(2010) 03 AHC CK 0184

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24683 of 2009

Vipin Kumar Kansal and another APPELLANT

Vs

Debt Recovery Appellate Tribunal at Allahabad and others RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Citation : (2010) 03 AHC CK 0184

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioners, questioning the validity of decision dated 27.07.2009 taken by the Chairperson of Debt Recovery Appellate Tribunal, Allahabad in Appeal No.770 of 2007 (Vipin Kumar Kansal and another vs. Bank of India and others) arising out of order dated 04.10.2006 passed by the Presiding Officer, Debt Recovery Tribunal, Lucknow.

2. Brief background of the case, as disclosed in the writ petition, is that Ghaziabad Improvement Trust granted lease in favour of Jamuna Das Gupta father of Santosh Kumar Jindal grandfather of Rajeev Kumar Jindal in respect of plot No. K.C. 68 measuring 246.66 square meter situated in Kavi Nagar, District Ghaziabad, on 31.12.1966. Civil Suit No.1323 of 1996 was filed by Santosh Kumar Jindal before Civil Judge (Senior Division), Ghaziabad, and therein Jamuna Das Gupta (father), Dinesh Kumar Jindal, Ashok Kumar Jindal, Anil Kumar Jindal, Sanjay Kumar Jindal, all sons and the daughter Smt. Sushila Devi were impleaded as parties. Said suit was decided on the basis of compromise, wherein each and every family member of Jamuna Das Gupta was signatory, and as per the aforesaid compromise, decree was passed on 05.08.1997 and the property in question, viz. K.C. 68, measuring 246.66 square meter, Kavi Nagar, District Ghaziabad was transferred to Santosh Kumar Jindal through family compromise. Based on the said decree, Santosh Kumar approached the Bank of India and created a mortgage of the said property and took loan. Before the

Bank a consent letter dated 21.08.1997 written by Ghaziabad Development Authority Officer was also produced, wherein permission was accorded to create mortgage of the mortgaged property in favour of the Bank. It appears that after the said property had been mortgaged with the Bank, Jamuna Das Gupta got converted the property in question into free hold property in his name on 22.12.1999. Jamuna Das Gupta executed power of Attorney in favour of Santosh Kumar Jindal. Said Santosh Kumar being holder of power of attorney of Jamuna Das Gupta on 13.09.2002 entered into an agreement to sell with the petitioners, and subsequently, sale deed was executed on 29.03.2003. As M/S Ganga Tea Products failed to pay off the loan, proceedings were initiated and orders were passed in favour of the Bank for recovery of the amount in question, thereafter, for selling the property in question proceedings were undertaken, then objections were filed by the petitioners contending therein that they were bona fide purchasers for value without notice, as such property in question cannot be auctioned. Objections preferred on behalf of the petitioners were accepted by the Recovery Officer of Debt Recovery Tribunal on 24.11.2003. Thereafter, Debt Recovery Tribunal on 04.10.2006 proceeded to pass order in appeal preferred under Section 30 of the aid Act, by for reversing the earlier order, and holding that the mortgage executed in favour of the bank was valid and buyers were not baonfide purchasers. Against the said order, appeal had been preferred before the Debt Recovery Appellate Tribunal, Allahabad and the same has been dismissed. At this juncture, present writ petition has been filed.

3. Counter affidavit has been filed by the bank to which rejoinder affidavit has been filed. Service on respondent Nos 4 to 7 has already been accepted to be sufficient, and thereafter with the consent of the parties, who are before the Court present writ petition has been taken up for final hearing and dispoosal.

4. Sri Abhitab Kumar Tiwari, learned counsel for the petitioner, contended with vehemence that in the present case mortgage was not at all valid and the same was executed by totally incompetent person and the circumstances clearly reflected that the petitioners were bona fide purchasers for value without notice, as such the impugned orders are liable to be quashed and the writ petition deserves to be allowed.

5. Countering the said submission Sri Sanjeev Singh, learned counsel appearing for the Bank, on the other hand, contended that in the present case, the petitioners cannot be termed to be bona fide purchasers for value without notice, inasmuch as they were close relatives of the incumbents from whom they purchased the premises and further in the present case equitable mortgage had been validly created, and without verifying the original documents, knowingly, transaction had been entered into in order to defeat the legitimate claim of the Bank, as such writ petition deserves to be dismissed.

