
(2013) 08 P&H CK 0239
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6395 of 2006

Gurbachan Kaur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 4 BC 425

Hon'ble Judges : Sanjay Kishan Raul, C.J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Sanjay Kishan Raul, C.J.—The late husband of the petitioner is stated to have purchased House No. 102/2, Basti Bhurekhan, Preet Nagar, Sodal Road, Tehsil and District Jalandhar in pursuance to a conveyance deed dated 31.3.1965. This property is stated to have been divided between late husband of the petitioner and Hansa Singh and others whereby the partitioned House No. 102/2 came to the share of the husband of the petitioner during settlement in partition proceedings and the property was constructed thereupon. The husband of the petitioner passed away on 28.8.1999. It is the case of the petitioner that her son Gurvinder Singh had been disinherited by her late husband on account of strained relations with the petitioner and her husband. Neither the petitioner nor her husband ever stood guarantee for any loan. It appears that Gurvinder Kaur wife of Gurvinder Singh, her son, obtained a loan of Rs. 50,000/- from Punjab and Sind Bank under Prime Minister Rozgar Yojna, which has not been paid, for which the Bank filed suit for recovery. The petitioner claims to have filed a civil suit for declaration that she along with her another son Baldev Singh are exclusive owners and in possession of property No. 102/2 as per family partition agreement dated 15.3.1984, which is pending before the Civil Court at Jalandhar and Gurvinder Singh has been impleaded as 5th defendant.

2. The Bank is stated to have issued a notice dated 29.3.2006 threatening auction of the property under the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") which was the security for the loan advance. The petitioner filed the present writ petition under Article 226 of the Constitution of India for quashing of the notice and interim protection was granted to the petitioner. The petitioner also sought to challenge the provisions of the SARFAESI Act and rules framed thereunder as ultra vires the Constitution of India.

3. The petition has been contested by respondent No. 2- State Bank of Hyderabad and it is categorically stated that the property had been mortgaged with the Bank. It is further stated that House No. 102 was jointly allotted to the late husband of the petitioner and Sh. Hansa Singh and Sh. Hansa Singh sold his share to Gurvinder Singh, son of the petitioner and Gurvinder Kaur w/o Gurvinder Singh and thus, mortgage was created by deposit of sale deed of the house property, a copy of which has been enclosed with Annexure R-1. That is how the proceedings under the SARFAESI Act were filed. There is no replication filed to the aforesaid written statement denying the averments made in the written statement of Bank.

4. We may notice that Mr. Hansa Singh, from whom the property was purchased by the son of the petitioner, Gurvinder Singh also passed away and his legal heirs have been impleaded as respondent Nos. 3 to 6 in pursuance to order dated 24.4.2007.

5. None has appeared for the parties despite the matter is effective at item No. 11 on the Regular Board. The matter has been called at 3.45 p.m. and thus, we proceeded to pass the judgment.

6. In view of the averments made in the written statement of respondent No. 2-Bank, it is apparent that the petitioner has not disclosed all relevant facts. It has not being disclosed that half portion of the property, which fell to the share of late Sh. Hansa Singh, was sold to Gurvinder Singh son of the petitioner and Gurvinder Kaur and a picture is sought to be portrayed as if petitioner and Gurvinder Singh had strained relations. A copy of the original sale deed deposited with the Bank has been enclosed with the written statement as Annexure R-1. The petitioner and her other son have no interest or claim on the portion which fell to share of Sh. Hansa Singh but are only concerned with the portion of her late husband Banta Singh. The plan annexed to the sale deed clearly demarcates the two portions of the house. The plan annexed to the sale deed also carves out two portions out of House No. 102, one half portion of Banta Singh (late husband of the petitioner) and the other of Sh. Hansa Singh. Thus, what has been sold to Gurvinder Singh and Gurvinder Kaur is only the half share of late Sh. Hansa Singh.

7. It appears that the apprehension of the petitioner arose out of the manner of description of the property in the auction notice where the boundaries mentioned were of the original Plot No. 102. What the Bank could have sold was only half of the house purchased by Gurvinder Singh and Gurvinder Kaur. We are thus, of the

view that respondent No. 2-Bank, in view of its written statement, is only claiming right to sell the portion of the property of late Sh. Hansa Singh purchased by Gurvinder Singh and Gurvinder Kaur, which was mortgaged to the Bank i.e. half portion of Plot No. 102 and the petitioner's share of half portion owned along with her other son, which was of her late husband, cannot thus, be effected by the auction notice (Annexure P-1).

The writ petition accordingly, stands disposed of.