(2007) 08 P&H CK 0191

In the Punjab And Haryana At Chandigarh

Narvir Singh and Another — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Registration Act, 1908 — Section 17, 78, 79
Transfer of Property Act, 1882 — Section 58, 59

Citation : (2008) 149 PLR 593

Hon'ble Judges : S.N. Aggarwal, J;K.S. Garewal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Garewal, J.—Narvir Singh and Rajinder Kaur have filed this petition seeking a direction to the Tehsildar, Panchkula and Halqa Patwari Bhaisa Tiba to enter a mutation in the revenue record with regard to the equitable mortgage created by the petitioners in favour of the Punjab National Bank, by deposit of the title-deeds of their respective properties.

2. M/s Ultra Tech Private Limited (in the annexures attached with the petition name of the Company has been shown as M/s Ultra Drugs (P) Ltd. is the company which has been sanctioned a term loan of Rs. 425 lacs and working capital facilities of Rs. 99 lacs by the Punjab National Bank, as per communication dated January 29, 2007 (Annexure P/2). The sanction letter also accepted the change in the Board of Directors and the change in the security offered by the Company. This letter reveals that equitable mortgages of 19 marlas of Narvir Singh''s land and 31 marlas of Rajinder Kaur''s land would be the securities offered by the borrowers. The petitioners deposited the original title deeds of their properties with the Bank on February 8, 2007. Thereafter, the Bank wrote to the Tehsildar, Panchkula on February 10, 2007 for entering the mutation on the basis of the two mortgages by deposit of title deeds to secure the loan amount of Rs. 525 lacs sanctioned by the bank.

3. The petitioners grievance is that the mutations have not yet been entered in

the revenue record. The stand of Tehsildar, Panchkula, in the. written statement, is that the petitioners want the mutations on the basis of the mortgage by deposit of the title deeds without payment of registration fees, as per Section 17(1)(c) of the Registration Act 1908 read with Article 1(1)(b) of the Registration Fees Notification dated November 6, 2006 and payment of stamp duty as per Article 6 of the Indian Stamps Act. According to the respondents, an instrument of deposit of the title deeds/equitable mortgage is compulsorily registrable u/s 17(1)(c) of the Registration Act, 1908. Therefore, the question of law involved in the present case is, whether a mutation can be entered in the revenue record in respect of an equitable mortgage by deposit of title-deeds without a deed of mortgage being executed by the mortgagor and without payment of registration fee?

4. Mortgage by deposit of title deeds is a type of mortgage described in Section 58(f) of the Transfer of Property Act. There are other types of mortgages as well, like simple mortgage, mortgage by conditional sale, usufructuary mortgage, English mortgage and anomalous mortgage.

5. Learned Counsel for the petitioners has referred to Rachpal Mahraj Vs. Bhagwandas Daruka and Others, in which it was held that when a debtor deposits with the creditor the title deeds of his property with an intent to create a security, law implies a contract between the parties to create a mortgage and no registered instrument is required u/s 59 of the Transfer of Property Act or in the form of a mortgage deed. Reference has also been made to Slate Bank of Mysore v. S.M. Essence Distilleries Pvt. Ltd. 1993 I.S.J. 580 (Kar)In this case a Division Bench of the Karnataka High Court was considering the case of creation of an equitable mortgage as collateral security for securing loan. The party which deposited the title deed had also later executed a memorandum in favour of the bank confirming deposit of title-deeds. When the principal debtor did not re-pay the loan the bank filed a suit/or recovery of the outstanding amount and also for a mortgage decree for sale of the mortgaged property. The suit filed by the bank was dismissed. In the appeal filed by the bank, question arose regarding whether an equitable mortgage by deposit of title-deeds and subsequent registration of a memorandum confirming the deposit of title-deeds u/s 58(f) of the Transfer of Property Act, rendered the equitable mortgage invalid? The Court held that the memorandum merely confirms an equitable mortgage but did not create a mortgage, as it was merely a record of transaction. The memorandum did not embody the bargain between the mortgagee and mortgagor nor it extinguished the equitable mortgage earlier created by creating a fresh equitable mortgage. Hence, the memorandum did not require to be stamped or registered. The above decision was based on the observations of the Supreme Court in Rachpal Maharaj''s case (supra) and United Bank of India Ltd. Vs. Lekharam Sonaram and Co. and Others, .

