Radha Krishna and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-03-2011

Judge : Amar Saran; S.C. Agarwal, JJ.

Appeal No. : CRIMINAL MISC. WRIT PETITION No. - 7560 of 2011

Appellant : Radha Krishna and Another

Respondent : State of U.P. and Others

Advocate for Def. : Govt. Advocate; Yashwant Singh Advs

Advocate for Pet/Ap. : Ashok Nath Tripathi; Vinay Sharma, Advs

Judgement :

1. Supplementary affidavit filed on behalf of the petitioners is taken on record.

2. Heard Sri Ashok Nath Tripathi, learned counsel for the petitioners and learned A.G.A. for the respondent nos. 1 and 2 as well Sri Yashwant Singh, learned counsel for the respondent no.3 UCO Bank.

3. This writ petition has been filed with a prayer to quash the impugned F.I.R. dated 8.4.2011 (annexure 1 to the writ petition) in Case Crime No.1024 of 2011 under sections 420, 467, 468, 471 IPC, Police Station Prem Nagar, District Bareilly lodged by respondent no.3.

4. F.I.R. was lodged on behalf of UCO Bank against the petitioners on the ground that a C.C. Hypothecation Limit for Rs.8 lacs was granted by the Bank on 3.3.2009 to M/s. Radha Krishna Dhyan Chand, Shahmat Ganj, Bareilly. The C.C. Hypothecation Limit was subsequently enhanced to Rs.15 lacs on 15.2.2010. At the time of taking aforesaid facility, the petitioner no.1 gave the original sale deed dated 21.9.2010 as well as a Will executed by Dhyan Chand in favour of petitioner no.1 dated 6.11.1996 to the Bank as security. On 15.1.2011, a possession notice under Rule 8 (1) framed under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "The Securitization Act") was published in the daily newspaper 'Hindustan' showing that the same Shop washypothecated by Radha Krishna in favour of Bank of Baroda earlier and the documents submitted to UCO Bank for hypothecation were forged and a fraud was committed with the Bank.

5. Sri Ashok Nath Tripathi, learned counsel for the petitioners submits that the petitioner no.1 is the owner of two Shops. Shop No.10 was earlier evacuee property and was purchased by father of petitioner no.1 through sale deed dated 6.11.1960 and the same was hypothecated in favour of UCO Bank whereas Shop No.11 was purchased by father of petitioner no.1 on 31.12.1962 from Khaleel Ahmad and Jamil Ahmad and the said Shop No.11 was hypothecated with UCO Bank and no fraud was ever committed by the petitioners.

6. Learned counsel for the respondent no.3 submits that two separate Shops No. 10 and 11 do not exist separately and there is only one Shop at the spot, which has been taken possession of by Bank of Baroda under the Securitization Act and, therefore, a fraud has been committed with UCO Bank.

7. This fact has not been disputed by learned counsel for the petitioners that the alleged two Shops have now been joined and used as one Shop. If only Shop No.11 was hypothecated in favour of Bank of Baroda, then on one of the boundaries of the Shop No.11, another Shop No.10 should have been mentioned in the boundaries of the property hypothecated in favour of Bank of Baroda. From the possession notice, it appears that boundaries of Shop No.11, hypothecated in favour of Bank of Baroda, are as follows :-

East : Shop of Mohan Lal

West : House of Tilak Raj

North : House of Fakhruddin ShahSouth : Road Even according to the petitioners, Shop Nos. 10 and 11 are adjoining Shops. If only Shop No.11 was hypothecated to Bank of Baroda, Shop No.10 should have been mentioned as one of the boundaries of the hypothecated Shop, but it was not done.

8. Therefore, we do not find any force in the submissions advanced by learned counsel for the petitioners that property hypothecated in favour of Bank of Baroda was separate from the property hypothecated in favour of UCO Bank. Moreover, the Writ Court is not competent to go into questions of facts and on the allegations, it cannot be said that no prima facie case is disclosed.

9. Hence, no ground exists for quashing of the F.I.R. or staying the arrest of the petitioners.

10. The writ petition is accordingly dismissed.