



REAL ESTATE

Supreme Court Ruling on Priority of Mortgage Created by Deposit of Title Deeds over Equitable Mortgage by deposit of an unregistered Agreement of Sale

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The Cosmos Co-operative Bank Limited v/s Central Bank of India & Ors.

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Background & Factual Matrix

The case involved a dispute between Cosmos Co-Operative Bank Limited and Central Bank of India over the priority of mortgage rights on a property offered as security by the borrowers who defaulted on re-payment of their loans.

It is important to note that the borrowers availed a loan facility from the Central Bank of India in the year 1989 based on an unregistered Agreement of Sale for a flat (hereinafter referred to as the “**Suit Flat**”) that the borrowers proposed to purchase from the developer. In accordance with this, the Central Bank of India sanctioned the loan to the borrowers, creating a charge over the Suit Flat.

Subsequently, in 1998, the same borrowers availed another loan from Cosmos Co-Operative Bank Limited by depositing an unregistered Agreement of Sale along with a Share Certificate pertaining to the Suit Flat.

When the borrowers defaulted on re-payment of their loan, the Central Bank of India approached the Debt Recovery Tribunal (hereinafter referred to as the “**DRT**”) for recovery of the requisite amount. The DRT held that the Central Bank of India had failed to establish a valid mortgage due to its failure to present the title deeds based on which the loan was sanctioned to the borrowers or to present any registered title deed pertaining to the Suit Flat.

Aggrieved by the DRT’s finding, the Central bank of India appealed in the Debt Recovery Appellate Tribunal (hereinafter referred to as the “**DRAT**”). Upon the production of the unregistered Agreement of Sale by the Central Bank of India, the DRAT ruled that the mortgage created by Cosmos Co-Operative Bank Limited was a subsequent mortgage created by the Central Bank of India. The DRAT further held that the mortgage created by the Central Bank of India was valid and set aside the order passed by the DRT.

Aggrieved by the DRAT’s decision, Cosmos Co-Operative Bank Limited approached the Bombay High Court, which upheld the DRAT’s decision, leading to the present appeal before the Supreme Court by the Cosmos Co-Operative Bank Limited.

Key Legal Issues

1. The priority of charge created by Cosmos Co-Operative Bank Limited based on a Share Certificate pertaining to the Suit Flat over the charge created by Central Bank of India based on an unregistered Agreement of Sale.
2. Whether the charge created by the Central Bank of India, based on an unregistered Agreement of Sale, was valid.

Supreme Court’s Findings

Priority of Mortgages:

The Court ruled that a mortgage created merely by depositing an unregistered Agreement of Sale does not create any legal interest in the property as per Section 54 of the Transfer of Property Act, 1882. The Court reinforced this by referring to *Suraj Lamp & Shakeel Ahmed v. Syed Akhlaq Hussain*, stating that an unregistered Agreement of Sale cannot be relied upon to claim ownership rights or to create a mortgage.

Further, the Court clarified that a legal mortgage created by deposit of valid title deeds – specifically, in this case, a Share Certificate – always has priority over an equitable mortgage created based on an incomplete title document, such as an unregistered Agreement of Sale. The Court held that Central Bank of India’s mortgage, being an equitable mortgage due to the deposit of an unregistered Agreement of Sale, is subordinate to the mortgage created by Cosmos Co-Operative Bank Limited, which was supported by a Share Certificate, equivalent to deposit of title deeds.

Furthermore, the Court applied Section 78 of the Transfer of Property Act, which states that if a prior mortgagee acts negligently and allows a subsequent mortgagee to advance money under the assumption that no prior encumbrance exists, the prior mortgage will be postponed. Since, the Central Bank of India did not issue a public notice or register its equitable charge, Cosmos Co-Operative Bank Limited's mortgage was given priority, and the High Court's ruling was set aside.

Recognition of Equitable Mortgage as charge under Section 100 of the Transfer of Property Act, 1882:

While an equitable mortgage does not transfer ownership, it can still create a charge under Section 100 of the Transfer of Property Act, 1882. However, such a charge is only enforceable against the parties involved and does not bind third parties if creation of such equitable charge was not disclosed to them. The Court explained that such a charge will be subordinate to a charge created over the property by deposit of title deeds.

The Court emphasized that an equitable mortgage does not create a charge that can be enforced against third parties (*Right in Rem*). Instead, it only creates a personal obligation (*Right in Personam*) between the parties involved. A legal mortgage, on the other hand, creates an enforceable interest in the property itself, making it superior in law.

Judgment

- The Supreme Court set aside the High Court's order, ruling in favour of Cosmos Co-Operative Bank Limited by affirming their superior claim over the Suit Flat. The Court further held that an equitable mortgage created by an unregistered Agreement of Sale cannot override a legal mortgage supported by valid title deeds.
- The Court recognised equitable mortgages under the nomenclature of a "charge" as per section 100 of the Transfer of Property Act, 1882, and clarified the enforceability of the same, as per the procedure and provisions applicable to a simple mortgage, except for those without notice of such charge.

Conclusion

This ruling emphasizes the importance of proper documentation and registration in securing mortgages and establishes that only legally valid mortgages, backed by recognized title deeds, hold precedence over subsequent mortgage claims. The judgment also clarifies the enforceability of equitable mortgages, recognizing them as subordinate to legal mortgages and reaffirming the need for lenders to act prudently to protect their interests.