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indrapal Vs. Shankar Lal

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Court : Allahabad

Decided On : Dec-18-2001

Reported in : 2002(1)AWC664; (2002)1UPLBEC556

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Sahkari Krishi and Gram Vikas Banks Act, 1964 - Sections 22

Appeal No. : Second Appeal No. 798 of 2001

Appellant : indrapal

Respondent : Shankar Lal

Advocate for Def. : H.P. Tripathi, Adv.

Advocate for Pet/Ap. : Faujdar Rai and ;Chandra Kumar Rai, Advs.

Disposition : Appeal dismissed

Judgement :

J.C. Gupta, J.

1. Heard Sri Faujdar Rai for defendant-appellant and Sri H. P. Tripathi for plaintiff-respondent.

2. This second appeal is by defendant against whom respondent filed suit for specific performance of an agreement of sale of Plot No. 74 situated in village Dhamapur Abdalpur, pergana and tehsil Soraon, district Allahabad. According to the plaintiffs case, the said agreement was executed by appellant and he had received a sum of Rs. 4,800 as earnest money and balance of Rs. 4,000 was paid before sub-registrar at the time of registration of agreement. He was always willing to perform his part of contract but the defendant was not coming forward to execute the sale-deed, hence plaintiff sent registered notice dated 26.2.1985 whereupon defendant refused to execute the sale deed. Left with no alternative, plaintiff-respondent filed the present suit.

3. In his written statement, defendant-appellant denied the execution of the agreement and further took a plea that since the property in question stood mortgaged with U. P. Sahkari Land Development Bank, the property in question could not be transferred in favour of the plaintiff on account of bar created under Section 22 of the U. P. Co-operative Land and Development Banks. Act, 1964.

4. On appraisal of evidence, the trial court recorded a categorical finding of fact that the agreement was executed by the defendant-appellant in favour of plaintiff-respondent. Defendant filed appeal and during the pendency of appeal, an additional Issue was framed whether the property in dispute was mortgaged in the year 1981 by defendant in favour of U. P. Sahkari Land Development Bank, Soraon Branch and if so whether mortgage was still existing. If so, what was its effect. The issue was then remitted to the trial court for giving a finding thereon. After recording evidence of the parties, the trial court decided the said issue holding that the property in dispute was of course mortgaged with the said bank by the defendant but the mortgage stood redeemed as the entire loan along with Interest has been paid to the bank,

5. The lower appellate court on receiving the said finding invited objections of the parties and by the impugned judgment dismissed the appeal.

6. Learned counsel for the appellant firstly submitted that as far as issue of execution of agreement in question is concerned, the trial court gave a cryptic finding. On going through the Judgment of the trial court, I do not agree with the

submission of the learned counsel. It is also significant to note that before the lower appellate court, learned counsel for the appellant made a contention that execution of agreement in question was not disputed. Be that as it may, it would further appear from the judgment of the lower appellate court that the learned Judge despite the above contention went through the evidence of the parties and affirmed the finding of the trial court that the agreement in question was duly executed by the defendant-appellant.

7. The second submission made before this Court by the learned counsel for the appellant is that once the trial court had recorded a findingon the remitted issue that the property in question had been mortgaged by the defendant, the agreement in question was not enforceable in view of the provisions of Section 22 of the U. P. Co-operative Land Development Banks Act, 1964 (hereinafter referred to as the 'Act').

8. A perusal of the order of the trial court deciding the remitted issue would further Indicate that on the basis of evidence on record, the Court also had come to the conclusion that the property which was mortgaged earlier stood discharged on account of payment of loan with interest to the bank.

9. Before appreciating the submission of the learned counsel for the-appellant. It may be relevant to mention here that the U. P. Cooperative Land Development Banks Act. 1964. was amended from time to time by U. P, Act No. 27 of 1978. No. 3 of 1979, No. 16 of 1989 and No. 19 of 1994. The long title of the U. P. Cooperative Land Development Banks Act, 1964, was substituted with the words 'U. P. Sahkari Krishl and Gram Vikas Banks' Act. Amended Section 22 of the said Act reads as under :

'22. Restriction on mortgagors' power to lease or to create other rights in the mortgaged and charged property--Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force no property in respect of which a charge, hypothecation or mortgage has been made in favour of a (Gram Vikas Bank) or the (Uttar Pradesh Gram Vikas Bank) shall be sold or otherwise transferred by the person making the charge, hypothecation or mortgage until the entire amount of loan or advance taken by him from the (Gram

Vikas Bank) or the (Uttar Pradesh Gram Vikas Bank) together with Interest thereon is paid to the bank and any transaction made in contravention of this section shall be void :

Provided that, if a part of the amount borrowed by a member is paid, the (Uttar Pradesh Gram Vikas Bank), or as the case may be. the (Gram Vikas Bank) with the approval of the (Uttar Pradesh Gram Vikas Bank) may, on application from the member release from the mortgage, charge or hypothecation created or made in favour of the bank, such part of the property or interest therein as it may deem proper with due regard to the security of the balance of the amount remaining outstanding from the member. (2) Any lease granted or rights created in contravention of the provisions of Sub-section (1) shall be void.'

10. A perusal of the above provision will indicate that Sub-section (1) thereof creates a bar in respect of transfers made by the person whose property has been hypothecated or mortgaged with the bank. This bar. however, is not absolute for all times to come inasmuch as the bar gets removed as soon as the entire amount of loan or advance taken by the person concerned together with interest thereon is paid to the bank. As already pointed out above, both the courts below have recorded concurrent findings that in the present case the mortgage made in favour of the bank stood discharged on account of entire amount of loan with interest thereon having been paid to the bank. In view of this finding, bar created by Section 22 stood removed and thus there was no legal impediment in enforcing the agreement in question. Sub-section (2) of Section 22 has no application to the facts of the present case as no lease was granted nor rights created by virtue of the agreement in question in contravention of Sub-section (1) of Section 22.

11. For the above reasons, this appeal is dismissed as no substantial question of law is involved therein.

12. Appeal is dismissed summarily.

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