

(2008) 09 P&H CK 0087

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Mohinder Singh

APPELLANT

Vs

Krishan Lal and Others

RESPONDENT

Date of Decision: Sept. 30, 2008

Acts Referred:

- Evidence Act, 1872 - Section 65

Citation: (2008) 152 PLR 569 : (2009) 2 RCR(Civil) 642

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is defendants' second appeal challenging the judgment and decrees of the Courts below, whereby suit of the plaintiff-respondent for possession has been decreed.

2. In brief, plaintiff Krishan Lal brought suit for possession seeking the possession of agricultural land measuring 7 kanals 4 marlas comprised in Khewat No. 608, khatoni No. 955, rect. No. 112, killa No. 6/2 situated at village Kakheri, Tehsil Guhla. As per assertion of the plaintiff, he along with proforma defendants No. 4 to 9 are owners of the suit land and defendants No. 1 to 3 are in unauthorized possession of the suit land without the consent of the plaintiff and other co-sharers. It is also alleged that the entries in the revenue record regarding the suit land having been mortgaged etc. are against the factual facts and the defendants have no title, right or interest in the suit land. The defendants has refused to hand over the possession to the plaintiff. Hence the suit.

3. Defendant No. 1 resisted the claim of the plaintiff and inter alia pleaded that the suit is mala fide and mis-conceived, as suit property along with some other properties, has been mortgaged with possession by the predecessor-in-interest of

the plaintiff and defendants No. 4 to 9 with the predecessor-in-interest of the defendants for the last more than 100 years. The mortgagor had failed to get the mortgage redeemed within the permissible period of law, as such, the equity of redemption stands vested in the mortgagee by prescription and the mortgagor seizes to have any right, title or interest in the suit land mortgaged and the land allotted during the consolidation in lieu of the land so mortgaged. The right of the plaintiff asking for the possession simplicitor is not maintainable.

4. It is further pleaded that defendant No. 1 is bonafide transferee for a consideration in good faith and the defendant purchased the suit land from Madan Lal, who is recorded to be the mortgagee in possession for an amount of Rs. 1,000/- vide registered sale deed No. 203 dated 18.5.72. The suit of the plaintiff is time barred. The defendant No. 1 is in possession of the suit land for a period of more than 12 years considering himself to be owner of the land in dispute, the possession of the defendant is open, continuous, hostile, to the knowledge of everyone, uninterrupted, without any objection from any quarter, in assertion of his right of ownership and the defendant No. 1 has also become the owner by way of adverse possession. Thus, the defendant No. 1 prayed for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed:

- i) Whether the plaintiff is owner of the suit and as alleged? OPP
- ii) If issue No. 1 is proved, whether the plaintiff is entitled to a decree for possession as alleged? OPP
- iii) Whether the suit of the plaintiff is malafide and misconceived? OPD
- iv) Whether the suit is not maintainable in the present form? OPD v) Whether defendant No. 1 is a bonafide transferee as alleged, if so its effect? OPD
- vi) Whether the suit is time barred? OPD
- vii) Relief.

6. The learned trial court decided issues No. 1 and 2 in favour of the plaintiff. Issues No. 3 and 4 were also decided against the contesting defendants and in favour of the plaintiff. Issues No. 5 and 6 were also decided against the contesting defendants. The suit of the plaintiff was decreed.

7. Feeling aggrieved against the aforesaid judgment and decree of the trial Court the defendants preferred an appeal, which was dismissed by the Additional District Judge, Kaithal, vide impugned judgment and decree dated 24.12.2003. While dismissing the appeal, the Lower Appellate Court observed that the defendant has failed to prove his possession over the suit as a mortgagee and he also failed to prove that he has become the owner by way of adverse possession and that the defendants No. 1 to 3 have failed to prove that they are bona fide purchasers and thus the trial Court rightly decreed the suit of the plaintiff-respondent.

8. Still not satisfied, defendants have filed this appeal challenging the judgment and decrees of the courts below.

9. The learned Counsel for the appellant has vehemently argued that the Courts below have misread and misinterpreted the evidence on record which has resulted into perversity of findings as the appellant has proved on record that he purchased the mortgagee rights from his predecessor-in-interest. Madan Lal vide Ex.D-15 and thus he is a bona fide transferee of mortgagee rights and therefore the appeal is liable to be accepted. Learned Counsel has further argued that the Courts below have erred at law while holding that Ex.D-15 has not been proved. He has placed reliance on a judgment of Allahabad High Court cited as Kiran Singh and Ors v. Balbir Singh and Anr. 1994(1) CCC115 to argue that certified copy of a registered sale deed is admissible in evidence and there was no further need of any evidence to prove Ex.D-15.

10. On the other hand, learned Counsel for the respondent has argued that the Courts below have recorded a finding of fact that the appellant has failed to substantiate his claim being a mortgagee.

11. I have heard learned Counsel for the parties and find no force in the arguments raised by the learned Counsel for the appellant. The judgment cited by the learned Counsel for the appellant is of no help to him as in this judgment a certified copy of the registered sale deed was produced as secondary evidence and an objection was raised that the same is inadmissible in evidence. In those circumstances, it was held that certified copy is a secondary piece of evidence and the same is admissible in evidence in order to prove the contents of the documents u/s 65 Sub-clause (e) and (f), of the Evidence Act.

12. There is no dispute with regard to the above proposition of law. However, the proposition of law canvassed in the instant appeal is different. In fact learned Counsel for the appellant wants to say that once the document is exhibited on the record, its mode of proof is also dispensed with and contents of the documents stand proved. The contention of learned Counsel is liable to be rejected. Simply because the document is exhibit and is admissible into evidence will not ipso facto dispense with the proof of contents of documents and the contents of documents have to be proved as per law. It is well settled that declaration made by private party before a public authority is not a public document. Modes of proof required under law cannot be dispensed with in respect of said agreement. I find support from a judgment titled as Manuel Barreto Xavier v. Narayan Biku Naik 1997(3) R.C.R. (Civil) 215 Bombay (Panaji Bench) (Goa), to form this view.

13. Thus, mortgage deed Ex.D-1 is not a public document and the appellant who claims himself to be bona fide purchaser of mortgagee rights has failed to prove the contents of documents Ex.D-15. In the case of State of Gujarat v. Amba Lal Magan Lal Shah Criminal Law Journal 967(1), it has been held that a private document does

not become a public document, simply because it is filed in the Court. To be a public document, it should be record of the act of a public officer or of a Court, that a part of the document namely, the original part would be a private document forming the record of the act of the private parties, and what is subsequently added to that document by the Court would be a public document. Mere fact that the documents are forthcoming from a Government Department and bear its seal, will not dispense with its necessity of formally proving those documents.

14. Thus there is no illegality or infirmity in the judgment and decrees of the Courts below.

No Substantial question of law arises.

15. No merit.

Dismissed.