

(2023) 03 KL CK 0170
In the High Court Of Kerala
Case No : Writ Petition (C) No. 4806 Of 2023

Vinu Madhavan

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Transfer of property Act, 1882 — Section 58, 60A, 83, 91

Citation : (2023) 03 KL CK 0170

Hon'ble Judges : Shaji P. Chaly, J

Bench : Single Bench

Advocate : R.Muraleekrishnan, V.S.Nowshad, T.M.Reshmy, Sithara.S, Binu K.B., M.Jithesh Menon

Final Decision : Allowed

Judgement

Shaji P. Chaly, J.

1. The writ petitioner who has availed housing loans from the State Bank of India, Vennala Branch, Kochi, respondent No.1, has filed the writ petition, seeking a writ of mandamus commanding the respondents to release the security documents, including the original title deed pertaining to Exhibit P1, to the petitioner at the earliest and for other related reliefs.

2. Brief material facts for the disposal of the writ petition are as follows:

The petitioner, in the year 2015, has availed housing loans for a total amount of Rs.16 lakhs from the respondent Bank by mortgaging the original of Exhibit P1 title deeds of his property. According to the petitioner, his business collapsed and to tide over the said situation, during the year 2016, the petitioner's wife got her share in cash from her family and offered to invest the same into the petitioner's business, subject to the condition that $\frac{1}{4}$ share in the petitioner's property including the right and ownership of the first floor of the building therein would be assigned to her. Accordingly, a deed was executed in favour of the petitioner's wife.

3. Thereafter, in the year 2022, the respondent Bank was made aware of the execution of settlement deed in respect of the mortgaged property and thereupon, the Bank asked the petitioner to close the loan accounts. Accordingly, the loans were closed by the petitioner on 07.04.2022, as is evident from Exhibit P3 closure letter dated 12.04.2022. Even though the petitioner requested to release the security documents, including title deed of his property, the Bank did not take any action.

4. While so, by Exhibit P7 letter dated 21.07.2022, the Bank communicated to the petitioner that the account is classified as fraud consequent to the alienation of the property without the permission of the Bank and therefore, the Bank intends to initiate legal action against the petitioner.

5. The second respondent has filed a statement reiterating the stand adopted by the Bank in Exhibit P7 letter. It is the contention of the Bank that during the subsistence of the mortgage, a portion of the property was alienated by the petitioner in favour of his wife; thereafter, a portion of the said property was mortgaged before the Kanayannur Taluk Co- operative Agriculture and Rural Development Bank and two loans were availed by concealing the mortgage made in favour of the respondent bank. Therefore, the contention of the Bank is that the Bank is entitled to proceed against the petitioner.

6. I have heard the learned counsel for the petitioner Sri. Muraleekrishnan and the learned Standing Counsel for the Bank, Sri. M. Jithesh Menon, and perused the pleadings and materials on record.

7. The basic question to be considered is, merely because the mortgaged property was transferred or alienated by the petitioner during the subsistence of the mortgage, but the entire loan amounts are paid to the satisfaction of the Bank, whether the bank is entitled to retain the security documents. In order to understand the real implication of a mortgage, it is worthwhile to refer to Section 58 of the Transfer of property Act, 1882, where the term 'mortgage' is interpreted as the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

8. Admittedly, the loan account was closed by repayment and the Bank's interest consequent to the mortgage of the property is protected fully; and therefore, the title deed deposited by the petitioner before the Bank creating a mortgage is no more required in the transaction.

9. So also, as per Section 60-A of the Act, 1882, a mortgagor can seek redemption, on the fulfillment of any conditions on the fulfillment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re- transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

10. That apart, Section 83 of the Act, 1882 makes it clear that at any time after the principal money payable in respect of any mortgage has become due and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage and seek redemption of the mortgage.

11. Section 91 of the Act, 1882 deals with persons who may sue for redemption, which specifies that besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:— (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same; (b) any surety for the payment of the mortgage-debt or any part thereof; or (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

12. On an analysis of the afore discussed provisions, it is clear that merely because the property was transferred by the petitioner during the subsistence of the mortgage, however the interest of the Bank is protected by closing the loan account, the Bank is not entitled to withhold the security documents on the ground that the petitioner has transferred the property during the subsistence of the mortgage. Further, the Bank is not entitled to adjudicate an issue with respect to the fraud allegedly committed; and merely because the Bank initiates any action, the Bank is not entitled to detain the title documents and other security documents submitted by the petitioner before Bank. This is because the mortgage was created solely for the purpose of securing the loans, which was paid off by the petitioner. Therefore, if at all the bank suffered any loss consequent to the transfer of the property made by the petitioner, it has to be adjudicated by a competent court of law and not by the bank. Therefore, the unilateral action of the bank withholding the security document is an illegal and arbitrary action.

13. The Bank does not have a case that the Bank has proceeded with the sale of the mortgaged property before the loans were closed by the petitioner; and that, consequent to the assignment/transfer of the mortgaged property made by the petitioner, the Bank has suffered any loss.

Considering the facts, law and the discussions made above, I am of the considered opinion that the petitioner is entitled to succeed in the writ petition. Accordingly, the writ petition is allowed, and there will be a direction to the respondents to release the title documents and other security documents furnished by the petitioner on account of the loan account Nos. 67310713808, 67310712533 and 67372186426 to the petitioner at the earliest, at any rate within three weeks from the date of receipt of a copy of this judgment.