(2016) 03 SC CK 0057

In the Supreme Court Of India

Case No : Civil Appeal No. 3812 of 2016 (Arising out of S.L.P. (Civil) No. 8604 of 2011)

Olinda Femandes APPELLANT

Vs

Goa State Co-Operative Bank Ltd. & Ors. RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:
Constitution of India, 1950 — Article 133

Citation : (2016) 5 JT 270 : (2016) 4 Scale 220 : (2016) 13 SCC 298

Hon'ble Judges : Anil R. Dave;Adarsh Kumar Goel, JJ.

Bench : Division Bench

Advocate : Dr. Rajeev B. Masodkar, S.R. Setia, Advocates, for the Appellant; Amit Sharma, Dipesh Sinha, Advocate, Arvind Kumar Sharma, Saurabh Mishra, Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

Anil R. Dave, J. - Heard the learned counsel for the parties.

2. Leave granted.

3. Looking at the peculiar facts of the case and to give quietus to the litigation, we think it just and proper to finally hear the appeal today.

4. The facts giving rise to the appeal, in a nutshell, are as under:

The property in question belongs to seven family members, including the present appellant. The property was mortgaged by Respondent No.6 so as to secure his debt of RS. 2,00,000/-, which he had borrowed from Respondent No.1-bank. The mortgage deed was signed by three co-owners of the property and four other co-owners, including the appellant, were not the signatories to the mortgage deed and according to the appellant, they had not consented to mortgage the said property in favour of Respondent no.1 bank to secure the debt of Respondent no.6.

5. Ultimately the property had to be sold by Respondent No.1 by holding a public auction as Respondent No.6 - the principal borrower, could not repay his dues to the Bank. The upset price of the property in question was fixed at RS. 41,97,500/-, but the property was sold in favour of Respondent No.10, who was the highest bidder, for RS. 5,50,000/- only.

6. The case of the appellant is that the appellant is one of the co-owners of the property which had been mortgaged by her brother without her consent and therefore, the property could not have been sold to realize cash for paying the same to the Bank so as to discharge the debt of Respondent no.6. The property had fetched an amount of RS. 5,50,000/- against the upset price of RS. 41,97,550/- by Respondent No.1-bank in favour of Respondent No.10 and therefore, the sale was not effected properly and as the property was sold at a throw away price, the sale must be set aside.

7. Learned counsel have appeared only for the appellant, the respondent bank and the auction purchaser.

8. Upon hearing the learned counsel, we find it quite shocking that against the upset price of RS. 41,97,550/-, the property has been sold only for RS. 5,50,000/-. It is an admitted fact that the property belonged to all the family members and the said property was not mortgaged by all, but was mortgaged only by a few family members to secure the debt of Respondent no.6.

9. The above facts, which are not disputed, clearly reveal irregularities and therefore, the sale in favour of Respondent no.10 must be set aside, but Respondent no.10 should also be compensated as he had paid the purchase price of RS. 5,50,000/- on 16.6.1998 to the Respondent Bank.

10. In view of the above, we direct that a sum of RS. 5,50,000/- which has been paid by the auction purchaser, be returned to him by the appellant, as the appellant is ready and willing to pay the same, along with 5% compound interest, with yearly rests thereon w.e.f. 16.6.1998 till the date of payment on or before 31st July, 2016. The said payment shall be made through Respondent No.1 Bank. Respondent No.10 has also enjoyed the property in the meanwhile and therefore, we are awarding lesser rate of interest on the amount paid by him towards the purchase price. The property shall be handed over by the auction purchaser i.e. Respondent No.10 to its original owners or to the appellant, who shall take possession on behalf of all the joint owners within one week from the date of receipt of the aforestated amount from Respondent No.1 Bank.

11. The amount payable shall be determined by Respondent No.1-bank and shall be intimated to the appellant as well as Respondent No.10 within two weeks from today. If the said amount is paid to Respondent No.1- bank on or before 31st July, 2016, the sale shall be deemed to be set aside and the property shall be handed over to the owners or to the appellant, as ordered hereinabove, within one week from the date of receipt of the said amount by Respondent No.10- auction purchaser. If the amount is not paid by the appellant on or before 31st

July, 2016, then the impugned judgment shall remain as it is and the appeal would stand dismissed.

12. It has been submitted by the learned counsel appearing for Respondent No.1-bank that the amount of RS. 5,50,000/- had been received by the bank from the auction purchaser and the same has been appropriated towards the dues of Respondent No.6. Some surplus amount is still lying with Respondent No.1-bank. The said surplus amount shall be returned to the present appellant with 8% simple interest. The appellant shall have a right to recover the amount which was due and payable by Respondent No.6 to Respondent No.1 Bank and if Respondent No.6 does not pay the said amount to the appellant before 31st July, 2016, right of Respondent no.6 in the property in question shall be deemed to be transferred to the appellant.

13. In view of the above order, the civil appeal is disposed of as allowed with no order as to costs. Pending applications, if any, stand disposed of.