

Regular Appeal No. 17/2018

Shri Rupesh Agarwal and Anr. Vs. Bank of Maharashtra & Ors.

Present: Shri Rahul Agarwal, Sr. Advocate assisted by Shri Naman Agarwal and Smt. Vanya Chhabra, counsel for the appellants,

Shri A. C. Thakur, counsel for the respondent-Bank, through V.C.,

Shri Vipul Pandey, counsel for the respondent No. 2,

Shri S. K. Pandey, counsel for the intervener,

ORDER

Date of Pronouncement : 21.07.2026

The present case was heard and reserved for orders by this Tribunal vide order dated 22.05.2026.

Learned counsel for the appellants submitted that the respondent No. 2 had no right to create mortgage in respect of the property in question during pendency of the litigation before the Civil Court at Bhopal. It was further contended that the gift-deed executed by his mother in favour of respondent No. 2 itself was under challenge before the Civil Court at the instance of the appellant No. 1 and the appellant No. 1 is continuously in possession of the property in question since 1996 i.e. the date of his birth, as the appellant No. 2 from the date of her marriage i.e. from 1993 has continuously been residing at Ghaziabad and as such she has never been in possession of the property in question. It was further contended that prior to creation of mortgage, the respondent No. 2 had filed a Suit before the Civil Court for obtaining the possession from the appellant No. 1.

Learned counsel further submitted that the Tribunal below has erred in considering the fact that the case of the appellant before the Tribunal below was that mother of the appellant No. 1 was not legally competent to execute the gift-deed in respect of the property in question to respondent No. 2. It was thus contended that the mortgage created by the respondent No. 2 over the property in question in favour of the respondent-Bank is illegal, as prior to the same, the said gift-deed was challenged before the Civil Court, hence the said mortgage was subject to outcome of the Civil Suit and in such a situation, the Bank was not entitled to proceed under the SARFAESI Act. It was also contended that the appellants were residing in the property in question for long time, but the respondent No. 2 was not in possession of the same, therefore, the respondent-Bank was not entitled to proceed against the said property and in such facts and circumstances of the case, the appellants have locus to challenge the proceedings of the Bank by filing securitization application under section 17 of the SARFAESI Act and as such the Tribunal below has wrongly held that the appellants have no locus and are not aggrieved by any of the measures taken by the Bank under the SARFAESI Act. It was, therefore, prayed that the order impugned may be set-aside and the appeal filed by appellants may be allowed.

Learned counsel for the respondent-Bank submitted that the appellants are neither borrower nor mortgagor or tenant and as such they have no locus to challenge the proceedings of the Bank.

Learned counsel further submitted that the appellants concealed the fact of family settlement dated 31.03.1996 and decree dated 16.06.1987 before the court of District Judge, Bhopal in Civil Suit No. 154-A of 1986. It was further contended that in terms of family settlement, the property in dispute came into the share of Smt. Santosh Agarwal, who afterwards transferred the same to her daughter Smt. Mallika Garg and she created mortgage in favour of the Bank to secure the financial facility extended to her firm M/s A.M. Trade Links and such the respondent no. 2 being an absolute owner of the property in question has rightly created the mortgage in favour of the Bank. It was, therefore, prayed that the appeal filed by the appellants may be dismissed with heavy costs.

Learned counsel for the respondent No. 2 submitted that the property in question was allotted to Smt. Santosh Agarwal, who is mother of the appellant No. 1 and mother in law of the appellant No. 2, by way of registered gift-deed dated 04.07.1968 executed by Ratan Chand Kansal, which was affirmed by judicial decree dated 16.06.1987 passed by the District Judge, Bhopal in Civil Suit No. 154-A of 1986. It was further contended that the said decree has never been challenged by either of the parties till date, as the appellant No. 1 was himself as defendant No. 3 in the said suit.

