KAUK220001892023

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC ANKOLA AT: ANKOLA, UTTAR KANNADA

Dated this the 12th day of October 2023

PRESENT:

Sri. Manohara M.
LL.M.
Senior Civil Judge, Ankola.

ORIGINAL SUIT No.15/2023

Plaintiff: The Kenara District Central Co-Op. Bank Ltd.

-Vs-

Defendants: 1. Shri Vinayak Jatti Naik and another.

I.A.No.I

APPLICANT: The Kenara District Central Co-Op. Bank Ltd.

V/s

RESPONDENT: 1. Shri Vinayak Jatti Naik and another.

ORDER ON IA NO.I

The plaintiff filed this application under Order XXXIX Rule 1 and 2 R/W Section 151 of CPC to restrain defendant No.2, his men, agents, servants or any body by way of temporary injunction from alienating the suit schedule property bearing Sy.No.34/2 area 0-05-11 situating Ankola Taluka Amarkodla Hobli Shedgeri village during the pendency of this suit.

2. In support of this application, the Manager of KDCC Bank Hirgutti Branch has sworn to an affidavit stating that the plaintiff bank advanced a loan of Rs.2,75,00,000/- to the defendant No.1. The suit property was mortgaged to the the plaintiff bank by a registered memorandum of deposit of title deeds dated 19-03-2015 before the sub registrar Karwar for equitable mortgage. The defendant No. l and the sureties failed to repay the loan amount regularly, and they were chronic defaulters. The plaintiff bank initiated an arbitration proceedings against the defendant No. 1 and other sureties to recover the loan dues. The joint registrar Belgaum in Proceeding No.JRL/B/DDS/01/2017-18 passed an award on 01-06-2017 against the defendant No.1 and other sureties and attached the suit property as it was mortgaged for the present loan. The said award was sent to the sale officer as per the provisions of Co-Op. Societies Act, and it is pending before the sale officer. The plaintiff bank received a notice on 17-01-2019 by the Tahsildar Ankola about MR No.H 51/2018-19. By that notice they came to know that the defendant No.1 alienated the property which was mortgaged to the plaintiff bank in favour of defendant No.2 by a registered sale deed dated 15-11-2018. The

plaintiff bank filed objections for the same narrating the facts of mortgage and attachment of the suit property. In spite of that the Tahsildar Ankola passed an order of certifying the mutation entry in favour of defendant No.2 violating the provisions of Co-Op. Societies Act. The plaintiff bank filed an appeal before the Assistant commissioner Kumta in RTS/AP/SR/48/2019-20 against the order of Tahsildar Ankola certifying the mutation entry MR No.H 51/2018-19. But the assistant commissioner Kumta dismissed the appeal stating that the parties have to agitate the matter before the civil court. Thereafter, the defendant No.1 approached the plaintiff bank and prayed time to settle the matter in one time settlement provision available to the borrowers. The defendant No.1 has to repay the loan of Rs.5,95,24,269/-(Five crore ninety five lakhs twenty four thousand two hundred sixty nine) as on 04-02-2023 with interest to the plaintiff bank. But the defendant No.1 never turned up for one time settlement also and never repaid the loan dues till today. Now there is a legal hurdle for the sale officer that the suit property is standing in the name of defendant No.2 as per the sale deed executed in favour of defendant No. 2 because of the wrong mutation entry of the Tahsildar Ankola under the influence of defendants. The sale officer cannot auction the suit land as the record of rights bears the name of defendant No.2. The defendant No.2 is not the borrower or the surety. The defendant No.2 is not the member of our bank. The defendants are close friends and colluding each other, they created the sale deed just to dupe the plaintiff bank in the repayment of the loan dues and to drag on time to repay it. The said sale deed is illegal and void as per law and not binding on the plaintiff bank. Now the defendant No.1 and 2, colluding each other, are trying to sell the suit property to third person for higher price for their illegal gain and put some legal hurdle to them to recover the loan dues. The defendants are real estate goons. They don't hesitate to do any illegal transactions for their benefit. Hence, balance of convenience is in their favour. They have every chance of success in this case. If the injunction is not granted, there is every chance that the defendant No.2 may transfer the suit property to any third persons by way of sale or gift or by any mode. Hence, this application is filed.

