

Manisha Chandrashekar Patil & Ors. v. Bank of Maharashtra & Anr.

Manisha Chandrashekar Patil & Ors.

...Appellant

Bank of Maharashtra & Anr.

...Respondent

Case No: Misc. Appeal No. 83/2009

Date of Judgement: 26/04/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr N.J. Devashree, Advocate.

For Respondent: Ms Drishti Shah, Advocate.

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Facts:

This is a common order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai, in two appeals – Misc. Appeal No. 83/2009 and Misc. Appeal No. 115/2009 – arising from the same judgment and order in Appeal No. 6 of 2008 dated 13.10.2008 on the files of the Debts Recovery Tribunal-II, Mumbai (DRT). Misc. Appeal No. 83/2009 is filed by Respondent No. 3C, Manisha Chandrashekar Patil & Others, while Misc. Appeal No. 115/2009 is filed by the first Respondent, Bank of Maharashtra, impugning the aforesaid judgment. The Bank of Maharashtra had filed Suit No. 2019 of 1991 for the realization of money from the borrower, late Pandurang Dajiba More, and obtained a decree. Consequent to the implementation of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB&FI Act), a Recovery

Certificate was issued by the DRT against the original borrower, who died and is now represented by his legal representatives, Respondents Nos. 3A to 3D. The Recovery Certificate was sought to be executed by the Bank by filing Recovery Proceeding No. 149 of 2004 before the Recovery Officer, DRT-II, Mumbai. The property described as Unit No. 515, 5th Floor, Bharat Industrial Estate, T.J. Road, Sewree, Mumbai 400015 (subject property) was attached and proceeded against. The first Respondent herein, Rajmohan Narsingh Rao, as the legal representative of his deceased mother, Jayalaxmi Rao, filed an intervention petition as M.A. No. 456 of 2005 before the Recovery Officer, claiming to be the absolute owner in possession of the subject property. Vide order dated 03.07.2007, the Recovery Officer dismissed the aforesaid M.A. (Intervention Petition). Aggrieved by the order dismissing the claim, the Intervener (Rajmohan Narsingh Rao) filed Appeal No. 6 of 2008 before the DRT under Section 30 of the RDDB&FI Act. The appeal was allowed vide judgment dated 13/10/2008, and the attachment over the subject property was released. Mrs. Gulab Pandurang More, one of the certified debtors, purchased the subject property from the Intervener's mother, the late Jayalaxmi Rao, by virtue of an agreement to sell dated 10.04.1972 and was in possession of the printing press conducted in the subject property by virtue of part performance of the contract. An advance sale consideration of ₹75,000/- was paid on 27.04.1972, and the press functioning in the subject property was also assigned to Mrs. Gulab Pandurang More for a sale consideration of ₹20,000/-. The balance sale consideration of ₹45,000/- was to be paid within 8 days. Mrs. Gulab also paid the dues to the society where the property was located, and the society had recognized Mrs. Gulab as a member and had even issued a lawyer's notice claiming arrears of dues from her. Consequent to the demise of Jayalaxmi, the Intervener Rajmohan Rao filed a suit before the Bombay High Court as No. 894 of 1975 against Mrs. Gulab for handing over possession of the property, including the printing press. The suit was, however, dismissed for default on 19.06.1989. Mrs. Gulab and her husband had filed a petition for quashing the criminal proceedings pending against them before the Additional Chief Metropolitan Magistrate, which was allowed, holding that it was a civil dispute, and no criminal offense was attracted.

Arguments by the Parties:

Appellants' Arguments (Bank of Maharashtra):

The Recovery Officer observed that, though the property was not mortgaged, a negative lien was created by the borrowers' undertaking that they would not create any encumbrance over the property. Relying on that undertaking, the Recovery Officer dismissed the Intervener's claim. It is contended that the purchaser (Mrs. Gulab More) failed to pay the balance sale consideration, and therefore, the amount paid earlier stood forfeited. It is further contended that the Intervener had, in consequence of the demise of his mother, filed Letters of Administration Petition No. 186 of 2001 and obtained an order to administer the property belonging to his mother.

