

SUPREME COURT OF INDIA

The Greater Bombay Co-operative Bank Limited

Vs.

Nagraj Ganeshmal Jain

C.A.No.009777-009778 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

26.07.2017

JUDGMENT

Deepak Gupta, J.,

SLP(Civil)No.28064-28065 of 2014

1. Leave granted.

2. These appeals are directed against the Judgment dated 02.04.2014 passed by the Bombay High Court in Writ Petition No. 195 of 2014, whereby the writ petition filed by the Petitioner-appellant, (hereinafter referred to as “the Bank”) was dismissed and the attachment order dated 14.12.2001, relating to No. 12, 5th Floor, New Shrinath Kunj, CHS Ltd, Vile Parle (West), Mumbai, 400056 was set aside and a further direction was given to enrol the respondent No.1 as member of the New Shrinath Housing Co-operative Society (hereinafter referred to as “the Society”).

3. The undisputed facts are that the flat in question was owned by Shri Dhillon P. Shah. Mr. Shah and his wife Smt. Shivangi Shah were Directors of a Company known as M/s. Mahaganesh Texpro Private Limited. The Bank granted a cash credit facility of Rs. 2.25 crores to the Company. The Directors including Shri Dillion P. Shah and Smt. Shivangi P. Shah stood guarantee for the repayment of the cash credit facilities.

4. The Company did not repay the amount due to the Bank and finally on 30.08.2001 recovery certificate for an amount of Rs. 2,98,94,363/- along with interest was issued by the Assistant Registrar of the Cooperative Societies and proceedings initiated for recovery of the amount from the Company and the guarantors. Demand notice was sent to the Company and also to Shri Dhillon P. Shah and Smt. Shivangi P. Shah on 12.12.2001. In the notice it was stated that the property of these persons including Flat No. 12/5 Gopal Bhuvan, New Shrinath Kunj Co-operative Housing Society Bapubhai Vash Road, Ville Parle (West) Mumbai (hereinafter referred to as the ‘suit property) and another bungalow owned by Smt.

and Shri Dhillon P. Shah, were to be attached and sold for recovery of the dues of the Bank. Both the properties including the suit property were attached. The bungalow was sold for a sum of Rs. 1.6 crores. That sale is subject matter of separate proceedings.

5. The attachment order was issued on 14.12.2001 and the same was served on Shri Dhillon P. Shah and his wife. They both challenged these attachment proceedings before various fora, but never took the objection that the suit property had already been sold or transferred. Mr. Dhillon P. Shah expired on 20.07. 2004.

6. On 01.11.2004, Smt. Shivangi P. Shah, widow of late Shri Dhillon P. Shah, sent a letter to the Society requesting that duplicate share certificate be issued, since the original share certificate was not traceable. In this letter she made no mention of the attachment of the flat or of the fact that dues were payable to the bank. She sent another similar letter on 28.12.2004. Thereafter, on 28.12.2004, the respondent No.1 for the first time claimed ownership of the suit property and, under some amnesty scheme, paid the stamp duty payable on the agreement to sell the suit property.

7. On 20.01.2005, the respondent No.1 applied to the Society praying that he may be granted membership of the Society. This application was rejected by the Society vide letter dated 28.01.2005. In this letter it was clearly stated that neither late Shri Dhillon P. Shah nor Mrs. Shivangi P. Shah had informed the other members of the Society about the fact that they had transferred the flat. This, despite the fact that there had been several meetings between the members of the Society and Shri Dhillon P. Shah and his wife. The respondent No. 1 was also informed that the flat had already been attached.

8. It was only thereafter, on 03.02.2005, the respondent No.1 filed objections under Rule 107 (19) (c) of the Maharashtra Cooperative Societies Rules, 1961 challenging the attachment order on the allegation that he had purchased the flat through agreement dated 04.10.1995 and was in possession of the same from 12.04.1996.