3. The defendant No.2 filed written statement and stated the written statement as objection stating that he does not the know that the defendant No.1 borrowed the loan of Rs.2,75,00,000/- from the plaintiff bank and registered the mortgaged suit schedule properties on 19/03/2015 before Sub-registrar office Karwar, and thereafter, the defendant No.1 and the guarantors failed to repay the loan amount, and on 17/01/2019, the Tahasildar Ankola issued notice as per MR No.H50/2018-19, and from the said notice, the plaintiff came to know the sale of suit schedule property by defendant No.1 to defendant No.2 on 15/11/2018, and the

defendant No.1 approached the plaintiff bank and talked for one time settlement, and the defendant No.1 has to pay Rs.5,95,24,269/- as on 04/02/2023, and the defendant No.1 failed to pay the said amount. It is also admitted that the plaintiff preferred an appeal against the order of the Tahasildar before Assistant Commissioner Court, and the said Assistant Commissioner Court dismissed the said appeal, and the defendant No.2 is not borrower and guarantor and he is not the member of the plaintiff bank. It is denied the remaining plaint averments. It is further averred that as per his knowledge, the plaintiff bank created mortgage over suit schedule property without consent and knowledge of the owner Shri Vinayak Jatti Naik, and while borrowing loan, the said Shri Vinayak Jatti Naik mortgaged his converted land, and he has not consented for the mortgage of suit schedule property, and the said mortgaged was redeemed, and there is no encumbrance of plaintiff bank as on this date. The defendant No.2 is a bonafide purchaser. The said Shri Vinayak Jatti Naik has got commercial building at Ankola which is valuable several crores of rupees, and it is mortgaged property. The plaintiff has not taken any action on the said property. Hence, it is prayed to dismiss the application.

4. Having heard both side and having perused the plaint,

IA No.I, WS and other materials following points arise for consideration.

1. Whether the plaintiff made out prima facie case?

2. Whether the plaintiff made out balance of convenience in his favour?

3. Whether the plaintiff is put to irreparable loss and injury which cannot be compensated in terms of money if the temporary injunction is not granted?

4. What order?

5. My answer to the above points are as under:-

Point No.1 : In the affirmative
Point No.2 : In the affirmative
Point No.3 : In the affirmative
Point No.4 : As per the final order for the following:

R E A S O N S

6. Point No.1: There is no dispute that the plaintiff preferred an appeal against the order of the Tahasildar before Assistant Commissioner Court, and the said Assistant Commissioner Court dismissed the said appeal, and the defendant No.2 is not a borrower and guarantor, and he is not the member of the plaintiff bank. It is the case of plaintiff that the plaintiff bank advanced a loan of Rs.2,75,00,000/- to the defendant No.1; the suit property was mortgaged to the plaintiff bank by a registered memorandum of deposit of title deeds dated 19-03-2015 before the sub registrar Karwar for equitable mortgage; the defendant No. 1 and the sureties failed to repay the loan amount regularly, and they were chronic defaulters; the plaintiff bank initiated an arbitration proceedings against the defendant No. 1 and sureties to recover the loan dues; the joint registrar Belgaum in Proceeding No.JRL/B/DDS/01/2017-18 passed an award on 01-06-2017 against the defendant No.1 and sureties and attached the suit property; the said award was sent to the sale officer as per the provisions of Co-Op. Societies Act, and it is pending before the sale officer; the plaintiff bank received a notice on 17-01-2019 by the Tahsildar Ankola about MR No.H 51/2018-19; by that notice the plaintiff bank came to know that the defendant No.1 alienated the suit property; the plaintiff bank filed objections for the same narrating the facts of mortgage and attachment of the suit property; in spite of it, the Tahsildar Ankola passed an order of certifying the mutation entry in favour of defendant No.2 violating the provisions of Co-Op. Societies Act; after dismissal of appeal by assistant commissioner Kumta dismissed stating that the parties have to agitate the matter before the civil court, the defendant No.1 approached the plaintiff bank and prayed time to settle the matter in one time settlement provision available to the borrowers; the defendant No.1 has to repay the loan of Rs.5,95,24,269/-(Five crore ninety five lakhs twenty four thousand two hundred sixty nine) as on 04-02-2023 with interest to the plaintiff bank; but the defendant No.1 never turned up for one time settlement also and never repaid the loan dues till today; the defendants are close friends and colluding each other, they created the sale deed just to dupe the plaintiff bank in the repayment of the loan dues and to drag on time to repay it; the said sale deed is illegal and void as per law and not binding on the plaintiff bank; now the defendant No.1 and 2, colluding each other, are trying to sell the suit property to third person for higher price for their illegal gain and put some legal hurdle to them to recover the loan dues; the defendants are real estate goons; they don't hesitate to do any illegal transactions for their benefit.