6. After respective arguments have been advanced, factual position which emerges in the present case, and to which there is no dispute, that with regard to the property which is subject matter of dispute, qua the same lease was

granted by the Ghaziabad Improvement Trust in favour of Jamuna Das Gupta, father of Santosh Kumar Jindal and grandfather of Rajeev Kumar Jindal in respect of plot No.KC 68 measuring 246.66 square meter, Kavi Nagar, District Ghaziabad on 31.12.1966. Said property was transferred to Santosh Kumar Jindal through compromise decree in suit No.1323 of 1996. On the basis of the said decree, Santosh Kumar Jindal subjected the property in question to an equitable mortgage on 22.08.1997 and took loan in favour of the firm M/S Ganga Tea Products by depositing the original lease dated 31.12.1966 along with certified copy of the decree of civil court dated 23.07.1997 and also accompanied with consent letter dated 21.08.1997 of the Officer of Ghaziabad Development Authoroity . In spite of the fact that Jamuna Das Gupta had lost his interest in the property in question, based on the said compromise decree, he got the said property converted into free hold vide free hold deed dated 22.12.1999. It transpires from the record that said Jamuna Das Gupta intended to sell the said property and for this purpose objections are alleged to have been invited on 23.08.2002, and when no objections were received, then agreement to sell was executed by Jamuna Das Gupta through his son and power of attorney holder, Santosh Kumar Jindal, on 13.09.2002 in favour of the petitioners for a sum of Rs.14.40 lacs, and later on, sale deed was also got executed on 29.03.2003. As the amount of loan could not be repaid to the bank, proceedings were initiated for recovery and the property in question was sought to be attached, wherein on the objections preferred by the petitioners, the Recovery Officer by order dated 24.11.2003 decided the case in favour of the petitioners. However, said order was reversed by the Debt Recovery Tribunal, and subsequently affirmed in appeal by Debt Recovery Appellate Tribunal.

7. Entire emphasis of the petitioner has been that in the present case once compromise decree in question had not been at all got registered, then in such a situation equitable mortgage could not have been created and once said equitable mortgage was of no consequence, then qua the property in question no exercise could be undertaken as has been done, and petitioners were bona fide purchasers for value as such their interest ought to have been protected .

8. This is true that in the present case lease in question by Ghaziabad Development Authority (initially Ghaziabad Improvement Trust) was in favour of Jamuna Das Gupta, who being fully well aware of the nature of the property entered into compromise with his son Santosh Kumar Jindal and other family members, thereafter, based on the said compromise Santosh Kumar Jindal was shown to have acquired rights in the property in question. After the said decree had been passed, along with the said judgment and decree and the lease deed together with letter of the Ghaziabad Development Authority to create mortgage papers were deposited with the Bank, and based on the same, loan was advanced. Said transaction inter se Jamuna Das Gupta and Santosh Kumar Jindal has binding force. Once Jamuna Das Gupta had given up his rights qua the property in question and assigned the same to his son Santosh Kumar Jindal, and based on the same letter had been issued by Ghaziabad Development

Authority and equitable mortgage had been created, then in such a situation, as far as petitioners are concerned, they cannot collaterally challenge the validity of the said proceeding, specially in the background when power of attorney had been executed in favour of Santosh Kumar Jindal by Jamuna Das Gupta, and it was Santosh Kumar Jindal who had been in fore front to manage the property. Once this is the factual scenario, entire things have been manipulated by Santosh Kumar Jindal in active collusion of Jamuna Das Gupta and equitable mortgage had been created in favour of the Bank, then Bank had the first charge over the property in question and had every right to proceed with auction of the mortgaged property for realization of the amount of loan. The transaction in question is complete inter se Santosh Kumar Jindal, Jamuna Das Gupta, Ghaziabad Development Authority and the Bank and all of them knew fully well that equitable mortgage had been created with the bank and in such a situation if third party right has been created, it is always subject to the right of the Bank. The appellants cannot question the validity of the proceedings so undertaken, which are genuine and bona fide as far as Bank is concerned, and as far as manipulations and manoeuvrings of Santosh Kumar Jindal and Jamuna Das Gupta are concerned, they are proved and need no evidence, as circumstances are speaking for themselves that entire manipulation has been made by Santosh Kumar Jindal, who has tried to manipulate the things to his advantage, initially, by getting the suit compromised on the basis of family partition and then by creating equitable mortgage with the consent of the Ghaziabad Development Authority, and then getting the free hold rights in favour of Jamuna Das Gupta, and then by getting the power of attorney of Jamuna Das Gupta in his favour and then proceeding to execute agreement to sale followed by sale deed. Series of transaction clearly gives loud message in respect of manipulations being made. The equitable mortgage is thus undaunted and has to be accepted valid and based on the same proceedings undertaken by Bank cannot be faulted.

