(2009) 02 P&H CK 0213

In the Punjab And Haryana At Chandigarh

The Haryana State Co-operative Housing Federation Ltd. APPELLANT

Vs

Ramesh Jain and Others RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Citation : (2009) 02 P&H CK 0213

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.

C.M. No. 1549-C of 2009

1. This is an application for condoning the delay of 15 days in refiling the appeal.

2. For the reasons stated in the application, C.M. is allowed, the delay of 15 days in refiling the appeal is condoned.

C.M. No. 1550-C of 2009

3. This is an application for making good the deficiency of court fee.

4. For the reasons stated in the application the application for making good the deficiency of Court fee is allowed.

R.S.A. No. 554 of 2009

5. This regular second appeal is directed against the judgments and decree dated 8.11.2006 and 11.8.2008 passed by the learned Courts below vide which suit for declaration with a consequential relief of mandatory injunction filed by the plaintiff-respondent No. 1 stands decreed.

6. The plaintiff-respondent being owner of plot No. 1104, measuring 261 square yards located in Sector 13, Hisar mortgaged the plot as a security of loan of Rs. 2,00,000/- (Rupees two lacs only) taken from defendant No. 1 i.e. the Haryana

State Co-op. House Finance Society Ltd. The equitable mortgage was created by deposit of title deed with defendant No. 1. It was the terms of the mortgage that on repayment of loan with interest to the mortgagee, the mortgage would be deemed to have been redeemed and the property shall be free from all incumbrances.

7. It was also undertaken by defendant No. 1 that document of title would be returned back to the plaintiff. Plaintiff specifically pleaded that there was no privity of contract between plaintiff and defendant No. 3 i.e. appellant herein. The stand taken by the plaintiff that loan stood paid along with interest on 4.5.2000 vide receipt No. 1022 and on that day defendant No. 2 on behalf of defendant No. 1 issued No dues Certificate. It was further the case of the plaintiff that after repayment of the loan a request was made for cancellation of mortgage. However, in spite of repayment, the documents of title were not returned. The notice of the suit was given. However in spite of service defendants No. 1 & 4 chose to absent themselves and were ordered to be proceeded against ex parte.

8. The suit was contested by defendant No. 3, wherein objections were taken with regard to the jurisdiction of the Court as well the plea of estoppel. It was also pleaded that plaintiff had no cause of action to maintain the suit. The stand taken by defendant No. 3 was that loan was advanced by defendant No. 3 through defendant No. 1/Society during the year 1994-95 in three installments. It was defendant No. 1 who mortgaged the suit property with defendant No. 3. On merit, it was pleaded that as Society is yet to repay the loan to defendant No. 3, therefore, the mortgage continued to subsist and, thus, it was claimed that suit deserved to be dismissed.

9. It was further pleaded that defendant No. 3 was liable to repay the loan amount to Life Insurance Corporation of India.

10. On the pleadings of the parties, the learned trial Court was pleased to frame the following issues:

1. Whether the plaintiff is absolute owner of plot in question as fully detailed in para No. 1 of the plaint? OPP

2. Whether the plaintiff had taken a loan of Rs. 2 lacs from the defendant No. 1 and 2 for the purpose of building loan on 1.7.1994 @ 15.7% per annum to be repaid from 1.5.1995 to 1.5.2015 in 80 equal quarterly installments by mortgaging his plot No. 1104, Sector 13, Hisar? OPP

3. Whether the plaintiff has paid full and final payment along with interest as alleged in para No. 3 of plaint? OPP

4. Whether the mortgage deed pertaining to plot No. 1104 situated in Sector 13, Hisar executed between the plaintiff and the defendant No. 1 and or through defendant No. 2 for obtaining loan stands canceled on the basis of no dues certificate by the defendant No. 1 through defendant No. 2 on 4.5.2000? OPD

5. Whether the plaintiff is entitled to decree of mandatory injunction as prayed for? OPP

6. Whether the Civil Court has got no jurisdiction to try and entertain the present suit? OPD

7. Whether the plaintiff has no cause of action to file the present suit? OPD

8. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

9. Whether the suit of the plaintiff is not maintainable in present form? OPD

10. Relief.

11. Issues No. 1, to 5 were taken together and the learned trial Court decided issues No. 1 & 2 in favour of the respondent-plaintiff holding that the plaintiff was absolute owner of the plot in question and also that the loan of Rs. 2,00,000/- (Rupees two lacs only) was taken from defendants No. 1 & 2 as a building loan, which was repayable in 80 equal quarterly installments. It was also held that the security by way of mortgage was created in favour of defendant No. 1.