Learned counsel also submitted that on the basis of the aforesaid gift-deed, Smt. Santosh Agarwal became absolute owner of the property in question, therefore, she out of her own free will and affection executed the

registered gift-deed on 22.03.2011 in favour of her daughter respondent No. 2 Smt. Malika Garg. It was further contended that on the basis of said gift-deed, the respondent No. 2 mortgaged the property in question with the respondent No. 1-Bank for securing the loan advanced to her firm M/s A.M. Trade Links.

Learned counsel also submitted that before passing the order impugned, the Tribunal below recorded the statement of Smt. Santosh Agarwal on 25.07.2017, wherein she had accepted her execution of the said gift-deed in favour of the respondent No. 2 and considering the same, the Tribunal below has dismissed the S.A. of the appellants holding that they have no locus to file the same. It was, therefore, prayed that the appeal filed by the appellants may be dismissed with heavy costs.

Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the appellants are neither borrowers nor guarantors or mortgagors to the credit facilities advanced by the respondent-Bank to M/s A.M. Trade Links.

The question involved the present case is, as to whether the appellants have locus to challenge the SARFAESI proceedings conducted by the Bank against the property in question or not?

Undisputedly, the appellant No. 1 is the son of Smt. Santosh Agarwal and appellant No. 2 is her daughter in law. The property in question came into the ownership of Smt. Santosh Agarwal through a registered gift-deed

dated 04.07.1968 executed by Shri Ratan Chand Kansal. It is averred that a family settlement was executed on 30.04.1986 amongst late R.K. Agarwal, Smt. Santosh Agarwal and appellant No. 1 Rupesh Agarwal, wherein the property in question was acknowledged that the same is exclusively of Smt. Santosh Agarwal. The said family settlement had attained finality, when declaratory decree dated 16.06.1987 was passed by the competent Civil Court in Civil Suit No. 154-A/1986 filed by Raj Kumar Agarwal and the said decree has never been challenged by any of the parties till date. If the appellant No. 1 had any grievance against the gift-deed dated 04.07.1968, family settlement dated 30.04.1986 and declaratory decree dated 16.06.1987 passed by the Civil Court, the same ought to have been challenged before the court of competent jurisdiction, but there is nothing on record, which may show that the appellant No. 1 ever did so. Thus Smt. Santosh Agarwal, mother of the appellant No. 1 was legally owner of the property in question and she had rightly transferred the same to her daughter respondent No. 2 through registered gift-deed dated 22.03.2011.

Since in the preceding paragraph of this order, it has been held that Smt. Santosh Agarwal was absolute owner of the property in question and being an owner she has rightly transferred the same to her daughter through registered gift-deed as mentioned above, therefore, creation of mortgage over the property in question by the respondent No. 2 in favour of the Bank for securing the loan advanced to M/s A.M. Trade Links cannot be permitted to be questioned by the appellants, because the appellants are

found nowhere in any transactions of the property in question. The contention of the appellants that his mother had executed the registered gift-deed in favour of the respondent No. 2 under pressure is not tenable, because she was summoned by the Tribunal below for taking her statement about the said gift-deed and she clearly admitted before the Tribunal below that the said gift-deed was executed by her in favour of the respondent No. 2.

It is also relevant to clear that long occupancy in any property does not create any title or right over the same in favour of the occupant. Thus the claim of the appellant No. 1 that he has been residing in the property in question since his birth, therefore, he has right over the property in question is not tenable in the eye of law. As such the Tribunal below has rightly held that the appellants have no locus to file the securitization application under section 17 of the SARFAESI Act against the proceedings undertaken by the Bank for recovery of its dues. Hence, the order impugned does not call for any interference by this Tribunal.

In view of the discussions as recorded above, the appeal filed by the appellants is liable to be dismissed, hence the same is with no order to costs.

A copy of this order be forwarded to the parties concerned as well as to the DRT concerned and be also uploaded on the e-drt portal.

Justice R.D. Khare
Chairperson

VN Giri,PS