(1985) 07 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1979 of 1976

Punjab and Sind Bank Ltd. APPELLANT

Vs

Surjit Kaur and others RESPONDENT

Date of Decision : 26-07-1985

Acts Referred:
Transfer of Property Act, 1882 — Section 58(f)

Citation : (1985) 07 P&H CK 0073

Hon'ble Judges : Pritpal Singh, J

Bench : Single Bench

Advocate : Lakhinder Singh, for the Appellant; R.P. Bali, for the Respondent

Final Decision : Allowed

Judgement

Pritpal Singh, J.—Daljit Singh defendant-respondent received a loan of Rs. 6,000/- on 3rd August, 1970 from the plaintiff-appellant Punjab & Sind Bank Ltd. for the purchase of tubewell etc. He also agreed to pay interest at the rate of 5% over and above the rate of Reserve Bank subject to a minimum of 10% per annum. He executed a promissory note and an agreement of hypothecation. Besides this, he created an equitable mortgage of his land in favour of the Bank by depositing the title deeds. Thereafter, the defendant Daljit Singh sold the hypothecated property as well as the mortgaged land to Surjit Kaur, Arjan Singh and Makhan Singh defendants Nos. 2 to 4. Since the lean was not returned to the bank, the latter filed a suit for recovery of Rs. 6151.49 against all the four defendants. The amount was sought to be realised from the sale of the hypothecated property as well as of the mortgaged land with the condition that in case of any short fall, the amount was to be realised from the defendant Daljit Singh personally.

2. Only Surjit Kaur defendant No. 2 contested the suit. The trial Court accepted the plaintiff''s claim and decreed the suit. Surjit Kaur defendant filed an appeal which was partially accepted by the Additional District Judge, Ludhiana. Although the decretal amount was allowed to be recovered from the hypothecated

property but it was held that the bank will not be entitled to recover the amount from the mortgaged land. The reason given was that the document Ex. P. 16 executed by Daljit Singh defendant regarding the mortgage of the land required compulsory registration and since it had not been registered, the mortgage of the land was not valid. The decree of the trial Court was modified accordingly. Against this judgment and decree of the lower appellate Court, the Punjab & Sind Bank has filed the instant second appeal.

3. The sole print for consideration in this appeal is whether the document Ex. P. 16 required compulsory registration. In this document Daljit Singh defendant mentioned that he had already deposited the documents of title of the property the details of which were given therein. Section 58(f), Transfer of Property Act, envisages a form of mortgage by deposit of title-deeds According to this provision, where a person delivers to a creditor documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds. It is then provided in section 59 of the Act that where the principal money secured is one hundred rupees or upwards, a mortgage, other then a mortgage by deposit of title-deeds, can be effected only by a registered instrument. Clearly, therefore, a transaction of mortgage by deposit of title-deeds is not compulsorily registerable. This form of mortgage is also known as an equitable mortgage. It was held in Punjab & Sind Bank Ltd. v. Jaswant Singh (1937) 39 P.L.R. 253 that for creating an equitable mortgage all that is necessary is a loan coupled with deposit of the deeds relating to the property to be mortgaged, with intention to create a charge on the property. No writing is necessary. But if parties choose to put their agreement with respect to the transaction in writing, that document will exclude all other evidence unless registered. However, a memorandum signed by the mortgagor in relation to equitable mortgage by deposit of documents of titles does not require compulsory registration unless the memorandum on its face embodies such terms and is signed and delivered at such time and place and in such circumstances as to lead legitimately to the conclusion that, so far as deposit is concerned, it constitutes agreement between the parties. It was held that a document not constituting the bargain between the parties but which is an evidence of past transaction does not require registration. This view was reiterated by this Court in Sham Lal Thakar Dass Aggarwal Vs. Punjab National Bank Ltd. and Others, and it was held that the firmly settled rule is that if the document per se creates an equitable mortgage it requires registration, but if it merely recites a completed transaction, it does not require registration and it is immaterial whether the creation of the mortgage and the preparation of the memorandum reciting the factum of the completed equitable mortgage with the list of the properties mortgaged may have simultaneously come about. The Supreme Court put a seal of approval on this view in D. D. Seal v. R. L. Phumra AIR 1961 P&H. 81 It was held that in order to require registration the document must contain all the essentials of the transaction and one essential is that the title-deeds must be deposited by virtue of the instrument or acknowledge an

earlier deposit of title-deeds and say further that the title-deeds shall be held as security on the said mortgage

4. A bare reading of Exhibit P. 16 would show that it merely recites of the depositing of the title deeds as past transaction. Neither the title deeds were deposited by virtue of this instrument nor it has been mentioned therein, while acknowledging the earlier deposit of title deeds, that the title deeds shall be held as security on the said mortgage. Thus, in the ratio of the judgment in D. D. Seal (supra) it does not require compulsory registration.

5. The learned respondents'' counsel relied upon Indian Bank Ltd., Hyderabad Vs. Anomula Seshagiri Rao and Sons Co., Vijayawada and Others, None of these judgments is applicable to the facts of this case. In M/s Lekharam''s case (supra) the Supreme Court held that if the parties choose to reduce the contract to writing while depositing the title deeds, the document will be the sole evidence of its terms and would essentially require registration. Similarly, in the case of A.S. Rao & Sons (supra) depositing of title deeds was made by a letter explaining why the title deeds were being deposited which indicated that the parties intended to reduce the bargain into writing and in those circumstances it was held the letter would require registration. In the present case these ingredients are absent and it cannot be held that Exhibit P. 16 constitutes an agreement between the parties. In my view, therefore, the lower appellate Court was wrong in holding that Exhibit P 16 is inadmissible in evidence for want of registration.

6 In this view of the matter the instant appeal is allowed with, costs, the judgment and decree of the lower appellate Court are set aside and those of the trial Court are restored.