12. However, issues No. 3, 4 & 5 were decided against the plaintiff and in favour of the defendant and it was held that plaintiff had not paid the full amount and further that the mortgage could not stand cancelled on payment of loan on the basis of No Dues Certificate issued by defendant No. 1. Thus, it was held that plaintiff was not entitled to decree for mandatory injunction.

13. Issue No. 6 was also decided against the plaintiff and it was held that in view of finding recorded on issue No. 3, the jurisdiction of Civil Court was barred as dispute raised touched the business of the society. Whereas, issues No. 7 to 9 were decided against defendants and in favour of plaintiff being not pressed. Consequently, suit was ordered to be dismissed.

14. The plaintiff-respondent preferred an appeal against the judgment and decree passed by the learned trial Court. The learned lower appellate Court held that once it was established on record that the plaintiff had paid all loan amount as was evident from Ex. P-1 to Ex.P-3 especially the account statement Ex. P3, which showed that entire amount due stood paid and balance was nill and ''No Dues Certificate'' was also issued. It could not be held that the total amount was not paid. The learned lower appellate Court also held that defendant No. 1 was proceeded ex parte and, therefore, the pleadings with regard to repayment of loan went unrebutted, therefore, the finding on issue No. 3 of the learned trial Court could not be sustained. The learned Court also looked into Ex. D-2 i.e. the mortgage deed which clearly stipulated that after the repayment of the total amount with interest the mortgage would cease to exist and consequently reversed the finding of the learned trial Court on issues No. 3, 4 and 5 and decreed the suit with directions to appellant defendant No. 4 for return of

documents of title.

15. The learned Counsel appearing on behalf of the appellant raised the following substantial questions of law for consideration by this Court:

1. Whether the learned lower Appellate Court passed a decree for mandatory injunction against the appellant though no relief was claimed against defendant No. 3?

2. Whether on account of non-payment of loan amount by defendant No. 1 to defendant No. 3 the plaintiff was entitled to return of the documents of title?

3. Whether the Civil Court had the jurisdiction to entertain and try the suit?

16. In support of the substantial questions of law raised, the learned Counsel for the appellant contends that the learned lower appellate Court was not justified in directing defendant No. 3 to release the document of title in spite of no relief having been claimed against it.

17. However, there is no force in the contention raised by the learned Counsel for the appellant. Once it is proved on record that contract was between plaintiff and defendant No. 1, the plaintiff was entitled to mandatory injunction. Once the appellant was holding the title deeds in pursuance to the arrangement between defendants No. 1 and there was no privity of contract between plaintiff and defendant No. 3, the learned lower appellate Court was justified in issuing direction to the appellant to return the document of title.

18. The learned Counsel for the appellant also contends that as the documents were deposited by defendant No. 1 to secure the loan advanced to the plaintiff till the amount of defendant No. 3 was cleared, the plaintiff could not claim the return of title deed.

19. However, this plea is also misconceived as already observed once there is no privity of contract between plaintiff and defendant No. 3 and loan was admittedly advanced by defendant No. 1, the defendant No. 3 had no jurisdiction whatsoever to withhold the property of plaintiff to secure the loan payable by defendant No. 1.The dispute, if any, is to be settled by defendant No. 1 and defendant No. 3 inter se and plaintiff cannot be made to suffer for their inter se dispute.

20. The third substantial question of law also deserves to be decided against the appellant. Once the loan amount stood and paid to defendant No. 1, the contract came to an end.

21. Admittedly, no loan was advanced by defendant No. 3 to plaintiff so as to claim that the matter fell within the purview of Cooperative Societies Act to bar the jurisdiction of the Civil Court.

22. The plaintiff in the facts and circumstances had the remedy only to go to the Civil Court as the plaintiff was neither member of defendant No. 3 nor he had

taken any loan from defendant No. 3.

23. Thus, the substantial questions of law as framed deserved to be answered against the appellant-defendant No. 3.

24. No merit.

25. Dismissed.