

Shri Pandurang Hasha Patil & Ors v. Bank of India & Ors.

Shri Pandurang Hasha Patil & Ors

...Appellant

Bank of India & Ors.

...Respondent

Case No: Misc. Appeal No. 99/2023

Date of Judgement: 11/09/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Ms Aarti Suvarna, Advocate.

For Respondent: An advocate for the Appellant is present.

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Facts

Savitribai Pandurang Patil and others (Appellants) are the legal heirs of late Pandurang Hasha Patil. Bank of India (Respondent 1) had lent money to Respondent 5 on the mortgage of a flat (Flat No. 1202 on the 12th floor of 'Elite Towers', Kharghar, Navi Mumbai) purchased from Respondent 3 (sole proprietor of Respondent 2, M/s. Dolphin Enterprises) for Rs. 90 lakhs under a sale agreement dated 13/06/2015. Respondent 5 defaulted on loan repayment, and Bank of India classified the account as a non-performing asset (NPA) and issued a demand notice under Section 13(2) of the SARFAESI Act on 31/07/2017. Bank of India took symbolic possession of the secured asset (flat) on 04/10/2017 and obtained an order from the District Magistrate for physical possession under Section 14 of the SARFAESI Act. Appellants claim to be the legal heirs of late Pandurang Patil, who had allegedly purchased the flat

and was in possession until his demise. After his death, the Appellants inherited the flat and are in actual possession and enjoyment of the apartment. On receiving notice of taking physical possession, the Appellants approached the Debt Recovery Tribunal (DRT) with a Securitisation Application (S.A.) contending that Respondents 2, 3, or 5 have no right, title, or interest over the secured asset, and the mortgage is invalid. The DRT dismissed the Appellants' application for an interim order to stall the possession measures, and the Appellants filed an appeal before the Debt Recovery Appellate Tribunal (DRAT).

Arguments by the Appellants

Respondent 3 had issued an allotment letter for the flat to late Pandurang Patil on 06/03/2009 and handed over possession to him. Late Hasha Ragho Patil (Pandurang Patil's father) was entitled to allotment of a plot under the 12.5% scheme by CIDCO after his land was acquired for the development of Navi Mumbai. After Hasha Ragho Patil's demise, the plot devolved upon his legal heirs, including Pandurang Patil, who became the owner of 1000 sq.m. of land after executing release deeds with other legal heirs. CIDCO issued allotment letters for plot Nos. 9B and 9C to Pandurang Patil and his nephew Pandit Namdeo Patil and executed lease agreements with them. Respondents 3 and 4 (claiming to be partners of Respondent 2) approached Pandurang Patil and offered to develop the plots. A development agreement was executed on 05/03/2009, agreeing to hand over 17,500 sq.ft. of constructed area to Pandurang Patil, including the subject flat (No. 1202). Respondent 2 completed the construction and handed over physical possession of the subject flat and other flats/shops to Pandurang Patil in April 2014, who leased out the subject flat. After Pandurang Patil's death on 09/01/2017, the property devolved upon the Appellants as his legal heirs. The Appellants filed a criminal complaint against Respondent 3 for offenses related to cheating and forgery. The Appellants filed a Special Civil Suit seeking specific performance of the contract, termination of the agreement with Respondent 5, and a permanent injunction against Respondents 1 to 5.

Arguments by Respondent 1 (Bank of India)

There is no registered document concerning the subject flat executed in favor of the Appellants or their predecessor in interest. The property has been sold to Respondent 5 in 2015 through a registered sale deed and mortgaged to the bank for a loan. On default of payment, the bank is within its right to proceed against the secured asset under the SARFAESI Act. Although the Appellants have approached a Civil Court for relief against the Respondents, no favorable order has been obtained by them.

Court's Elaborate Opinions

The DRAT analyzed the material placed before the DRT and the rival submissions based on the precedents relied upon by the Respondent Bank's counsel. The DRAT found no infirmity with the DRT's order, as the Appellants based their title under an unregistered development agreement and did not make out a prima facie case for an interlocutory order against the SARFAESI measures initiated by the Respondent Bank. The DRAT dismissed the Misc. Appeal, finding it without merits.

Cases Cited

Deenadayalan vs. N.Satheesh Kumar and Ors. (Madras High Court):

- When the applicant is neither a borrower nor a guarantor, and it is prima facie apparent from the record that the relief claimed is incapable of being decided by the DRT under Section 17 of the SARFAESI Act, the civil rights can be decided by the Civil Court.

Arjun Sitaram Nitinwar vs. Rama Sakharam Prasad & Ors. (Bombay High Court):

- When a development agreement is eloquent of substantial rights created in favor of the applicant, the said document is compulsorily registrable under Section 17 of the Registration Act.
- An unregistered development agreement creating

substantial rights is inadmissible in evidence.

Bank of Baroda & Ors. vs. Gopal Shriram Panda & Ors. (Bombay High Court, Nagpur Bench):

- Where the civil rights of persons other than the borrower or guarantor are involved, and it is prima facie apparent from the record that the relief claimed is incapable of being decided by the DRT under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act, the Civil Court would have jurisdiction.

Sections and Laws Referred

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

- Section 13(2) – Issuance of demand notice
- Section 14 – Enforcement of security interest by a secured creditor

Debt Recovery Tribunal (DRT) Act, 1993

- Section 17 – Jurisdiction, powers, and authority of Tribunals

Registration Act

- Section 17 – Documents requiring registration

Indian Penal Code

- Sections 420 (Cheating), 464 (Making a false document), 465 (Punishment for forgery), 466 (Forgery of record of Court or of public register, etc.), 467 (Forgery of valuable security, will, etc.), and 34 (Acts done by several persons in furtherance of common intention)