

(2009) 01 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (C) No. 9003 of 2008

Shiban Krishan Kaul

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Citation : (2009) 157 DLT 607 : (2009) 7 ILR Delhi 49

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Siddarth Yadav and D.N. Rao, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—The present writ petition has been filed against the order of the Recovery Officer, Debt Recovery Tribunal (hereinafter referred to as 'DRT') whereby authorizing the receiver to take physical possession of the immovable property bearing No. 3/17, Rajasthan Housing Board Colony, Bhiwadi, Rajasthan (hereinafter referred to as the 'property').

2. The brief facts of the case which led to the present writ petition as per the case set up by the petitioner are as follows:

(a) The Petitioner Shri Shiban Krishan Kaul and Respondent No. 3 Shri P.D. Agarwal entered into an Agreement to sell on 3rd May, 1990 whereby the Petitioner was taken into employment of Respondent No. 2 M/s. Electronic Circuits Ltd. As per the agreement, the Petitioner in addition to the salary, was sold the property in question and installments thereof were deducted from the salary payable to the Petitioner.

(b) The Petitioner was to remain in employment of Respondent No. 2 for a minimum period of 5 years, so as to be entitled to acquire title over the property. The Petitioner after completing 5 years in employment, resigned from the employment of Respondent No. 2.

(c) In the meanwhile, the Respondent No. 1 Indian Bank commenced recovery proceedings against Respondent No. 2 & 3. Separate proceedings were commenced against the said Respondents before the High Court of Rajasthan.

(d) In the proceedings before DRT, Delhi the Respondent No. 3 filed an affidavit giving description of the immovable properties owned by him. The property as described above was listed as his personal property. Even though the aforesaid property was neither mortgaged nor charged with Respondent No. 1, the bank sought attachment order against the said property.

(e) The Petitioner upon acquiring knowledge of the said proceedings pending before Respondent No. 4 Recovery Officer, DRT filed an application as the third party/objector. Therein, it was contended that the Petitioner has been in possession of the said property since the year 1990 and his possession had not been disturbed. Further, even though transfer papers had not been executed by Respondent No. 3, however all dues towards the property were already being cleared by the Petitioner in his capacity as owner.

(f) The Petitioner simultaneously instituted a suit for specific performance before the Civil Judge, Tijara, Rajasthan against Respondent No. 2 & 3.

(g) The Civil Judge passed an interim order in favour of the Petitioner thereby directing the Respondent No. 2 & 3 (defendants therein) not to transfer, alienate, etc. possession of the suit property in favour of a third party.

(h) The Respondent No. 4, however, appointed Respondent No. 5 as a Receiver to take over the immovable property of the Petitioner.

(i) Hence, the present writ petition has been filed.

3. The learned Counsel for the Petitioner contended that in terms of employment contract dated 3rd May, 1990, Respondent No. 3 executed an Agreement to sell and Arrangement of Appointment whereby it was agreed that Respondent No. 3 shall sell/transfer his immovable property in favour of the Petitioner. Thereafter, the Petitioner worked with the Respondent No. 2 Company till 2nd January, 1996. The Petitioner and his family came into peaceful and vacant possession of property bearing No. 3/17, Rajasthan Housing Board Colony, Bhiwadi, Tehsil-Tijara, District Alwar, Rajasthan in the year 1990. The Petitioner was shocked to receive a notice issued under the signatures of Respondent No. 4 whereby the Petitioner was informed that a Petition/claim had been filed by Respondent No. 1 before the Debt Recovery Tribunal against Respondent No. 2 and 3. He further submitted that Respondent No. 3 had filed an affidavit wherein he wrongly stated that he owns the immovable property as mentioned herein above. Even otherwise, the property had never been mortgaged by Respondent No. 3 with Respondent No. 1 and thus, was not a collateral security whereby Respondent No. 1 could in any manner whatsoever act against the said property or proceeds to recover its dues, if any, against Respondent No. 2 & 3 from the said immovable property. Furthermore, the title in the said property had changed in

favour of the Petitioner much prior to the initiation of the proceedings by Respondent No. 1 before the DRT.

4. He thus submitted that firstly, Respondent No. 3 is not the owner of the immovable property, especially after its sale in favour of the Petitioner in 1990. Secondly, even if for the sake of argument it is to be agreed, though not admitted that the Respondent No. 3 is the recorded owner, however even then the said property is neither mortgaged with the Respondent No. 1 bank nor any lien/ charge has been created thereon by Respondent No. 3 in favour of Respondent No. 1. Thus, in no way the Respondent No. 1 can proceed against the said property. In support of his contention, he stated that he is the absolute owner of the aforesaid property and neither the original owner Shri P.D. Agarwal nor anybody else has any right, title or interest in the aforesaid property. He further stated that this property was neither mortgaged nor charged with anybody except with the Petitioner. The Petitioner has filed papers/documents like Agreement to sell dated 3rd May, 1990 in support of the claim that he is in possession of the property.