7. No doubt, the defendant No.2 has averred that as per his knowledge, the plaintiff bank created mortgage over suit schedule property without consent and knowledge of the owner Shri Vinayak Jatti Naik, and while borrowing loan, the said Shri Vinayak Jatti Naik mortgaged his converted land, and he has not consented for the mortgage of suit schedule property, and the said mortgaged was redeemed, and there is no encumbrance of plaintiff bank over suit schedule property as on this date; the defendant No.2 is a bonafide purchaser; the

defendant No.1 has got commercial building at Ankola which is valuable several crores of rupees, and it is mortgaged property; the plaintiff has not taken any action on the said property.

8. In this way, from the averments of the defendant No.2, it could be seen that there is a mortgage on the suit schedule property, and the said mortgage is created by the plaintiff without consent of defendant No.1, and there is no encumbrance over the suit schedule property as on the date of the suit. The plaintiff bank produced authority letter, memorandum of deposit of title deeds, encumbrance certificate, memorandum of deposit of title deeds, mutation register extract of MR No.H50, sale deed dated 15/11/2018, order of assistant commissioner, award copy and order of deputy commissioner. In this way, it is very clear from the said documents and averments of plaintiff bank and defendant No.2 that there is a mortgage over the suit schedule property. Whether it is a created mortgage or real mortgage to be decided on merit. The plaintiff apprehend that the defendant No.2 may also alienate the suit schedule property. As already the defendant No.1 sold the suit schedule property in favour of defendant No.2 during the existence of said mortgage, now whether the preserving of suit schedule property is necessary or

not to be decided. The prima facie case is a case which is not frivolous or vexatious, but it includes serious questions to be investigated. Whether the suit property is a mortgaged property or the absolute property of defendant No.2, are serious questions to be investigated in this case. Till deciding of the said serious questions, the suit schedule property is to be preserved intact for the benefit of both the parties. In result, I am of the considered opinion that the plaintiff made out prima facie case. Consequently, I answer this point in the affirmative.

9. POINT NO.2 & 3:- These points are taken up together for consideration. The plaintiff in his affidavit stated that the defendants are close friends, and colluding each other, they created the sale deed just to dupe their bank in the repayment of the loan dues and drag on time to repay it; the said sale deed is illegal and void as per law and not binding on their bank; now the defendant No.1 and 2, colluding each other, are trying to sell the suit property to third person for higher price for their illegal gain and put some legal hurdle to them to recover the loan dues. The alienation of suit schedule property by way of sale will certainly create third party right in the suit schedule property. Thereby the suit schedule property will not be kept intact for the benefit of the parties to this suit. If the right of alienation by way of sale is restrained, the right of alienation will only be postponed. The very right will not be restrained permanently. If the defendant No.2 succeeded in this case, he will certainly exercise the said right. If the defendant No.2 succeeded in his attempt of alienation and the plaintiff succeeded the right in the suit schedule property, certainly plaintiff will be put irreparable loss and injury which cannot be compensated in terms of money as the right of recovering of loan amount will be hindered and delayed. Therefore, the comparative hardship is more to plaintiff than defendant No.2 if the injunction is denied. Under these circumstances, I am of the considered opinion that the balance of convenience lies in favour of plaintiff and the plaintiff will be put to more hardship and injury if the injunction is denied. Consequently, I answer point No.2 and 3 in the affirmative.

10. Point No.4: In view of my reasons on Point No.1 to 3, I proceed to pass the following:

O R D E R

I.A No.I filed under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby allowed as under:

The defendant No.2 is restrained from alienating the suit schedule property by way of temporary injunction till disposal of this suit.

(Dictated to the Stenographer, transcribed by him, transcription corrected by me and then pronounced in the open court on 12th October 2023)

(Manohara M.)
Senior Civil Judge, Ankola

MAHONARA M (SENIOR CIVIL JUDGE AND JMFC COURT ANKOLA)