9. Much emphasis has also been sought to be laid that as decree was not registered, as such rights transferred through compromise decree was of no consequence. Conduct of father son duo Jamuna Das Gupta and Santosh Kumar Jindal has been noted in detail. Compromise decree forms part of the record, same is based on family settlement dated 30.06.1997, wherein each and every family member having interest in the property is signatory, and as per the same there were already preexisting rights in the property of the family which by mutual consent was settled. Qua preexisting rights, having been settled, registration was not at all required. Hon''ble Apex Court in the case of Syndicate Bank vs. Estate Officer, 2007 AIR, has taken the view, if any interest in property can be created by reason of transaction or otherwise, which does not require registration, it may not be necessary to have full title before such mortgage is created by deposit of title deeds. A person may acquire title to property irrespective of the nature thereof by several mode: (i) a lease of land which does not require registration; (ii) by way of partition of joint family property; and (iii) by way of family settlement, which does not require registration. Apart from this

property belong to Ghaziabad Improvement Trust, which had been leased out to Jamuna Das Gupta, wherein he had the authority to assign, and here on the basis of settlement, Jamuna Das Gupta had assigned the property in favour of Santosh Kumar Jindal, which was accepted by Ghaziabad Development Authority, by writing letter in favour of Santosh Kumar Jindal, while creating mortgage. Series of transaction, clearly reflect that with open eyes mortgage had been validly created, and as such subsequent transaction, in favour of petitioner was of no consequence.

10. The next question is as to whether the petitioners have been bona fide purchasers for value without notice or not? This much has come in evidence and is not disputed that the appellants are close relatives of Santosh Kumar Jindal and others. In the present case circumstances have been narrated in detail that Jamuna Das Gupta was the original lease holders of the property in dispute, and on account of being lease holder, free hold rights have been created in his favour. At no point of time any attempt had been made by the appellants to get the original lease deed from Jamuna Das Gupta, The said circumstances in itself was indicative of the fact that the appellants themselves were not interested in knowing the genesis and origin of the transaction, and falsely in the sale deed mention has been made that original lease deed has been lost, whereas the fact of the matter was that it was mortgaged with the Bank. The Appellate Tribunal has taken into account each and every aspect of the case and came to the conclusion that the appellants were well aware of each and every circumstances and the record shows that no action, whatsoever, has been taken by the appellants either against Santosh Kumar Jindal or against Jamuna Das Gupta by instituting criminal prosecution or to get their money back. The appellate court has taken note of the fact that publication in daily news "Dainik Bhavi Satta" was just an eye wash, and further specific case of Santosh Kumar Jindal had been that the appellants were very well aware of the entire transaction and they had not at all discharged their liabilities in transaction. Once this is the factual scenario that the transaction entered into by the appellants itself was not bonafide transaction and they had purchased litigation, then in such situation interest of the bank cannot be hampered on technicalities in mechanical manner. In the present case it is writ large that transaction entered by the petitioners also was in furtherance of the well calculated design of Santosh Kumar Jindal and till date no action has been taken against Santosh Kumar Jindal or Jamuna Das Gupta by the appellants for recovery of the amount, whereas in the sale deed there is clear cut mention made that in the event of transaction being defective on any score vendee would be entitled to realise the amount from the vendor. In this background, writ petition deserves to be dismissed.

Consequently, writ petition fails and the same is dismissed.