5. The main contention of the Petitioner in the present writ petition is that he is the absolute owner of the impugned property and neither the original owner Shri P.D. Agarwal nor anybody else has any right, title or interest towards the aforesaid property. The claim of the Respondent Bank is that this property was attached on the basis of an affidavit wherein the original owner had disclosed that he is the owner of the impugned property. In our view, the Petitioner all along the proceedings and as also in front of us has not been clear about his interest in the impugned property. He himself is not sure as to in what capacity, he is residing there.

6. The Recovery Officer, Debt Recovery Tribunal in its order dated 12th November, 2008 has recorded the following findings:

(a) From the information and facts placed before this forum, it is seen that the objector has been changing stand according to his convenience.

(b) A letter was written by the objector to this forum on 22nd December, 2006 wherein it was, inter alia, submitted that:

I have the first charge on the property of H. No. 3/17, Rajasthan Housing Board Colony, Bhiwadi as Shri P.D. Agarwal who is the promoter/Director of the company named M/s. Electronics Circuit Ltd has not paid my dues to me after closure of the company.

It is again submitted in his letter:

So by this letter I wish to request your good office to look into my interest and recovery of my dues which amount to about Rs.3, 50,000/- before taking any final decisions in finalizing the case and passing any order

(c) In the report dated 17th May, 2007 filed by the Court Auctioneer who was

deputed to conduct the sale of the impugned property, it is stated that the objector (S.K. Kaul) who alleged himself to be the tenant of the property made wrongful interference and warned the bank officers that no bid would be allowed to be made by the interested bidders. The auction ultimately failed for want of bids.

(d) In the present objections filed on 30th October, 2007, however, it is claimed that he is the absolute owner of the impugned property and neither the original owner Shri P.D. Agarwal nor anybody else has any right, title or interest towards the aforesaid property.

(e) It is seen that the objector has all along been mercurial in his stand about his interest in the property. He himself is not sure as to in what capacity he is residing there. It amply proves that his objections are not justifiable.

7. It is to be noted that as per the facts placed before this court and as noted from the earlier stand of the Petitioner in his capacity as objector before the Tribunal, the Petitioner has been changing stands consistently. In the first instance, the Petitioner wrote to the Tribunal, a letter dated 26th December, 2006 wherein he claimed that he has the first charge on the impugned property because Shri P. D. Agarwal who is the Promoter-Director of the company has not paid his dues after the closure of the company. In the report dated 17th May, 2007 filed by the Court Auctioneer who is deputed to sell the impugned property, it is stated that the Petitioner alleged himself to be the tenant of the property making wrongful interference and further warning Bank Officers that no bid would be allowed to be made by the interesting bidders. In the objections filed on 30th October, 2007 and in the present petition filed before us, the Petitioner has claimed that he is absolute owner of the impugned property and neither the original owner nor anybody else has right, title or interest in the aforesaid property. Thus, three contradictory and differing stands have been adopted by the petitioner, namely, first charge towards dues; rights as a tenant and as the purchaser in the course of employment.

8. The Respondent Bank has rightly attached the impugned property on the basis of an affidavit filed by Respondent No. 3 Shri P.D. Agarwal which disclosed that he is the original owner of the impugned property. Alongwith this affidavit Shri P.D. Agarwal had also filed as proof of ownership, an allotment letter dated 16th October, 1987 issued by the Rajasthan Housing Board (RHB). To check the veracity of the affidavit the Respondent Bank had enquired the status of the impugned property from RHB who had accordingly confirmed that the impugned property in question is still in the name of Shri P.D. Agarwal and there are dues of Rs. 6, 58,282/- on the aforesaid impugned property. The Petitioner, in our view, as per the facts of the case as discussed above cannot claim to be the absolute owner of the impugned property at all.

9. Thus, the pleas of the Petitioner are not amenable to interference in the writ jurisdiction of this Court, in light of the facts of the present case and in view of

the contradictory stands taken by the Petitioner in the various proceedings. The Tribunal had rightly come to the conclusion that the Petitioner/Objector has all along been inconsistent in his stands about his interest in the impugned property and thus his contention that he is the original owner of the impugned property cannot be sustained. In light of the above and in view of the paradoxical stand taken by the Petitioner and after assessing the facts of the case, we are of the view that the orders of the Tribunal do not permit any interference under Article 226 of the Constitution. In light of the above, the writ petition is dismissed along with all pending applications. Accordingly, the writ petition stands disposed of.