



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 294 of 2022
Decided on : 11.11.2025

UCO Bank and another

...Petitioners

Versus

Smt. Manjana Verma Sahni and another

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes

For the petitioners : Mr. Jitender Pal Ranote, Advocate.

For the respondents : Mr. Bimal Gupta, Senior Advocate, with Mr. Varun Thakur, Advocate, for respondent No.1.

Name of respondent No.2 deleted
vide order dated 10.09.2025.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have assailed order dated 06.04.2022, passed by learned Civil Judge, Court No.1, Solan, District Solan, H.P. in CMA No. 202/6 of 2021, in Civil Suit No. 19/2020, in terms whereof, an application filed by the petitioners herein, under Order VII, Rule 11 of the Civil Procedure Code (hereinafter referred to as 'CPC'), was

¹Whether reporters of the local papers may be allowed to see the judgment?

dismissed.

2. The respondent herein has instituted a suit for declaration and for permanent prohibitory injunction as also for mandatory injunction against the present bank and one Amandeep Singh, *inter alia*, on the ground that the plaintiff is the lawful owner in possession of the property i.e. Flat No.1, situated at Ground Floor, Block 18 Phase II, Housing Board Colony, Saproon, Solan, in terms of a sale deed executed and registered on 11.12.2019. According to the plaintiff, the property was purchased from one Manjeet Singh. The property in question was initially allotted by HIMHUDA to one Smt. Anuradha Mehrotra, who transferred the same subsequently in favour of Manjeet Singh and this was done after seeking due permission from HIMHUDA. After Manjeet Singh became the owner of the property, he sold the same to the plaintiff against consideration. It is further averred in the plaint that the plaintiff was under the bona fide impression that the suit property being free from all type of charges, was transferred in her name as nothing stigmatic appeared to be there and whatever was the charge of ICICI Bank, stood cleared by the plaintiff. Yet now

defendants No.1 & 2 are proceeding to take possession of the said property on the basis of some alleged mortgaged documents executed by defendant No.3 Amandeep Singh. It is in this backdrop that the suit has been filed alleging that the bank officials in connivance with Amandeep Singh, had played fraud upon the plaintiff. The reliefs sought in the suit are as under:-

“a) *Decree of declaration declaring the Gift deed bearing registration no. 558/2008 alleged to be executed and registered in the name of defendant no.3 and thereafter mortgage deed bearing registration no.661/2015 alleged to be executed in by defendant no.3 in favor of defendant no.1 and 2 as void ab initio, false and fictitious documents and is a result of fraud committed by defendant no.1 to 3 in connivance with each other and same deeds are not binding upon the right, title and interest of the plaintiff in the suit property on the basis of sale deed bearing registration no.2471 registered on dated 11-12-2019.*

b) *A Decree of Permanent Prohibitory Injunction restraining the defendants no.1 and 2 to misuse the process of law to take the possession of the suit property*

i.e. bearing Flat No.1, Ground Floor, Block 18 Phase II, Housing Board Colony, Saproon, Solan, constructed in a land comprised in khata khatoni no.500min/533 khasra no.kita 5 total measuring 74-01 bigahs Tehsil and District Solan H.P. by situated in mauja Dehun dispossessing the plaintiff from the suit property in any manner whatsoever and to create charge, encumbrance of any type in any manner what so ever upon the suit property.

c) Any other additional or alternative relief if this Hon'ble Court deem fit under the present fact and circumstances of the case, may kindly be passed in favor of plaintiff and against the defendants in the interest of justice and fair play."

3. Written statement to the plaint stands filed by the present petitioners. A counter-claim has also been filed by the petitioners before the learned Trial Court.

4. The petitioners also preferred an application under Order VII, Rule 11 of the CPC, seeking rejection of the plaint, *inter alia*, on the ground that the Civil Court has no jurisdiction to entertain the same in light of the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred

to as 'the 2002 Act') and further on the ground that there is no enforceable cause of action against the plaintiff. The application stands dismissed by the learned Trial Court and feeling aggrieved the petitioners have approached this Court.

5. Learned counsel for the petitioners has vehemently argued that in light of the provisions of the 2002 Act, the Civil Suit was not maintainable and the Trial Court has erred in not appreciating this fact that the suit was barred by law. He further argued that otherwise also there was no enforceable cause of action against the bank and this aspect of the matter has also been ignored by the learned Trial Court. He further submitted that the petitioner was having a remedy under Section 17 of the 2002 Act and in light of the bar that is there under Sections 34 and 35 of the 2002 Act, the Civil Suit was not maintainable. He stated that as all these aspects of the matter were ignored by the learned Trial Court, the present petition be allowed by setting aside the impugned order.