6. We are of the view that an equitable mortgage is created by mere deposit of title-deeds. However, when a memorandum is executed by the depositor that

memorandum would not constitute a mortgage requiring to be registered as a mortgage under the Registration Act and Stamp Act, nor would be the memorandum extinguish the equitable mortgage which had earlier been created by deposit of title-deed. The petitioners deposited the. title-deeds of their respective properties as equitable mortgage in terms of the sanction letter dated January 29, 2006 (Annexure P/2). One of the directions in the said sanction letter addressed to the Bank Manager was that he shall ensure that a wall is constructed around the properties to make the property more identifiable and mutation is entered in favour of the bank.

7. It was in pursuance of these directions that the Manger had written to the Tehsildar on February 10, 2007 for recording charge of the bank in the revenue record. This letter is annexed as Annexure P/3. Even the principal borrower approached the Tehsildar through letter dated February 12,2007 (Annexure P/4). Affidavits of the petitioners dated February 18, 2007 are at Annexure P/5, stating that they had created mortgage in favour of the bank u/s 58(f) of the Transfer of Proper Act, 1882 by deposit of original title deeds and had no objection if entries in the revenue record were made in favour of the Punjab National Bank in respect of the aforesaid mortgage.

8. We are convinced that the mortgage which was created in favour of the bank was by deposit of title-deeds and this transaction did not require registration. The provisions of the Registration Act and the Stamp Act did not apply.

9. On behalf of the State it was argued that the government of Haryana had, in exercise of powers under Sections 78 and 79 of the Registration Act, 1908, partially modified the provisions of an earlier notification dated April 17, 1979 and prescribed fees in respect of registration of certain documents. Copy of the notification dated November 6, 2006 is Annexure R/1. Subsequently, the Financial Commissioner issued administrative instructions R/2, dated March 29, 2007, to all Deputy Commissioners stating that there was an ambiguity among Circle Revenue Officers, Banking Institutions and borrowers regarding registration of deposit of title-deed/equitable mortgage and charging of stamp duty and registration fee payable thereon. It was clarified that the instrument of deposit of title-deed and equitable mortgage were compulsorily registrable.

10. We are of the view that an equitable mortgage is created by deposit of title-deeds and not through any written instrument. Simple pledge of the title-deeds to the bank as security creates an equitable mortgage, therefore, there is never an instrument of deposit of title-deed/equitable mortgage. The petitioner simply went to the bank and handed over the title deeds of their respective properties. This act was enough to create a mortgage as envisaged u/s 58(f) of the Transfer of Property Act. Quite often a memorandum is drawn up regarding the handing over of the title-deeds but this memorandum is simply a written record of the pledge. The memorandum itself is not an instrument of mortgage. The judgment of Karnataka High Court has considered this aspect in detail and come to the conclusion that a memorandum evidencing a transaction of equitable mortgage

neither creates a mortgage nor establishes an equitable mortgage created by the deposit of title-deeds, therefore, such a memorandum was not compulsorily registrable.

11. Even the notification dated November 6, 2006 did not cover the case of equitable mortgage by deposit of title-deeds. It is only through the subsequent administrative instructions dated March 29, 2007 that instrument of deposit of title-deeds have been made compulsorily registerable and this too through a clarification.

12. The settled law is that a mortgage created by a simple deposit of title-deeds. After the deposit has been made, the parties may, if they so desire, record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage and would not require compulsory registration either u/s 59 of the Transfer of Property Act or under the notification dated November 6, 2006 (Annexure R71) and instructions dated March 29, 2007 (Annexure R/2).

Resultantly, this petition is allowed. The respondents are directed to enter mutation in favour of the bank recording that the properties which stand equitably mortgaged in favour of the Punjab National Bank, Branch Office Marrahanwala, Panchkula, by deposit of title-deeds.

