

(2024) 12 SHI CK 0059

High Court Of Himachal Pradesh

Case No: OSA No.12 Of 2022

Bakshish Singh (since deceased)
through LRs And Others

APPELLANT

Vs

Ajay Vir Singh And Others

RESPONDENT

Date of Decision: Dec. 20, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Order 7 Rule 11, Order 7 Rule 11(b), Order 7 Rule 11(d)
- Limitation Act 1963 - Article 58, 62
- Transfer of Property Act 1882 - Section 58(b), 67, 68
- Specific Relief Act 1963 - Section 34

Hon'ble Judges: Tarlok Singh Chauhan, ACJ; Bipin Chander Negi, J

Bench: Division Bench

Advocate: G.D. Verma, Sumit Sharma, Janesh Gupta, Karan Singh Kanwar, Desh Raj Thakur, Ashok Kumar Tyagi

Final Decision: Dismissed

Judgement

Bipin Chander Negi, J

1. The present appeal has been preferred against judgment dated 01.08.2022, whereby the learned Hon^{ble} Single Judge has

allowed an application filed by respondents No. 15 to 18 under Order 7 Rule 11 (b) and (d) CPC. The brief facts giving rise to the present appeal in

the case at hand are that one Basant Singh had created a simple mortgage without possession on the suit land in favour of one Ram Singh. The

amount borrowed was Rs.800/-. The simple mortgage had been created with an undertaking to pay the mortgage money within three years. In default

whereof the mortgagor was to pay 75 paisa w.e.f the date of execution of the mortgage deed till three years thereafter. With a further stipulation that if in case there is a default in making repayment then the mortgager would pay penal compounding interest.

2. The mortgage was registered with the Sub Registrar on 26.06.1931. At the time of recording of the same in the revenue record, Ram Singh had expired. Therefore, the mutation of mortgage was attested in favour of Tara Singh i.e. son of Ram Singh. The present petitioner, respondents No. 22,

23 and proforma respondents No. 19 to 21 are all successors-in-interest of Tara Singh.

3. After the death of Basant Singh and the subsequent death of his wife, his estate was inherited by his two daughters Rattan Kaur and Pritam Kaur

in equal shares. Respondents No. 2 to 13 are the legal heirs of Rattan Kaur and respondent No. 14 is the legal heirs of Pritam Kaur.

4. Rattan Kaur sold her share to defendant No.1 on 18.02.1999. Similarly, Pritam kaur sold her share to defendant No.1 on 26.06.2000. Defendant

No.1 in the month of January, March, May of 2019 sold part of the suit land purchased from Rattan Kaur to respondents No. 15 to 18. Mutation No.

1240 dated 07.08.2018 was attested by the revenue authority deleting the names of the petitioners, respondents No. 22 and 23, proforma respondents

No. 19 to 21, who being successor-in-interest of Tara Singh had been recorded as mortgagees.

5. In the aforesaid backdrop in the suit filed on 13.01.2020 by the present petitioners alongwith respondents No. 22 and 23, a declaration has been

sought qua sale deeds entered into between Rattan Kaur and Pritam Kaur with defendant No.1 in the years February, 1999 and June 2000. Other

than the aforesaid, declaration has been also sought qua mutation No. 1240 dated 07.08.2018 and qua sale deeds entered into between respondent

No.1 and respondents No. 15 to 18 in the months of January, March, May, 2019. Besides the aforesaid, a declaration has been sought qua the

petitioners, proforma respondents No. 19 to 21 and respondents No. 22 and 23 having become owners of the suit land based upon the principle of

foreclosure. Other than the aforesaid, permanent prohibitory injunction has been sought against the contesting respondents restraining them from

interfering, raising illegal construction, creating any charge or changing the nature or alienating the suit land. A mandatory injunction has also been

sought for demolition of illegal construction raised by the contesting respondents on the suit land.

