

(2011) 12 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11586 of 2010

Gurmukh Singh

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 06-12-2011

Acts Referred:

Citation : (2011) 12 P&H CK 0066

Hon'ble Judges : Hemant Gupta, J;G.S. Sandhawalia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the order dated 6.1.2003 passed by Debts Recovery Tribunal (Annexure P-4) (for short the "DRT") and the order dated 12.1.2010 passed by Debts Recovery Appellate Tribunal (Annexure P-6) (for short the "DRAT").

2. Petitioner claims to be the co-owner of the land measuring 95 kanals 2 marlas situated in village Jagowal Bagar Tehsil and District Gurdaspur. Petitioner asserts that his share in the property cannot be put to sale in execution of the recovery certificate in favour of the Bank, against M/s Dashmesh Brick Klin Samiti and its guarantors. Reliance is placed upon an order passed by Recovery Officer on 11.4.2002 (Annexure P-3) wherein the petitioner was given right to get his share defined/partition as prescribed in the law.

3. On behalf of the respondent, it is pointed out that in fact, petitioner is the legal heir of the guarantor Diwan Singh who has mortgaged the property to secure the loan advanced by the Bank to M/s Dashmesh Brick Klin Samiti Ltd. M/s Kundan Singh, Darshan Singh and Dara Singh were impleaded as defendants No. 2 to 4 as the sons of Ajit Singh who is the pre-deceased son of Diwan Singh as his legal representative.

4. In the recovery proceedings under the Recovery of Debts to the Banks and Financial Institutions Act 1993, Recovery Officer has passed the order on

11.4.2002 as mentioned above but in appeal filed by the petitioner, it was clarified that the petitioner is the grand son of Diwan Singh who originally mortgaged the property with the Bank. The property measuring 95 kanals 2 marlas was previously owned by Diwan Singh mortgaged in favour of the Bank. The estate of Diwan Singh is inherited by the petitioner along with the three sons of Ajit Singh who was impleaded as respondents before the Civil Court and subsequently before the DRT. It was held by DRT in appeal that since the property stands mortgaged by Diwan Singh, therefore, the property was inherited by the petitioner. It is the said order which was affirmed in appeal by DRT vide the order dated 12.1.2010 (Annexure P-6).

5. Learned counsel for the petitioner has vehemently argued that the order dated 11.4.2002 was not challenged by the Bank but was made subject matter of challenge by the petitioner, therefore, respondent cannot be permitted to dispute the order dated 11.4.2002 in an appeal filed by the petitioner.

6. We have heard learned counsel for the parties and do not find any merit in the present petition. Though, it appears that the order passed by the Recovery Officer is not coherent as it failed to notice the fact that the property mortgaged is of Diwan Singh. All the legal heirs of Diwan Singh were bound by the mortgage created by their grand father. Such aspect was clarified by DRT in appeal in its order dated 6.1.2003 (Annexure P-4) and maintained by DRAT in its order dated 12.1.2010 (Annexure P-6).

7. We do not find any illegality or irregularity in the orders impugned in the present writ petition which may warrant interference in exercise of the writ petition.

8. Dismissed.