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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 74/2017, CM No.9131/2017 (u/O 41, R-10 CPC for stay)

STATE BANK OF INDIA Appellant

Through: Ms.Jaya Tomar, Advocate

versus

PRATAP SINGH Respondent

Through: Mr.Shankar Datt Gahtori, Mr.Vijay
Datt Gahtori, Mr.Deepak Pandey, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.07.2018

1. This Regular Second Appeal under Section 100 of the CPC impugns the judgment and decree (dated 27th July, 2016 in RCA No.7/2015 of the Court of Senior Civil Judge, North East) allowing the First Appeal under Section 96 of the CPC preferred by the respondent against the judgment and decree [dated 1st August, 2015 in Suit No.27/2007 (Unique ID No. 02402C0056102007) of the Court of Administrative Civil Judge-cum-Commercial Civil Judge, North East] of dismissal of the suit filed by the respondent / plaintiff against the appellant / defendant for permanent injunction restraining the appellant / defendant from interfering in the peaceful possession and ownership of the respondent / plaintiff of property consisting of ground, first and second floor constructed over 50 sq.yds. and bearing No.195/5 out of Khasra No.157 in the abadi of Krishna Gali No.2, Maujpur, Shahdara, Delhi and thereby passing a decree for permanent

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injunction in favour of the respondent / plaintiff and against the appellant / defendant.

2. This appeal came up first before this Court on 6th March, 2017 when notice thereof was ordered to be issued. The delay in re-filing the appeal was condoned. However, notice having been issued without indicating the substantial question of law arising, the counsel for the appellant / defendant and the counsel for the respondent / plaintiff have been heard on this aspect.

3. The counsel for the appellant / defendant has stated:

- (i) that one Chandrawati was the owner of 100 sq.yds. of immovable property of which the aforesaid 50 sq.yds., subject matter of suit from which this appeal arises, was a part.
- (ii) that the said Chandrawati, on 8th October, 1998 executed and registered a sale deed of the entire 100 sq.yds. of property in favour of her son Sunil Kumar Sharma;
- (iii) Sunil Kumar Sharma on, 9th October, 1998 mortgaged the entire 100 sq.yds. of property with the appellant / defendant bank by deposit of title deeds and Chandrawati, as mother of Sunil Kumar Sharma, also personally stood guarantee for repayment of the finance facility extended by the appellant / defendant bank to Sunil Kumar Sharma;
- (iv) that the appellant / defendant bank instituted two mortgage suits, one before the District Judge and the other before Senior Civil Judge, for recovery of two loan amounts from Sunil Kumar Sharma and Chandrawati and both of which loans were secured by the mortgage aforesaid;



- (v) that in the suit before the Additional District Judge, a final mortgage decree has been passed and in the suit before the Senior Civil Judge, a preliminary mortgage decree has been passed;
- (vi) that the respondent / plaintiff instituted the suit claiming that Chandrawati, on 25th March, 1997 had executed a registered power of attorney with respect to 50 sq.yds. out of the aforesaid 100 sq.yds. in favour of the sister of the respondent / plaintiff and the sister of the respondent / plaintiff, as attorney of Chandrawati, on 25th June, 1998 had executed a sale deed with respect to the said 50 sq.yds. in favour of the respondent / plaintiff and respondent / plaintiff thus, under the sale deed dated 25th June, 1998, was the owner of 50 sq.yds. of the property, which along with another 50 sq.yds. was mortgaged by Sunil Kumar Sharma on 9th October, 1998 with the appellant / defendant when Sunil Kumar Sharma could not have acquired any title to the property to be able to mortgage the said 50 sq.yds., sale deed whereof on earlier date had been executed in favour of the respondent/plaintiff.

4. I have enquired from the counsel for the appellant / defendant that if the aforesaid facts have been proved, then how could there be a valid mortgage by Sunil Kumar Sharma of 50 sq.yds. which had earlier been sold by Chandrawati and in which thus Sunil Kumar Sharma, under the sale deed executed in his favour by Chandrawati, did not acquire any right.

5. The counsel for the appellant / defendant contends that the suit court dismissed the suit upholding the mortgage of the property in favour of the appellant / defendant and the respondent / plaintiff while preferring the first



appeal did not challenge the finding of the suit court regarding mortgage. Attention in this regard is invited to the substantial questions of law proposed at pages 14 to 19 of the paper book.

6. I have enquired from the counsel for the respondent / plaintiff, whether not the suit, as filed, was barred by Section 47 of the CPC and the remedy, if any of the respondent / plaintiff was to file objections in execution, if any sought under Section 47 read with Order XXI Rule 58 and Rule 97 of the CPC.

7. The counsel for the respondent / plaintiff states that he had filed objections in execution and which execution has been dismissed and has drawn attention to the order dated 19th May, 2017 in Execution No.14/2015 (24302/2016) of the Court of Additional District Judge, Central-10 dismissing the execution in default of appearance of the decree holder.

8. The counsel for the appellant / defendant states that she has no instructions in this regard.

9. The counsel for the respondent / plaintiff otherwise is unable to show as to how the suit was not barred as aforesaid.

10. The following substantial questions of law are framed for consideration:

(i) Whether the suit from which this appeal arises was barred by Section 47(1) of the CPC?

(ii) If the answer to the aforesaid question is in favour of the respondent / plaintiff, whether the First Appellate Court was precluded from allowing the appeal of the respondent / plaintiff for the reason of the respondent / plaintiff having not challenged any particular finding of the suit court?



11. Admit.
12. Only First Appellate Court record has been received.
13. The trial court record be requisitioned.
14. List for hearing on 30th November, 2018.
15. Till disposal of the appeal, the respondent / plaintiff to not alienate, encumber or part with possession of the property.
16. CM No. 9131/2017 is disposed of.

RAJIV SAHAI ENDLAW, J

JULY 27, 2018

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