(2013) 07 DEL CK 0038

In the Delhi High Court

Case No : Regular First Appeal 260 of 2003, CM No''s. 590 of 2003, 10986 of 2010 and 23178 of 2010

Rajesh Kumar Gupta APPELLANT

Vs

Pratap Builders and Contractors (P) Ltd. and Another RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18
Specific Relief Act, 1963 — Section 20

Citation : (2013) 07 DEL CK 0038

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Girish Aggarwal and Mr. Sunil Lalwani, for the Appellant; Rajinder Wali, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—These four appeals though by different appellants are against the same two respondents i.e. M/s. Pratap Builders & Contractors (P) Ltd. and Punjab & Sind Bank and again though against separate judgments and decrees (judgments and decrees, dated 7th December, 2002 in RFA No. 260/2003, RFA No. 275/2003 & RFA No. 297/2003 & judgment and decree dated 28th February, 2003 in RFA No. 778/2003) but the counsels for the appellants/ plaintiffs state that the facts in all matters are identical and arguments have been addressed with reference to the record of RFA No. 260/2003. For the said reason, though the Trial Court record in RFA No. 297/2003 & RFA No. 778/2003, which were dismissed in default and were subsequently restored, is not available but the counsels have been heard.

2. The appeals impugn the judgments and decrees of dismissal of the suits filed by each of the appellants/plaintiffs. The said suits were filed pleading; (a) that the respondent no. 1 M/s. Pratap Builders & Contractors (P) Ltd. had constructed a five storied building on a plot of land ad-measuring 4400 sq. mtr. bearing No. 7-

A/2, Rajpur Road, Delhi comprising of 40 flats and each of the appellants/ plaintiffs is the owner/purchaser of a flat in the said building; (b) that the construction was commenced in the year 1982-83 and was done after obtaining permissions from all the local authorities; (c) that each of the appellants/ plaintiffs is the purchaser for valuable consideration of his/her respective flat; (d) that Sale Deeds were registered by the respondent no. 1 in favour of each of the appellants with respect to their respective flats and the appellants/plaintiffs are in possession of their flats; (e) that the respondent no. 2 Punjab & Sind Bank had however issued a Notice dated 30th March, 1997 averring that the property No. 7-A/2 on which the flats had been constructed was part of property No. 7-A, Rajpur Road, Delhi which stood mortgaged with the respondent no. 2 Bank and asking the appellants/plaintiffs to deliver possession to the respondent no. 2 Bank. The suits were accordingly filed, (i) for declaration that the respective flats are not the subject matter of any mortgage and that the mortgage if any created by the respondent no. 1 in favour of the respondent no. 2 Bank is null and void and the respondent no. 2 Bank has lost any right, title or interest under the said mortgage; (ii) for declaration of the appellants/plaintiffs as the owners of their respective flats; and, (iii) for injunction restraining the respondent no. 2 Bank from dispossessing the appellants/plaintiffs from the flats.

3. Needless to state that the respondent no. 2 Bank contested the suit. The respondent no. 1 was proceeded against ex parte. On the pleadings of the parties, as many as 12 issues as under were framed on 7th October, 1998:-

1. Whether the suit is bad for the lack of cause of action? OPD

2. Whether the suit is bad for the suppression of material facts? OPD

3. Whether the suit is barred under the res judicata? OPD

4. Whether the jurisdiction of this court is barred under the provision of recovery of debt due to the bank and financial institution of the act? OPD

5. Whether the suit is bad for non-joinder and mis-joinder of the parties? OPD

6. Whether the suit is bad for the lack of locus standi on the part of the plaintiff? OPD

7. Whether the plaint has been properly valued for the purpose of court fee and jurisdiction? OPP

8. Whether the plaintiff is entitled for the declaration as prayed for? OPP

9. Whether the flat bearing no. LGFH, 7A/2 Rajpur Road, Delhi is not covered under any mortgage? OPP

10. Whether the mortgage by defendant no. 1 for the property 7A Rajpur Road, Delhi in Delhi is null and void? OPP

11. Whether the plaintiff is entitled for the mandatory injunction as prayed for? OPP

12. Relief.

4. The Trial Court, after recording evidence, has held:-

(a). That the suit filed by the appellants/plaintiffs was not bad for lack of cause of action;

