

CS DJ ADJ 1104/17

PARDEEP SOLANKI Vs. LUV BHARDWAJ AND ORS.

17.11.2021

Present: Sh. J.V. Rana, Ld. Counsel for plaintiff.  
Sh. Jogender Sehrawat, Ld. Counsel for defendant no.1.  
None for defendant no.2.

Arguments heard on the point of jurisdiction of this Court to try the present suit. Ld. Counsel for plaintiff argued that plaintiff is owner and in possession of the suit property i.e. property bearing Khasra No.54/2 (2-12) out of total 3-16 situated in the revenue estate of village Nasirpur, Delhi. The defendants in collusion with each other committed a fraud with the plaintiff. Defendants prepared forged documents alleging that suit property has been sold by plaintiff to defendant no.1. On the basis of the forged documents, the defendant no.1 procured a loan from defendant no.2 bank. Defendant no.2/PNB Bank was also in connivance with defendant no.1 in the illegal act as it had never tried to verify authenticity of the documents submitted by defendant no.1 for taking loan. The plaintiff had never executed any document for sale etc. with the defendant. The alleged GPA and Will executed by grand-father of the plaintiff in favor of the plaintiff are also forged and fabricated documents on the basis of which the sale deed in question was shown as executed by the plaintiff in favor of defendant no.1. As bank had initiated proceedings under SARFAESI Act to take possession of the suit property, the plaintiff moved before the Ld. DRT against the said proceedings. However, the relief of declaration/cancellation of a document along with injunction can be maintained before the Ld. Civil Court. Further there is clear forgery and fabrication done by the defendants in procuring the loan in question, therefore, present suit is maintainable before this Court. Ld. Counsel had supported his arguments by referring the judgments i.e. Ashok Kumar Rayjada Vs. Bank of Rajasthan & Anr. CS (OS) 1730/2010 of Hon'ble High Court of Delhi; Gurdeep Singh Vs. Punjab & Sindh Bank & Ors. WP(C)

4570/2014 of Hon'ble High Court of Delhi and M/s Visa Agro Industries Pvt. Ltd. Vs. Sh. Charan Singh & Anr., CRP 157/2013 of Hon'ble High Court of Delhi.

Ld. Counsel for defendant no.1 opposed these submissions of Ld. Counsel for plaintiff and stated that the plaintiff had already filed petition before the DRT wherein similar relief have been sought as of the present suit. There is no any forgery or fabrication was committed on behalf of the defendants in taking the loan from the bank. All the documents in favor of the defendant no.1 are genuine documents duly executed by plaintiff. Plaintiff had attained title qua the suit property for executing the sale deed in favor of the defendant no.1 on the basis of GPA and Will executed by his grand-father Late Sh. Kali Ram in his favor. If the plaintiff is having any objection regarding the proceedings under SARFAESI Act, then he may move before Ld. DRT. Jurisdiction of this Court is barred by Section 34 of the SARFAESI Act. Therefore, present suit is not maintainable before this Court due to lack of jurisdiction. Ld. Counsel for defendant no.1 had supported his arguments by referring the judgment i.e. Suraj Bhan Vs. Financial Commissioner (2007) 6 SCC 186.

Written arguments have already been filed on behalf of defendant no.2/PNB. As per the written submissions, defendant no.2 initiated the proceedings u/s 14 of SARFAESI Act, 2002 for taking possession of the suit property and vide order dated 01.07.2017, the Ld. CMM concerned appointed a Court Receiver to take possession of the suit property. Thereafter, the plaintiff had challenged the proceedings before DRT and then before DRAT, where his request for granting ex-parte injunction against the bank was declined. Thereafter, the plaintiff moved before Hon'ble High Court, where the matter is pending. Present suit is barred by Section 10 CPC as well as by Section 34 of the SARFAESI Act. Defendant no.2 has also cited the judgments in support of his arguments i.e. Jagdish Singh Vs. Heera Lal & Ors. (2004) 1 SCC 479 and Mardia

Chemical Limited Vs. Union of India & Ors. MANU/SC/0323/2004.

I have considered the submissions of both parties and have gone through the file. Plaintiff has filed the present suit with the prayers of declaration to declare forged, illegal, null & void to the sale deeds dated 28.04.2005 (5 in number) pertaining to the suit property; for cancellation of the aforesaid sale deeds and for permanent injunction thereby restraining the defendants or their agents etc. from dispossessing the plaintiff from the suit property. As per the plaintiff, he is owner in possession of the suit property as same is ancestral property succeeding by him from his forefathers. As per the revenue record of year 1948-1949, name of grand-father of plaintiff Late Sh. Kali Ram along with others has been recorded in the Jamabandi qua the Khasra No.54 i.e. of the suit property. When Delhi Land Reforms Act, 1954 came into force, Late Sh. Kali Ram became Bhumidhar of the suit property and he died in year 1993. After that father of the plaintiff inherited the Bhumidhari Rights of the suit property. Thereafter, father of the plaintiff had also pursued/answered the litigations qua the suit property filed by DDA and thereafter, under Land Acquisition Act as per the submission and documents filed by the plaintiff. On 02.04.2009, father of the plaintiff died and plaintiff and his brother inherited the suit property. Through the documents regarding or the litigations attended by the plaintiff/his father, plaintiff has shown prima-facie that he remained owner and in possession of the suit property continuously.