9. The respondent No.1 also challenged the decision of the Society refusing to grant him membership. The Deputy Registrar vide order dated 18.09.2006 allowed the appeal of the respondent No.1 and directed the Society to admit him as a member. It would be pertinent to mention here that in these proceedings the Bank was not a party. The Bank on coming to know about the order of the Deputy Registrar dated 18.09.2006 also filed a Revision Application before the Divisional Joint Registrar on 16.07.2010 challenging the order directing the society to grant membership to respondent No1.

10. The Bank contested the proceedings filed by the respondent challenging the order of attachment of property and a prayer was made that the documents especially the alleged agreement to sell be sent to a handwriting expert for ascertaining whether the signature on the document were of Shri Dhillon P. Shah or not. This prayer was allowed on 12.11.2006 in the presence of the counsel for the respondent No.1.

11. The forensic expert sent his report dated 21.07.2010 in which he found that the signature on the photocopy did not appear to be of Shri Dhillon P. Shah. On 09.10.2010, the objection petition filed by the respondent No.1 was dismissed and it was held that he had no right title or interest in the suit flat.

12. Thereafter respondent No.1 filed Revision Petition, which was allowed on 28.10.2013. The Bank thereafter filed writ petition No.195 of 2014, which was dismissed giving rise to these appeals.

13. As far as the issue of transfer of the suit flat is concerned, the Bombay High Court has dismissed the petition of the Bank only on the ground that since the attachment order was passed in the year 2001 and the agreement of sale was executed prior thereto, therefore, the attachment order is not valid. The High Court did not go into the questions raised by the Bank that no right, title or interest in the flat could have been transferred by the said agreement.

14. Here, it would be pertinent to mention that admittedly the respondent No.1 was a close friend of Shri Dhillon P.Shah and he also states that he had a lot of business dealings with him. According to the respondent No. 1 an amount of Rs. 20 lakhs were advanced by M/s. Hitesh Corporation a proprietary firm of the respondent No.1 to Shri Dhillon P. Shah on 05.12.2004. Admittedly, this advance was made not in connection with the flat but either as a loan or part of some business transactions. According to the respondent No.1, since Shri Dhillon P. Shah could not repay the amount of Rs. 20 lakh on 04.10.1994 he executed the alleged agreement to sell in his favour. Pursuant thereto respondent No.1 took possession of the said flat on 12.04.1996 and thereafter had been paying the electricity bills etc.

15. Immoveable property can be transferred only by a Registered document. There can be no transfer of any right, title or interest in any immoveable property except by way of a registered document. In this behalf we may make reference to the judgment of this Court in *Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana*¹, wherein it was held as follows.

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/will transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”

16. This Court clearly held that an agreement to sell which is not a registered deed of conveyance would not meet the requirements of Section 54 and 55 of the Transfer of Property Act. With respect to Section 53A of the Transfer of Property Act, it is well settled that the same can only be used as a defence in proceedings initiated by the transferor or by any person claiming under him.

17. As far as the present case is concerned, the very foundation of the case of the respondent No.1 i.e. agreement to sell is doubtful. The original has not seen the light of day and only photocopy thereof was filed. There are doubts with regard to the signature of Shri Dhillon P. Shah. As pointed out earlier, the Bank attached the property in question in the year 2001. Shri Dhillon P. Shah died in the year 2004 and during these three years though Shri Shah and his wife filed various legal proceedings, they never disclosed that this flat had been sold by them. The respondent No.1, during the life time of Shri Dhillon P. Shah never claimed ownership of the flat.

18. Shri Dhillon P. Shah and his wife never disclosed the fact of the alleged sale of the suit property to anybody including any member of the Society. It is more than obvious that with a view to wriggle out of the recovery proceedings, after the death of Shri Dhillon P. Shah this document has been fabricated. This document does not transfer any right, title or interest of the property and, therefore, the Revisional Court and the High Court erred in allowing the claim of the respondent No.1

19. The appeals are accordingly allowed and the order of the High Court and the revisional/appellate authority accepting the claim of respondent No.1 are set aside and the claim of the respondent No.1 is rejected. It is held that respondent No.1 has no right, title or interest in the suit property. Therefore, he cannot claim membership of the New Shrinath Kunj Housing Co-operative Society.

Judgment Referred.

¹(2012) 1 SCC 656