

(2016) 04 SHI CK 0144
In the High Court Of Himachal Pradesh
Case No : C.S. No. 96 of 2010

Manu Goel

APPELLANT

Vs

Tarsem Chand Jain

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)

Citation : (2016) ILRHP 1444

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : Mr. Bimal Gupta, Senior Advocate with Mr. Vineet Vasishat, Advocate, for the Plaintiffs; Mr. Arvind Sharma, Advocate, for the Defendants Nos. 1 to 3; Ex-parte, for the Defendant No. 4

Final Decision : Disposed Off

Judgement

P.S. Rana, J.—Decision upon preliminary issue No. 9:

Hon'ble Division Bench of Himachal Pradesh High Court in OSA No. 11 of 2011 title Manu Goel and others v. Tarsem Chand Jain and others decided on 19.8.2014 directed to decide issue No. 9 as preliminary issue. In compliance to direction of Hon'ble Division Bench dated 19.8.2014 issue No.9 is decided as preliminary issue.

Brief facts of the case:

2. In Civil Suit No. 96 of 2010 title Manu Goel & others v. Tarsem Chand Jain & others plaintiffs have sought relief for declaration to the effect that reconstituted partnership deeds dated 9.2.2007, 10.9.2007, 15.12.2007 and 17.12.2007 entered between plaintiffs and defendant No. 1 are wrong illegal and result of fraud played upon plaintiffs by defendants No. 1 and 2. It is pleaded that reconstituted partnership deeds are not binding upon plaintiffs and further declaration sought that plaintiffs are in fact partners of defendant No.3 and

consequential relief of possession sought directing defendants No. 1 and 2 to handover vacant and peaceful possession of property of defendant No. 3 to plaintiffs free from all encumbrances. Further declaration sought that pledging of sale deed dated 27.9.2003 property of co-defendant No. 3 with co-defendant No. 4 is wrong illegal and is result of fraud played upon plaintiffs. Further declaration sought that notice under Section 13 (2) of SARFESI Act 2002 dated 29.9.2010 and act of defendant No. 4 in taking possession of the property of co-defendant No.3 on 9.12.2010 and thereafter publication of possession-cum-sale notice dated 16.12.2010 be held as wrong illegal and not binding upon plaintiffs and be set aside. Further decree of permanent prohibitory injunction restraining defendants No. 1, 2 and 4 from alienating or transferring or selling the property of co-defendant No. 3 sought. In alternative relief for recovery of Rs. 3,28,23,000/- (Rupees three crores twenty eight lac twenty three thousand) along with interest at the rate of 18% also sought.

3. Per contra written statement filed on behalf of co-defendants No. 1 to 3 pleaded therein that suit of the plaintiffs is not maintainable. It is pleaded that plaintiffs have executed reconstituted deeds in favour of defendants No. 1 to 3 voluntarily and handed over possession by assigning all the rights and liabilities and now they cannot wriggle out from their acts. It is further pleaded that plaintiffs have no cause of action against co-defendants No. 1 to 3. It is further pleaded that UCO bank co-defendant No. 4 has obtained possession of suit property owned by co-defendant No. 3 under the SARFASI Act 2002 and at present all assets of co-defendant No. 3 are in possession of co-defendant No. 4. It is further pleaded that Civil Court has no jurisdiction to entertain and try the present suit. It is further pleaded that remedy available to plaintiffs is only under the SARFAESI Act 2002. It is further pleaded that proper court fee not filed and suit of plaintiffs is barred by law of limitation act.

4. Per contra separate written statement filed on behalf of co-defendant No.4 UCO Bank pleaded therein that civil suit is not maintainable against co-defendant No.4 in view of SARFAESI Act 2002. It is further pleaded that as per Section 34 of the SARFAESI Act 2002 jurisdiction of Civil Court is barred relating to proceedings initiated under SARFAESI Act 2002. It is further pleaded that no injunction by Civil Court could be granted relating to proceedings initiated under SARFAESI Act 2002 as per Section 34. It is further pleaded that suit property is mortgaged with co-defendant No.4 bank and bank has already proceeded in consonance with procedure of SARFAESI Act 2002. It is further pleaded that when defendants failed to repay the outstanding loan amount within the stipulated period then co-defendant No.4 took possession of mortgaged property on 9.12.2010 under Section 13 (4) of SARFAESI Act 2002. It is further pleaded that possession-cum-sale notice dated 15.12.2010 was delivered to defendants as per SARFAESI Act 2002. It is further pleaded that plaintiffs have remedy under Section 17 of the SARFAESI Act 2002 before Debts Recovery Tribunal having jurisdiction in the matter. It is further pleaded that plaintiffs and co-defendants No. 1 and 2 have inter-se dispute relating to reconstituted deeds and

agreements. It is pleaded that civil suit is not maintainable against co-defendant No. 4 UCO Bank. It is further pleaded that plaintiffs have also sought alternative relief of recovery of Rs. 3,28,23,000/- (Rupees three crores twenty eight lac and twenty three thousand) against other co-defendants. It is further pleaded that defendants No. 1 to 3 on 8.1.2008 have deposited with co-defendant No.4 UCO Bank the original title deed and created equitable mortgage of the suit property relating to loan of Rs. 7,16,23,313.27 including interest upto June 2010. It is further pleaded that co-defendants No. 1 to 3 also confirmed equitable mortgaged of suit property in favour of co-defendant No. 4 UCO Bank on 10.1.2008. It is further pleaded that plaintiffs have no cause of action against co-defendant No. 4 i.e. UCO Bank.