(b). That the appellants/plaintiffs had suppressed the material facts in the plaint, of the respondent no. 2 Bank having filed applications before the Debt Recovery Tribunal (DRT) for recovery of its dues and orders for sale of the mortgaged properties including property no. 7-A, Rajpur Road, Delhi having been made in the said proceedings and that the appellants/plaintiffs had filed applications in the DRT but which were dismissed;

(c). That the suit of the appellants/plaintiffs was not barred by res judicata;

(d). That the jurisdiction of the Civil Court to entertain the suits for the reliefs sought of declaration/injunction was not barred by Section 18 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(e). That the suit of the appellants/plaintiffs was not bad for non-joinder or mis-joinder of parties;

(f). That the appellants/plaintiffs had locus standi to institute the suit;

(g). That the suit had been properly valued for the purposes of Court Fees and jurisdiction;

(h). That the flats owned and in possession of the appellants/plaintiffs built on 7-A/2 Rajpur Road were part and parcel of property No. 7A, Rajpur Road, Delhi which was mortgaged with the respondent no. 2 Bank and the appellants/plaintiffs had failed to prove that their flats did not fall in or are not part and parcel of property No. 7A, Rajpur Road, Delhi and were thus not entitled to the reliefs of declaration and injunction; and,

(i). That in view of the orders of the DRT of sale of the mortgaged property including property No. 7A, Rajpur Road, Delhi, the mortgage could not be said to be null and void.

Resultantly the suits were dismissed.

5. Notice of these appeals was issued and vide ex parte ad interim orders, status quo was ordered to be maintained with respect to the said flats. The appeals were subsequently admitted for hearing and the interim orders made absolute.

6. The counsels have been heard.

7. The counsel for the appellants/plaintiffs has invited attention to the order dated 2nd December, 2011 in these appeals whereby the respondent no. 2 Bank was directed to file an affidavit setting out clearly the amounts due to it under the mortgage. He has further drawn attention to the voluminous affidavit filed in

pursuance thereto. However it has been put to the counsel for the appellants/ plaintiffs as to what is the purport of this exercise. It is not disputed as aforesaid that the respondent no. 2 Bank has in the proceedings before the DRT enforced the mortgage and obtained the order for sale of the property on which the flats of the appellants/plaintiffs are constructed. This Court, in these proceedings is not to adjudicate as to how much amount is due to the respondent No. 2 Bank. No purpose therefore will be served by going into the correctness or otherwise of the affidavit filed by the respondent no. 2 Bank. The counsel for the appellants/ plaintiffs agrees and has not pursued the said aspect.

8. The sole contention with which the appellants/plaintiffs filed the suits was that, the property on which their flats were constructed was not the property which had been mortgaged. The finding in this respect has been returned against the appellants/plaintiffs. The counsel for the appellants/plaintiffs has thus been asked as to what is the evidence in this respect.

9. The counsel for the appellants/plaintiffs has first drawn attention to the Sale Deed which was deposited with the respondent no. 2 Bank and which is a Sale Deed executed by one Shri Inder Narain Seth of property No. 7A, Rajpur Road, Delhi ad-measuring 6000 sq. yds. in favour of Shri Pratap Singh. The counsel for the appellants/plaintiffs informs that the sons of said Shri Pratap Singh were/are the Directors of the respondent no. 1 Company which has constructed and sold the flats and with whom the appellants/plaintiffs dealt. The counsel for the appellants/plaintiffs, from the description of the boundaries of the said 6000 sq. yds. of land subject matter of the said Sale Deed has sought to argue that the land on which the flats are constructed is not the 6000 sq. yds. of land subject matter of the said Sale Deed. It is contended that the land on which the flats are constructed is on the ''East'' of the said 6000 sq. yds. of land and which land on the ''East'' is in the said Sale Deed described as ''government land''. It is contended that the flats of the appellants/plaintiffs have been constructed over government land.

10. On enquiry as to what was the title or right of the respondent no. 1 to raise construction of the flats on government land, the counsel contends that that is not the concern of these suits in as much as all that the appellants/plaintiffs are required to establish is that the land on which their flats have been constructed is not the land subject matter of the Sale Deed which was mortgaged with the respondent no. 2 Bank.