Respondents' Arguments (Manisha Chandrashekar Patil & Others):

The Intervener (Rajmohan Narsingh Rao) was admittedly not in possession of the subject property in consequence of the sale and had even approached the High Court seeking possession of the property from Mrs. Gulab by filing Suit No. 894 of 1975, which was dismissed for default on 19.06.1989. The Intervener has no case that the legal representatives of Pandurang More or Gulab More had voluntarily handed over the subject property to him, and how he regained possession is not explained. The trespasser of a property cannot defend his right over the property in any manner because the possessory right of a trespasser is not legally sustainable.

Court's Elaborate Opinions:

The DRAT acknowledges the DRT's finding that the certified debtors (Mrs. Gulab Pandurang More) were in possession of the property by virtue of part performance as contemplated under Section 53A of the Transfer of Property Act. The DRAT notes that it is an admitted case that the Intervener (Rajmohan Narsingh Rao) was not in possession of the property and had even approached the Bombay High Court seeking possession of the property from Mrs. Gulab More. The DRAT finds the DRT's observation and finding that at the time of attachment, Rajmohan

Rao was in possession, and therefore the attachment was improper, unacceptable. The DRAT holds that the trespasser of a property cannot defend his right over the property because the possessory right of a trespasser is not legally sustainable. The DRAT observes that the DRT heavily relied upon the provisions of the Income Tax Act, while Section 29 of the RDDB&FI Act clearly states that the provisions of the Second and Third Schedules of the Income Tax Act and 1962 Rules shall, as far as possible, apply with necessary modifications. The DRAT cites the decision in *Keshrimal Jivji Shah & Ano. vs. Bank of Maharashtra & Ors.* 2004 (3) Mh.L.J. 893, which held that whenever the Legislature uses words such as "as far as possible" or "as far as practicable," the intent is not to apply the provisions in their entirety. The DRAT finds no justification for the impugned order upsetting the orders of the Recovery Officer dismissing the claim put forth by the Intervener.

Cases Cited:

Ochavaram Nanabhai vs. Dolatram Jamietram (1904) I.L.R. 28 Bom 644 (followed in *Bai Parvatibai vs. Raghunath Lakshman* Bom. L.R. 1063): It was held that, at the hearing of a petition for Letters of Administration to the estate of a deceased person, it is not the province of the court to go into the title of the property to which the Letters of Administration referred. It is no part of the duty of the Testamentary Judge to consider the question of the title to property. *Nathulal vs. Phoolchand* AIR 1970 SC 546: It was held that a transferee in possession of the property in part performance of the contract is entitled to remain in possession and can defend his possession. A trespasser displacing a person in possession of such property cannot obviously succeed under Order XXI Rule 63 of the Code of Civil Procedure against the attaching decree holder on the sole ground that the judgment debtor has only a possessory title. *Uppala Kanakaiah vs. Mohaboob Singh & Ors.* AIR 1961 AP 497: It is settled law that under the aforesaid provisions of the Code of Civil Procedure, the possessory title of a judgment debtor can be attached by the decree holder. *Keshrimal Jivji Shah & Ano. vs. Bank of Maharashtra & Ors.* 2004 (3) Mh.L.J. 893: It was held that whenever the Legislature

uses words such as “as far as possible” or “as far as practicable,” the intent is not to apply the provisions in their entirety.

Sections and Laws Referred:

Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB&FI Act):

Section 29 (Application of certain provisions of Income-tax Act)

Section 30 (Appeal to the Appellate Tribunal)

Code of Civil Procedure:

Order XXI Rule 63 (Attachment of immovable property)

Transfer of Property Act:

Section 53A (Part performance)

Income Tax Act:

Second and Third Schedules

Rules (referred in Section 29 of RDDB&FI Act)

In conclusion, the DRAT allows both appeals and sets aside the impugned judgment and order of the DRT in Appeal No. 06 of 2008 dated 13.10.2008. The DRAT confirms the order of the Recovery Officer dismissing Misc. Application No. 456 of 2006 in R.P. No. 149 of 2004 dated 03.07.2007, which had dismissed the Intervener's (Rajmohan Narsingh Rao) claim over the subject property.