

CS No. 2634/16

Ritu Gupta Vs Usha Dhand

07/10/2017

Present: Sh. Gaurav Mitra and Ms. Rashmita Roy
Chaudhary, Ld. Counsel for plaintiff.
Sh. Dushyant Singh, Ld. Counsel for non
applicant Kotak Mohindra Bank Ltd.
Mohd. Shahzad, Ld. Counsel for defendant no.
8 i.e. UCO Bank.

Ld. counsel for plaintiff and proposed defendant no. 9 produced original sale deed in their possession in term of order dated 01/09/2017.

Arguments on application under Order 1 Rule 10 CPC heard.

Be put up for order after lunch.

Ld. Counsel for parties are directed to file photocopy of back to back of the aforesaid sale deed with proper attestation by responsible person.

(RAVINDER SINGH)
Addl. District & Sessions Judge (Shahdara),
Karkardooma, Delhi. 07/10/2017.

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At 4.00 p.m.

Present: Sh. Gaurav Mitra and Ms. Rashmita Roy Chaudhary, Ld. Counsel for plaintiff.
Sh. Dushyant Singh, Ld. Counsel for non applicant Kotak Mohindra Bank Ltd.
Mohd. Shahzad, Ld. Counsel for defendant no. 8 i.e. UCO Bank.

1) Vide this order, I shall dispose off plaintiffs application u/o. 1 rule 10 CPC to implead Kotak Mahindra as defendant no. 9 in the suit.

2) Plaintiffs in their aforesaid application alleged that defendant no. 1 & 3 procured a loan of Rs. 17,60,000/- from Citi financial consumer finance limited (CCFIL) so, they executed a demand promissory note in its favour on 22.05.2006 and further in view to secure the aforesaid loan, defendant no. 1 & 3 created a mortgage over her property i.e. plot no. 9 admeasuring 56.79 square yards block J, Krishna Nagar, Ghaundli, Shahdara, Delhi by depositing sale deed executed between Smt. Harbans Kaur and Smt. Krishna Devi on 25-3-1980. Plaintiffs alleged that when the loan agreement was executed on 22.05.2006, defendant no. 1 was the legal owner of the said property in terms of sale deed executed in her favour by Krishna Devi on 05-9-2005. Plaintiffs alleged that due to non payment of loan, CCFIL had invoked arbitration proceedings against Late Smt. Krishna Devi, defendant no. 1 & 3 and obtained an ex-parte award on 31.05.2011.

Plaintiff claimed that the CCFIL filed the execution petition for execution of arbitral award but same was dismissed as withdrawn on 04.01.2013, which suggest that CCFIL was aware of its fraud in collusion with D-1. Further, plaintiffs alleged that on 03.12.2015 notice was issued, by proposed defendant NO. 9 taken over the business assets of CCFIL under section 13 (4) of SARFEASI Act. Plaintiff alleged that proposed defendant no. 9 thereafter approached Debt Recovery Tribunal (DRT) and received a recovery certificate for the same amount against their said property which was served upon them on 22.09.2016. Accordingly, plaintiff claimed that proposed defendant no. 9 is necessary and property party for just decision of the case.

3) Proposed defendant no. 9 contested the application by filing detailed reply stating therein that Smt. Krishna Devi, who became owner of property measuring 56.7/9 sq. yards vide sale deed dated 25-3-1980 sold the same to her daughter i.e., D-1 vide sale deed dated 20-4-2002, hence, D-1 & D-3 rightly mortgaged the property in order to secure the loan taken by them from CCFIL. Further it is pleaded inspite of service of notice U/s 13 (4) SARFAESI ACT borrowed defaulted in repayment of loan, hence, on 03-12-2015 proposed defendant took the symbolic possession over the secured asset i.e., property in question. Further it is pleaded on 22-9-2016 one Sh. Rajesh Verma claiming himself to be the owner of secured asset present before Hon'ble D.R.T and in his present recovery certificate was issued. Proposed defendant no. 9 denied that defendant no. 1 fabricated sale deed dt. 05.09.2005

for taking the loan. Further, proposed defendant no. 9 admitted that CCFIL assigned their loan to it vide deed of assignment dt. 18.07.2012. Further, it is pleaded that proposed defendant no. 9 is neither necessary nor proper party to the suit and plaintiff has every right to approach DRT to contest claim of proposed defendant no. 9. Accordingly, it is prayed for dismissal of the application.

4) I have heard the arguments of Ld. counsels for the plaintiffs and proposed defendant no. 9 and perused the material available on record.