11. The counsel for the appellants/plaintiffs has next been asked to show from the Sale Deeds of the flats executed by the respondent no. 1 in favour of the appellants/plaintiffs the lineage of the title of the respondent no. 1 to the land on which the flats were constructed and which flats have been sold to the appellants/ plaintiffs.

12. The counsel for the appellants/plaintiffs on going through the said Sale Deeds states that in the Sale Deeds of the flats in favour of the appellants/

plaintiffs describe the land on which the flats are constructed as the land purchased by Shri Pratap Singh from Shri Inder Narain Seth (under the Sale Deed which was mortgaged with the respondent no. 2 Bank).

13. Once that is the position, no further enquiry is needed or called for in as much as the sole contention aforesaid of the appellants/plaintiffs is falsified from the documents of title of the appellants themselves.

14. Rather, I am appalled as to why, in the face of position emerging from admitted documents, the suit and these appeals remained pending for decades, to the prejudice of recovery of public monies by the respondent No. 2 Bank.

15. Faced therewith, the counsel for the appellants/plaintiffs states that the description of the land on which the flats are constructed in the Sale Deed in favour of the appellants/plaintiffs is incorrect.

16. That is however not the case of the appellants/plaintiffs. The appellants/plaintiffs have not challenged the recitals to the said effect in the Sale Deeds in their favour and have not claimed any declaration with respect thereto. It is also not the case of the appellants/plaintiffs as to which is the land on which their flats are constructed if not the land as described in the Sale Deeds in their favour.

17. The counsel for the appellants/plaintiffs at this stage states that liberty be granted to the appellants/plaintiffs to take appropriate proceedings challenging the description of the land in the Sale Deeds in favour of the appellants/plaintiffs.

18. All that can be observed is that if the appellants/plaintiffs after these proceeding are entitled in law to take any such action, they would be so entitled, subject of course to the objections of the respondent no. 2 Bank in this regard.

19. The counsel for the appellants/plaintiffs in RFA No. 297/2003 and RFA No. 778/2003 also contends that the respondent no. 2 Bank having allowed a multi-storied building to come up on the land mortgaged with it and having not warned the prospective buyers that the land was mortgaged with it, is not entitled to now enforce the mortgage against the appellants/plaintiffs. He is however unable to cite any principle of law on the basis whereof it can be said that the valuable rights as mortgagee of the respondent no. 2 Bank in the property stands extinguished. Even otherwise in my view a mortgage attaches itself to the property and it is the persons dealing with the property who have to exercise all caution while acquiring rights therein and who will suffer if do not exercise such caution. It is not in dispute that the Sale Deed of the land since the year 1976 is lying with the respondent no. 2 Bank. The appellants/plaintiffs are unable to show as to what care and caution they exercised in asking for inspection of the original Sale Deed of the land which could not have been shown by the respondent no. 1 to the appellants/plaintiffs. Once the appellants/plaintiffs chose to, without satisfying themselves as to the custody of the original Sale Deed of the land with the person from whom they were purchasing flats, go ahead with the said purchase, they cannot be heard to put the onus on the respondent no. 2

Bank and defeat the mortgage. The plea of the bona fide purchaser for value is a plea of the creation of Section 20 the Specific Relief Act, 1963 only and a person howsoever bona fide and honest if pays consideration and purports to acquire title from a person who has no title to convey, cannot claim any title to the property in his favour. Even otherwise, no evidence is shown to demonstrate that any action of the respondent no. 2 Bank led the appellants/plaintiffs to deal with the respondent no. 1.

20. No merit is thus found in the appeals which are dismissed; however no order as to costs.

21. The counsel for the respondent no. 2 Bank during the hearing informs that in another proceeding a Settlement has been arrived at between the principal borrowers and the respondent no. 2 Bank but which till date has only been partly complied with; that it is a part of the said Settlement that upon each individual flat owner paying the amounts mentioned in that Settlement, the respondent no. 2 Bank will issue an NOC with respect to the individual flats under instructions from the principal borrowers and their strategic investors.

22. It is made clear that the dismissal of this appeal shall not come in the way of the appellants/plaintiffs availing of the said Settlement.

23. It is further informed that the balance amount to be recovered under the said Settlement in LPA No. 328/2011 is Rs. 8,80,00,000/- though there is a default clause. Decree sheet be drawn up.

