respondent No. 1-Bank. The possession of the property handed over to the petitioner shall abide by the final decision of the Tribunal in proceedings under the Act.