5) It is admitted fact that D-1 & D-3 took loan from CCFIL and in order to secure the said loan they mortgaged the property measuring 56.79 sq. yards with CCFIL. It is also admitted that when D-1 & 3 failed to pay the loan, CCFIL got ex-parte arbitral award dated 31-5-2011 in its favour. The execution petition for execution of award dated 31-5-2011 was dismissed as withdrawn by CCFIL vide order dated 04-1-2013. It is also admitted that property which was mortgaged with CCFIL was sold by Smt. Krishna Devi to D-1 who sold the said property to plaintiff vide sale deed dated 28-4-2010. It is pertinent that if the property was mortgaged with CCFIL then how D-1 had sold the same to the plaintiff. It is also pertinent that the CCFIL assigned its assets with proposed defendant no. 9 vide deed of assignment dated 18-7-2012 i.e., much after the sale deed dated 28-4-2010 of plaintiff qua mortgaged property by D-1. Further, it is pertinent that Smt. Krishna Devi executed sale deed of 56.79 sq. yards in favour of D-1 on 22-4-2002 and after that the

said Smt. Krishna Devi executed the sale deed of property measuring 114 sq. yards (which includes mortgaged property of 56.79 sq. yards) in favour of D-1 on 5th September 2005.

6) Admittedly, plaintiffs filed instant suit for declaration, declaring them as owner of property J-2/9 Krishna Nagar, Delhi by virtue of Sale Deed dt. 28.04.2010 and for declaring five sale deed dt. 23.08.2006, 28.08.2006, 18.10.2006, 27.11.2006 and 26.02.2007 allegedly executed by defendant no. 1 in favour of defendant no. 2 & 3 as null and void and for permanent injunction restraining the defendants from dealing with the property in any manner and also for mandatory injunction. Plaintiff filed their suit initially against Ms. Usha Dhand, her son Sh. Naveen Kapoor and Sh. Aakashdeep Kapoor, PNB Housing Finance, Syndicate Bank, and Sub-registrar as defendant no. 1 to 6 respectively. Subsequently, plaintiff impleaded Bank of Baroda, Shakarpur branch as defendant no. 7 vide order dt. 07.07.2011 and UCO Bank DDA Market, J Block, Saket, New Delhi as defendant no. 8 vide order dt. 14.11.2011 in the suit.

7) It is pertinent to mention that defendant no. 4 & 5 filed separate application U/o. VII rule 11 CPC for rejection of plaint on ground that suit is barred U/s. 34 of SARFEASI Act. The said applications of D-4 & 5 were dismissed by Hon'ble High Court vide order dt. 19.11.2013 (as then case was there). It is also pertinent that plaintiff application U/o. 39 rule 1 & 2 was also disposed of as allowed

by Hon'ble High court vide order dt. 30.10.2014 (as then case was there).

8) In view of aforesaid discussion and considering the fact and circumstances of the present case, I am of considered opinion that proposed defendant no. 9 is necessary and proper party for just decision of the case. Accordingly, plaintiff application U/o. 1 Rule 10 CPC is disposed of as allowed.

9) Plaintiff filed application U/o. 39 Rule 1 & 2 CPC seeking direction against defendant no. 9 to maintain status quo qua suit property till the disposal of the suit.

10) Ld. Counsel for plaintiffs prayed that till the hearing of application for interim relief, interim protection qua possession of property in question be granted as defendant no. 9 has already got issued recovery certificate from Hon'ble D.R.T where case is coming for hearing on 09-10-2017 and in case possession of the property in question is taken over, plaintiff will suffer irreparable loss and injury which can not be compensated by cost.

11) Ld. Counsel for the defendant no. 9 opposed the aforesaid contention of Ld. Counsel for plaintiff.

12) I have heard the Ld. counsel for the parties and perused

the case file including copies of various sale deed filed by plaintiff and defendants including defendant no. 9.

13) Admittedly, defendant no. 9, has not filed the reply to the aforesaid application, so considering the facts of the instant case, till the defendant has not filed the reply to the application, it is deemed fit and proper to direct the defendant no. 9 to maintain the status quo as on today with regard to the property in question i.e., 56.79 sq. yards.

14) In case plaintiff has not supplied the copy of aforesaid application to defendant no. 9 then they are directed to supply the copy of same to the defendant no. 9 who thereafter filed the reply with advance copy to the plaintiff.

15) Be put up for reply and arguments on application U/o. VI Rule 17 CPC as on application 39 Rule 1 & 2 CPC for **18.12.2017**.

**ANNOUNCED IN THE OPEN
COURT TODAY 07-10-2017**

**(Ravinder Singh)
ADJ/Shahdara/KKD, Delhi.
07.10.2017**