However, basic question before the Court at this stage is that whether present suit is maintainable before this Court or is barred by Section 10 CPC or Section 34 SARFAESI Act. Defendant no.2/PNB Bank initiated proceedings u/s 14 of the SARFAESI Act to recover possession of the suit property which was taken by the bank from defendant no.1 as secured assets while granting loan to defendant no.1. Defendant no.1 had taken the loan on suit property on the basis of sale deeds dated 28.04.2005 executed in his favor by the

plaintiff. Through this suit, plaintiff is challenging the said sale deed stating that no any sale deed ever executed by the plaintiff in favor of the defendant no.1 and same is a forged and fabricated document. Perusal of the sale deed dated 28.04.2005 reveals that the same has been executed by the plaintiff in favor of defendant no.1. As per contents of the sale deed, same has been executed by the plaintiff as GPA on behalf of Sh. Kali Ram i.e. grand-father of the plaintiff dated 11.03.1994. The documents filed by defendant no.1 shows that GPA dated 11.03.1994 and Will dated 15.03.1994 was executed by Late Sh. Kali Ram in favor of plaintiff qua the suit property. However, as per para no.7 of the plaint, Sh. Kali Ram was died in year 1993. During arguments Ld. Counsel for plaintiff has also filed copy of death certificate of Late Sh. Kali Ram having date of death as 20.05.1993. If Sh.Kali Ram was died in year 1993, then execution of Will and GPA by him in year 1994 become prima-facie doubtful. The sale deed in question was also allegedly executed by the plaintiff in favor of defendant no.1 on the basis of the aforementioned GPA, on the basis of which the loan has been taken from defendant no.2. Therefore, the plaintiff is seeking cancellation of the said sale deeds through this suit.

Plaintiff is not challenging the appointment of receiver u/s 14 of SARFAESI Act and the proceedings initiated by the DRT for recovery of the loan from the mortgaged property of the plaintiff, but in the present suit he is challenging the sale deeds on the basis of forgery and fabrication by the defendant no.1 in collusion with defendant no.2 for procuring the loan from the bank. It has been observed by Hon'ble High Court of Delhi in case Gurdeep Singh Vs. Punjab & Sindh Bank & Ors. WP(C) 4570/2014 while referring Mardia Chemicals Limited Vs. Union of India (2004) 4 SCC 311 that despite a legal bar in the SARFAESI Act, in exceptional circumstances, where a fraud is alleged, a civil suit is maintainable. It has also been held by Hon'ble High Court of Delhi in M/s Visa Agro Industries Pvt. Ltd. Vs. Sh. Charan Singh & Anr.,

C.R.P. 157/2013 that, *“Since the respondents/plaintiffs seek declaration of the sale deed as null & void, being manipulated and forged documents, the scope of inquiry being beyond the jurisdiction of revenue court only civil suits were maintainable. Referring to Suraj Bhan vs. Financial Commissioner (2007) 6 SCC 186 it is stated that the validity and genuineness of the sale deeds can only be decided by a competent Civil Court”*.

In the present suit, plaintiff had challenged the genuineness and validity of the sale deeds on the basis of which defendant no.1 has taken loan from defendant no.2. Plaintiff had made clear allegation of fraud, forgery and fabrication stating that plaintiff had never executed the said sale deeds and same are forged by the defendants. Although the plaintiff had already filed litigation before the DRT wherein relief of cancellation/declaration were also sought, however, the said forum is not a competent court to grant the such relief which can only be granted by the Civil Court. Hence, in view of the aforementioned discussion and law laid down by Hon’ble High Court of Delhi, Court finds that the bar of Section 10 CPC and Section 34 of SARFAESI Act is not applicable upon the reliefs sought by the plaintiff in the present suit. Accordingly, suit filed by the plaintiff is maintainable before this Court.

Issues have already been settled vide order dated 30.03.2019. Put up for PE on **17.02.2022**.

Plaintiff is directed to file list of witnesses and to supply advance copy of affidavit of witnesses to opposite party before two weeks of next date of hearing. Plaintiff is also directed to take all necessary steps to secure presence of witnesses on next date of hearing.

**(DR. JAGMINDER SINGH)**  
**ADJ-03/SOUTH-WEST**  
**DWARKA/ NEW DELHI**  
**17.11.2021**