(2013) 08 P&H CK 0903

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2327 of 1995 (O and M)

Paramjit Singh Bhullar and Another — APPELLANT

Vs

State Bank of Patiala and Another — RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 48

Citation : (2013) 08 P&H CK 0903

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The defendant is in appeal aggrieved against the judgment and decree dated 20.05.1995 passed by the first Appellate Court whereby the suit for recovery for Rs. 79382.79/- was decreed against the Defendants by modifying the decree earlier granted by learned trial Court on 03.01.1994 against defendant No. 1 alone. The plaintiff-Bank filed suit for recovery of the aforesaid amount, inter alia, on the ground that the defendant No. 1, an employee of the Bank, availed loan of Rs. 1,10,000/- for the purchase of ready built house at Patiala under the house loan scheme of the plaintiff-Bank. The loan was to be repaid in 115 installments of Rs. 725/- at the rate of interest of 11.5% per annum. The defendant No. 1 purchased the house vide sale deed dated 19.05.1987. The said defendant executed documents including promissory note and authority letter and deposited title deed to create equitable mortgage. The defendant No. 1 sold the property to defendants No. 2 and 3, the present appellants, without permission of the plaintiff when the property is mortgaged with the plaintiff-Bank. In written statement, the defendant No. 1 admitted the factum of loan and also averred that he applied for permission to sell the property and the Bank Manager has assured him that sanction would be given in routine. It is averred that only half share has been sold whereas the remaining half is still with the defendant. The defendants No. 2 and 3 in their separate written statements denied knowledge of loan and equitable mortgage. It is averred that the original sale deed was shown to defendants No. 2 and 3 on 06.10.1988 and thereafter, the defendant No. 1 executed sale deed in favour of the defendants in respect of half share of the property.

2. The learned trial Court on the basis of pleadings of the parties framed the following issues:-

1. Whether the plaintiff bank is a body corporate constituted under the State Bank of India (Subsidiary Banks) Act, 1959? OPP

2. Whether the suit has been filed by a duly authorized and competent person? OPP

3. Whether the defendant No. 1 took a loan of Rs. 10,000/- from the plaintiff bank on 03.04.1987? OPP

4. Whether the plaintiff is entitled to interest if so at what rate and at what amount? OPP

5. Whether the suit is not maintainable? OPD

6. Relief.

3. The learned trial Court dealt with issues No. 3, 4 and 5 jointly and found that defendant No. 1 might have played fraud with the bank and deposited sale deed by way of equitable mortgage. The learned trial Court decreed the suit against defendant No. 1. However, in appeal, the learned first Appellate Court found that the learned trail court overlooked the statement of defendant No. 1, who admitted in the cross-examination that at the time of the sale of part of the house to defendants No. 2 and 3, he told that the house was mortgage with the Bank. It was held that when the house was under equitable mortgage, therefore, the possession of title deed by defendant No. 1 will not materially alter the matter. The learned first Appellate Court relied upon Section 48 of the Transfer of Property Act that the sale of half share by defendant No. 1 in favour of defendants No. 2 and 3 does not supersede the equitable mortgage. Consequently, the appeal was allowed and the suit was decreed against the defendants.

4. A perusal of the record shows that defendant No. 1 was an employee of the plaintiff-bank posted at Chandigarh at the time of availing loan. The factum of equitable mortgage of the property is not disputed by him. It has also come on record that he has informed defendants No. 2 and 3 about the equitable mortgage. In view of the said fact, the claim of the Bank in respect of nonpayment of loan amount cannot be defeated only for the reason that title deed of the house was shown to defendants No. 2 and 3. A perusal of the sale deed will not show that property was not mortgaged though the production of sale deed when the house was under mortgage is highly improbable by defendant No. 1. There is nothing on record that sale deed was ever handed over

to the purchaser.

5. In view of the said fact, I do not find any error in the findings recorded by the learned first Appellate Court giving rise to any substantial question of law for consideration of this Court in the present second appeal nor has any substantial question of law been framed by the appellants. Accordingly, the present regular second appeal is dismissed.