

(2004) 12 P&H CK 0032

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 44 of 2003

Mahabir

APPELLANT

Vs

Sadhu Ram and Another

RESPONDENT

Date of Decision: Dec. 10, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2, Order 20 Rule 5, 100
- Registration Act, 1908 - Section 17(2)

Citation: (2005) 2 CivCC 157 : (2005) 140 PLR 68 : (2005) 1 RCR(Civil) 410

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: S.K. Jain, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This is plaintiffs appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity, "the Code") challenging concurrent findings of facts recorded by both the Courts below.

2. It has been concurrently found that the plaintiff-appellant has failed to establish by adducing any evidence that he has become owner of the suit land. The judgment and decree Exs.P1 and P-2 respectively dated 19.12.1988 were obtained by the plaintiff-appellant when all the defendant-respondents were proceeded exparte. The plaintiff-appellant was found to be in possession of the suit land on the basis of a mortgage deed executed in favour of one Rattan Singh and the aforementioned Rattan Singh is alleged to have transferred his mortgagee rights to the plaintiff-appellant. On the aforementioned basis, the defendant-respondents were restrained from interfering in possession of the plaintiff-appellant over the suit land except in due course of law. The aforementioned judgment and decree did not declare the title of the plaintiff-appellant. In the suit it has been claimed that the

plaintiff-appellant has got transferred mortgagee rights in respect of the suit land in his favour by making the payment of Rs. 5,000/- to Rattan Singh. However, no document has been placed on record which may inspire confidence. The document showing the mortgage in favour of Dewan Singh by Chandu and transfer of mortgagee rights in favour of the plaintiff-appellant are unregistered documents and, therefore, have been held to be inadmissible in evidence as per Section 17(2) of the Indian Registration Act, 1908 (for brevity, "the Act"). Those documents were marked as Mark "C" and Mark "D".

3. Brief facts of the case are that Chandu, the original owner of 44 kanals of land had three sons who is alleged to have executed a family settlement during his life time and have partitioned the suit land between the plaintiff-appellant and the defendant-respondents who are the real brothers. He is alleged to have retained 8 kanals of land comprised in Killa No. 22 of the Rect. No. 43. The same is allegedly mortgaged with possession to one Rattan Singh son of Udham Singh for a sum of Rs. 5,000/- vide mortgage deed dated 5.9.1994. The plaintiff-appellant claimed that Rattan Singh transferred the mortgagee rights in respect of said 8 kanals of land in his favour for a sum of Rs. 5,000/- and possession of the same was delivered to him. It was further claimed that the plaintiff-appellant became owner of 14 kanals 18 marlas of land i.e. 1/3rd of the total land being the legal representative of his father Chandu. The total land claimed by the plaintiff-appellant as owner in possession is 22 kanals 18 marlas.

4. Mr. S.K. Jain, learned counsel for the plaintiff-appellant has vehemently argued that possession of the plaintiff-appellant under the judgment and decree dated 19.12.1988 Exs.P-1 and P-2 in respect of Khasra No. 22 Rect. No. 43 would continue to remain intact which cannot be disturbed by the Courts below by dismissing the suit of the plaintiff-appellant. He has also urged that under Order XX Rule 5 read with Order XIV Rule 2 of the Code even if issues No. 2 and 3 were not pressed, the Courts were under an obligation to record the findings on the aforementioned issues. In support of his submission, the learned counsel has placed reliance on a judgment of this Court in the case of Banarsi Das v. Balwant (2001)129 P.L.R. 479 and a Division Bench judgment of Himachal Pradesh High Court in the case of [Om Prakash and Others Vs. State of Himachal Pradesh and Others](#), .

5. After hearing the learned counsel at a considerable length, I have not been able to persuade myself to accept his submissions. It is well settled that the question of possession is a question of fact and it would not give rise to a question of law warranting admission of a second appeal in exercise of jurisdiction u/s 100 of the Code. For the aforementioned proposition reliance could be placed on the judgments of the Supreme Court in [Makhan Lal Vs. Asharfi Lal and Others](#), , [Mohan Lal Vs. Nihal Singh](#), and [Chandra Bhan Vs. Pamma Bai and Another](#), . Therefore, there is no room left for interference in the aforementioned findings of facts and the appeal is liable to be dismissed.

6. Moreover, it has been concurrently found that the plaintiff-appellant has not been able to produce on record any evidence showing that the property was mortgaged to Rattan Singh or it was mortgaged by his father Chandu to Dewan Singh. Even the transfer of mortgagee rights in favour of the plaintiff-appellant has been effected by unregistered documents which have been taken on record as Mark "C" and Mark "D" and are inadmissible in evidence u/s 17(2) of the Act. However, it has been found from the revenue record i.e. mutation Ex.P-3 and jamabandi Ex.P-4 that out of total 44 kanals and 15 marlas of land owned by father of the plaintiff-appellant, 1/3rd has been transferred in his name being his share besides his other two brothers who have been given equal shares. Thus, his share is worked out to be 14 kanals 18 marlas. The suit land is still joint and not partitioned between the parties. Therefore, there is no scope to interfere in the findings of facts as re-appreciation for recording conclusion different than the one recorded by the Courts below is impermissible.

7. The submission of the learned counsel that the Courts below were under an obligation to decide all the issues is without any substance because both the Courts below have expressly recorded that issue Nos. 2 and 3 were not pressed. Therefore, both the issues were decided against the defendant. A perusal of the judgment would show that onus to prove the aforementioned two issues was placed on the defendant-respondents and they were to fail in case of absence of any evidence or for not pressing those issues. Therefore, even otherwise the plaintiff-appellant cannot be considered to be aggrieved by the findings recorded on those issues. The judgments on which reliance has been placed by the learned counsel do not have any bearing on the question raised because in the case of Banarsi Das and another (supra) and Division Bench judgment of Himachal Pradesh High Court in Om Parkash's case (supra) the legal question decided is whether the trial Court has to decide the issue as a preliminary issue or all the issues are required to be taken up together in case evidence needs to be adduced. However, in the present case, no such controversy has been put forth for determination of this Court. Therefore, the argument is wholly devoid of merit and I have no hesitation in rejecting the same.

8. For the reasons above, this appeal fails and the same is hereby dismissed.