

Ajay Govind Vaidya v. Union Bank of India & Ors.

Ajay Govind Vaidya

...Appellant

Union Bank of India & Ors.

...Respondent

Case No: Misc. Appeal No. 122/2023

Date of Judgement: 09/10/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Senior Counsel Mr. Umesh Shetty, i/b Mr. V.K. Nair, Advocate.

For Respondent: Mr. Anchit Ojha, i/b Mr. R.K. Dubey & B.N. Joshi, Advocate.

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Facts:

This is an order in I.A. No. 678/2023 (Stay) in Misc. Appeal No. 122/2023, filed by Ajay Govind Vaidya (Appellant) against Union Bank of India & Ors. (Respondents). The Appellant has challenged the order dated 12.09.2023 in I.A. No. 1948/2023 in Securitization Application (S.A.) No. 338/2023 before the Debts Recovery Tribunal-II, Mumbai (D.R.T.), wherein the Presiding Officer refused to grant any protection order to the Appellant. The Appellant claims to be a one-third shareholder of the property (Plot No. E-21/A at Chembur) subjected to SARFAESI measures by the 1st Respondent Bank, which is scheduled for public auction on 13.10.2023. The Appellant claims to be the legal heir of his late father, Govind Vaidya, who was allotted the property under a scheme for Scheduled Castes and Scheduled Tribes.

There is a specific government order prohibiting the sale of the property without obtaining the government's permission. The property was allegedly sold by the late Govind Vaidya to the 2nd Respondent (elder brother of the Appellant) through an unstamped and unregistered sale deed dated 08.06.2000. The 2nd Respondent had earlier obtained a loan from Bank of Maharashtra and created a mortgage over the property. Subsequently, the 2nd Respondent mortgaged the property to the 1st Respondent Bank and obtained two loan facilities totaling over ₹5 Crore. The loan from Bank of Maharashtra was closed, leaving only the present loan due to the 1st Respondent. A simple mortgage deed was executed and registered in favor of the 1st Respondent on 19.09.2019. The Appellant's father, Govind Vaidya, passed away in 2016, leaving behind three sons as legal representatives. The Appellant filed a Civil Suit No. 298/2018 before the City Civil Court, Mumbai, for the partition of the property against his brother (2nd Respondent) and obtained an interim injunction on 13.12.2018, preventing the 2nd Respondent from creating any third-party interest in the property. Despite the prohibitory order, the mortgage in favor of the 1st Respondent was created on 19.09.2019. The 1st Respondent sought to be impleaded in the Civil Suit through an intervention application, but the Chamber Summons was dismissed. The 1st Respondent then moved an application under Section 14 of the SARFAESI Act for physical possession of the property. The Chief Metropolitan Magistrate passed an order on 24.02.2023 under Section 14, directing the Court Commissioner to take physical possession of the property, which was executed on 13.09.2023.

Arguments by the Appellant:

The order under Section 14 of the SARFAESI Act was passed based on an affidavit filed by the Chief Branch Manager of the Bank, who was not properly authorized as an Authorized Officer. Subsequently, the Bank realized the lack of proper authorization and appointed an Authorized Officer, who filed another affidavit on 23.06.2023, which was accepted by the Chief Metropolitan Magistrate (CMM). However, this was after the order under Section 14 was passed. The order under Section 14 is invalid and requires setting aside due to the lack of authority of the

Authorized Officer who filed the application. The Presiding Officer did not consider the validity of the assignment deed based on which the 2nd Respondent mortgaged the property, nor the challenges raised to the order under Section 14 due to the lack of authority of the Authorized Officer. The Presiding Officer refused to grant a prohibitory order solely based on the assignment deed in favor of the 2nd Respondent and the subsequent agreement for sale executed by the 2nd Respondent in favor of Mr. Moreshwar Deokumar Guldekar and Mrs. Vijaylaxmi Moreshwar Guldekar on 16.12.2017. The share certificate entered the name of the 2nd Respondent initially and later added Moreshwar's name as the owner. However, the subsequent sale by Moreshwar and his wife to the 2nd Respondent in 2017 is not mentioned in the share certificate. The Secretary of the Society issued a letter to the 2nd Respondent stating that the share certificate endorsement is invalid, forged, and fictitious.

Court's Elaborate Opinions:

Based on the overwhelming evidence indicating that the Appellant has a strong prima facie case, it is in the best interest of justice to stall the proposed SARFAESI action against the subject property until a final decision is taken in the S.A. The sale of the property would create further complications by dragging an auction purchaser into the litigation. The impugned order needs to be stayed, and the intended sale of the subject property on 13.10.2023 shall be deferred until further orders.

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

- Section 14: Regarding the application for enforcement of security interest by the Secured Creditor.

Government order prohibiting the sale of property allotted under the scheme for Scheduled Castes and Scheduled Tribes without obtaining the government's permission.