5. On 19.7.2012 following issues were framed:

1. Whether plaintiffs are entitled to decree of declaration that the reconstituted partnership deeds dated 9.2.2007, 10.9.2007, 15.12.2007 and 17.12.2007 entered into between the plaintiffs and defendants No. 1 and 2 are wrong, illegal and are result of fraud played upon the plaintiffs by defendants No. 1 and 2 and as such these aforesaid reconstituted partnership deeds are not binding on the plaintiffs? OPP.

2. Whether plaintiffs are entitled to decree of declaration that the plaintiffs are in fact partners of defendant No.3? OPP

3. Whether plaintiffs are entitled to decree of possession directing the defendants No. 1 and 2 to handover the vacant and peaceful possession of the property of defendant No.3 to the plaintiffs free from all encumbrances by declaring the plaintiffs as partners of defendant No.3.? OPP.

4. Whether plaintiffs are entitled to decree of declaration that pleading of sale deed dated 27.9.2003, property of defendant No.3 with defendant No.4 is wrong, illegal and is a result of fraud prayed upon plaintiffs? OPP.

5. Whether notice under Section 13 (2) of SARFAESI Act dated 29.9.2010, the act of defendant No.4 in taking possession of the property of defendant No.3 on 9.12.2010 and thereafter publication of possession cum sale notice on 16.12.2010 are wrong, illegal and not binding on the plaintiffs and liable to be set aside? OPP.

6. Whether plaintiffs are entitled for decree of permanent prohibitory injunction restraining defendants No. 1, 2 and 4 from alienating or transferring or selling the property of defendant No.3? OPP.

7. Whether the plaintiffs in alternative are entitled to recover Rs. 2,52,41,000/- on account of principal amount and Rs. 75,82,000/- (Rs. 1,05,82,000/- Rs. 30,00,000/-) after adjusting Rs. 30 lacs received by the plaintiffs on account of interest @ 18% per annum on the principal amount upto 30.11.2010 total amounting to Rs. 3,28,23,000/- along with future interest at the agreed rate of 18% per annum from the date of filing of the suit till the date of its realisation

from defendants? OPP.

8. Whether the plaint does not disclose any cause of action and is liable to be rejected under Order 7, Rule 11 of Code of Civil Procedure? OPD 1 to 3.

9. Whether this Hon'ble Court has no jurisdiction to entertain and try the present suit in view of the provisions of SARFAESI Act? OPD-4.

10. Whether plaintiffs suit hopelessly barred by time? OPD 1 to 3.

11. Whether suit of the plaintiffs is not maintainable as alleged in preliminary objection No.1? OPD 1 to 3.

12. Whether the suit of the plaintiffs is liable to be dismissed as alleged in preliminary objection No.4? OPD.

13. Whether the suit is not maintainable against defendants No. 1 to 3? OPD 1 to 3.

14. Relief.

6. After decision of OSA No. 19 of 2011 dated 19.8.2014 none appeared on behalf of co-defendant No.4 UCO bank in Civil Suit and co-defendant No. 4 UCO bank proceeded ex-parte. Final hearing upon preliminary issue No. 9 concluded. Entire record carefully perused. Issue No.9 is purely issue of law.

Findings upon preliminary issue No. 9:

7. Authorised Officer of UCO Bank Zonal Office Chandigarh has taken possession of suit property under SARFAESI Act 2002 relating to loan amount under Section 13 (2) and issued possession cum sale notice on dated 15.12.2010 of SARFAESI Act 2002. It is well settled law that SARFAESI Act 2002 is a special Act. As per Section 34 of SARFAESI Act 2002 jurisdiction of Civil Court is barred relating to proceedings initiated under SARFAESI Act 2002. Section 34 of SARFAESI Act 2002 is quoted in to:-

"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)."

8. It is well settled law that when there is conflict between general law and special law then special law always prevail. Suit property was mortgaged with UCO Bank co-defendant No.4 and equitable mortgage was created qua loan amount advanced by UCO Bank. Authorised Officer UCO Bank Zonal Office Chandigarh on dated 15.12.2010 has given possession cum sale notice under Section 13 (2) of SARFAESI Act 2002. As per Section 17 of SARFAESI Act 2002 there is right to appeal before Debts Recovery Tribunal.

9. In the present civil suit plaintiffs have sought relief that reconstituted partnership deeds dated 9.2.2007, 10.9.2007, 15.12.2007 and 17.12.2007 are wrong and illegal and are result of fraud. It is well settled law that as per Section 34 of Specific Relief Act 1963 suit for declaratory decree can be filed relating to any legal character or to any rights as to any property. Section 34 of Specific Relief Act 1963 is quoted in to:

"34. Discretion of court as to declaration of status or right. - Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so,

Explanation.- A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee."

10. As per Section 37 of SARFAESI Act 2002 application of other laws not barred. Section 37 of SARFAESI Act 2002 is quoted in to:

"37. Application of other laws not barred. - The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act 1992 (15 of 1992), the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

11. It is held that SARFAESI Act 2002 is in addition to any other law and is not derogation to other law. In view of the fact that SARFAESI Act 2002 is in addition to other law and is not derogation to other law it is held that entire civil suit of plaintiffs is not barred. It is held that jurisdiction of civil court relating to proceedings under SARFAESI Act 2002 is barred under Section 34 of SARFAESI Act 2002. Preliminary issue No. 9 is decided accordingly.