6. On the other hand learned Senior Counsel appearing for the respondent No.1-plaintiff has supported the order passed by the learned Trial Court by submitting that as

the issues raised in the plaint are such which cannot be decided under the provisions of 2002 Act, therefore, the application was rightly rejected by the learned Trial Court. He submitted that there was an enforceable cause of action against the petitioners-bank for the reason that the petitioner bank was trying to take away the possession of the property of plaintiff on the basis of an alleged mortgage of the said property by one Amandeep Singh with whom the plaintiff has no connection whatsoever. He submitted that in light of the fact that the respondent No.1/plaintiff is the true owner of the suit property, the only Court which can give a declaration to this effect is a Civil Court and other reliefs prayed for can also be granted by the Civil Court. He relied upon the judgment of the Hon'ble Supreme Court of India in Central Bank of India and another Versus Prabha Jain and others, (2025) 4 SCC 38 and submitted that the present petition being devoid of any merit be dismissed.

7. I have heard learned counsel for the petitioners as well as learned Senior Counsel appearing for respondent No.1. and have also carefully gone through the impugned order as

well as other documents on record.

8. The crux of the suit that was filed by the plaintiff has already been mentioned by me hereinabove. Section 17 of the 2002 Act, *inter alia*, provides that any person including borrower aggrieved by any of the measures referred to in Sub-Section (4) of Section 13 taken by the secured creditor or his authorized officer under Chapter III of the Act, may make an application along-with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measure has been taken. Section 34 of the 2002 Act provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any such action. Section 35 of the 2002 Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

9. Hon'ble Supreme Court in Central Bank of India and another Versus Prabha Jain and others (supra) in somewhat similar circumstances after referring to certain previous adjudication of its on the issue, has been pleased to hold that the Debt Recovery Tribunal is a creature of the RDB Act of 1993 and is empowered to exercise powers under that act and the SARFAESI Act of 2002. The Tribunal is bound by the powers conferred to it by the Parliament. Hon'ble Supreme Court has further held that the Supreme Court in Dwarka Prasad Agarwal Versus Ramesh Chander Agarwal, (2003) 6 SCC 220, has explained that bar of jurisdiction of a Civil Court is not to be readily inferred and such a provision requires strict interpretation. Hon'ble Court has held that the Court would lean in favour of construction which would uphold the retention of Civil Courts jurisdiction. Hon'ble Supreme Court further held that as the matter related to the protection of public money and is in the larger public interest, therefore, it is essential for Reserve Bank of India and other stakeholders to collaborate in developing a standardized and practical approach for preparing title search reports before sanctioning loans and also for the

purpose of determining liability of the officers who approved loans.

10. Coming back to the facts of the present case, herein admittedly the plaintiff is a stranger as far as the petitioners-bank is concerned. The plaintiff has neither raised any loan from the bank nor the plaintiff is a guarantor in the issue which has led to the action having been initiated by the bank under the 2002 Act. In fact, in the present case, there are very peculiar facts wherein the plaintiff has approached the Civil Court seeking a declaration that gift deed alleged to be executed and registered in the name of defendant No.3 by the General Power of Attorney holder of Manjeet Singh and thereafter mortgage deed registered by defendant No.3 in favour of defendants No.1 and 2, in the year 2015 are void ab-initio, false and fictitious documents and a result of fraud committed by defendants No.1 to 3 in connivance with each other. In light of this prayer of declaration, a decree of permanent prohibitory injunction restraining the defendant-bank to misuse the process of law to take the possession of the suit premises has also been prayed for.

11. This Court is of the considered view that the first relief which has been prayed for by the petitioners by no stretch of imagination can be granted under Section 17 of the 2002 Act and for the grant of that relief obviously the Fora is the Civil Court. This Court is not even remotely suggesting that whatever is mentioned in the Civil Suit by the plaintiff is to be construed to be the gospel truth. Of course, the defendant has a right to file written statement thereto, which already in fact stands by and the defendant has a legal right to contest the Civil Suit including the aspect of the maintainability, but the same be better decided by way of a trial, by framing of issues and by permitting the parties to lead evidence. In the backdrop of the facts which are involved in this case, invoking jurisdiction under Order VII, Rule 11 of the CPC and throwing out the plaint at the very initial stage, would be a very-very dangerous step as it would take away the right of the plaintiff to agitate the cause before the appropriate Fora. As far as Section 17 of the 2002 Act is concerned, it is again reiterated that the issues which are raised in the suit, cannot be decided under Section 17 of the 2002 Act.

12. In this backdrop if one perceives the order passed by the learned Trial Court, this is exactly what has been held by the learned Trial Court also and this Court concurs with the findings that have been returned by the learned Trial Court and sees no reason to interfere with them under Article 227 of the Constitution of India. The reliance placed upon by the learned counsel for the petitioners on the judgments of the Hon'ble Supreme Court of India in Kanaiyalal Lalchand Sachdev and others Versus State of Maharashtra and others, (2011) 2 SCC 782 and Jagdish Singh Versus Heeralal and others, (2014) 1 SCC 479, in the considered view of this Court are of no assistance to the petitioners in the backdrop of the peculiar facts which are involved in this particular case. This Court is not even remotely suggesting that in light of the provisions of Sections 17 and 34 of the 2002 Act, the petitioners have no right to agitate what is being agitated but the facts of the case demand that the issue be decided by way of a trial before the Civil Court. As the bank indeed is taking coercive steps against the property which plaintiff claims to be her, there is a cause of action in her favour against the bank.

13. In light of above observations, the petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 11, 2025
(Shivank Thakur)