6. Heard counsel for the parties perused the plaint, documents appended therewith.

Order 7 Rule 11 CPC, reads as under:

“11. Rejection of plaint.”The plaint shall be rejected in the following cases

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite

stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.” (emphasis

supplied). Reference in this respect can be made to case titled Dahiben v. Arvinbhai Kalyanji Bhanusali, reported as (2020) 7 SCC 366. Principles culled therein are

being referred to hereinbelow;

7. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the

threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be

terminated on any of the grounds contained in this provision.

8. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses

(a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

9. The underlying object of Order 7 Rule 11(d) is that if in a suit, the suit is barred by limitation under Rule 11(d), the court would not permit the

plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further

judicial time is not wasted.

10. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial

dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

11. Indisputably, the mortgage created in the case at hand is a "simple mortgage as defined under Section 58(b) of the Transfer of Property Act

1882". The mortgage in the case at hand has been created without delivery of possession. The mortgagor has bound himself to pay the mortgage

money. On failure to pay mortgage money, the mortgagee has a right to sell the mortgage property and to apply sale proceeds towards mortgage

money.

12. In the case at hand, the mortgager had agreed to pay the borrowed money within three years. The mortgage deed in the case at hand had been

created on 26.06.1931. Therefore, the right to recover the borrowed amount accrued on 26.06.1934. In terms of Article 62 of the Limitation Act 1963,

a suit to enforce payment of money secured by mortgage could have been filed within 12 years. Hence, in the case at hand, the right to recover the

mortgage amount expired on 26.06.1946. However in the case at hand the suit filed is not one for recovery of the mortgage money.

13. While examining the case on the principle of foreclosure, the Hon^{ble} Single Judge has correctly taken note of Chapter-IV of Transfer of

Property Act & specifically Sections 67,68 thereof. Thereafter, it has correctly been held that in the case of a simple mortgage, right of foreclosure is

not available in law, hence, the claim of acquisition of ownership on the mortgaged property on this account is misconceived.

14. In the case at hand, the suit filed is a simplicitor suit for declaration that the petitioners alongwith proforma respondents No. 19 to 23 and

respondents No. 22 to 23 having become owners of the suit property. Admittedly in the case at hand, the aforesaid individuals are not in possession of

the suit land. In terms of Section 34 of the Specific Relief Act, specially the proviso thereto, no declaration can be issued in favour of a party which

being able to seek further relief then a mere declaration of title omits to do so. Hence, on this account also, the suit is not maintainable as being barred

by law.

15. Admittedly the petitioners along with proforma respondents No. 19 to 23 and respondents No. 22 to 23 are neither in possession nor are owners of

the suit land. No relief of possession qua the suit land has been claimed. As already stated supra in case of a simple mortgage right of foreclosure is

not available. Therefore, neither relief of permanent prohibitory injunction nor mandatory injunction can be granted to the petitioners along with

proforma respondents No. 19 to 23 and respondents No. 22 to 23.

16. A declaration qua mutations attested in February, 1999 and June 2000 is being sought in a suit filed on 13.01.2020. Article 58 of the Limitation Act

provides three years limitation to obtain any other declaration from the date when the right to sue first accrues. The word "First" has been used

between the word "sue" and "accrues". Meaning thereby that whereas a suit is based on multiple causes of action, the period of limitation

shall begin from the date when the right to sue first accrues. Since the right to challenge sale deeds made by Rattan Kaur, Pritam Kaur to respondent

No.1 in February 1999 and June 2000 is patently barred by limitation, therefore, declaration qua subsequent sale deeds made in the months of January,

March, May 2019 is not maintainable. Reference in this regard can be made to the apex court judgement in Khatri Hotels (P) Ltd. v. Union of India ,

2011(9)SCC 126.

17. It is a well settled proposition of law that the plaint cannot be rejected partially. (Biswanath Banik v. Sulanga Bose, (2022) 7 SCC 731).

In view of the aforesaid there is no merit in the appeal, the appeal stands dismissed, so the pending application(s), if any.