

(2004) 05 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1855 of 1980

Puran Singh (Dead) through LRs

APPELLANT

Vs

Harphool Singh (Dead) through
LRs

RESPONDENT

Date of Decision: May 28, 2004

Acts Referred:

- Punjab Restitution of Mortgaged Lands Act, 1938 - Section 2

Citation: (2005) 139 PLR 586 : (2004) 4 RCR(Civil) 776

Hon'ble Judges: Viney Mittal, J

Bench: Single Bench

Advocate: Sanjay Majithia, for the Appellant; G.S. Punia, for the Respondent

Final Decision: Dismissed

Judgement

Viney Mittal, J.

Plaintiff, Puran Singh having concurrently remained unsuccessful before the Courts below has approached this Court through the present Regular Second Appeal.

2. The plaintiff filed a suit for declaration and possession of 1/2 share of the land in dispute measuring 25 bighas 15 biswas on the ground that the plaintiff had become the owner of the suit land and, as such, was entitled to the possession of the same and the defendants were no more entitled to redeem the land. The plaintiff averred that a registered deed of mortgage dated June 26, 1923 was executed by Sant Singh and Bhagwan Singh sons of Narain Singh whereby land comprised in khasra No. 898 measuring 27 bighas had been mortgaged with possession by them for a sum of Rs. 5,705/- in favour of one Gokal Chand. It was further stated in the plaint that the aforesaid land along with three other khasra numbers 75,875 and 626 all measuring 56 bighas 18 biswas was already under mortgage with possession with aforesaid Gokal Chand for a sum of Rs. 3,087/- ever since 1965 BK. The aforesaid mortgage was executed by Sant Singh, Jiwan Singh and Bhagwan Singh sons of Narain Singh.

Later on 30th Baisakh 1978 KB (1921 A.D.), the said land was burdened with an additional charge of Rs. 900/- by one of the three mortgagors, namely, Sant Singh. In 1980 BK (1923 A.D.) Sant Singh and Bhagwan Singh, two of the original mortgagors raised a further charge of Rs. 1,718/- and that point of time, however, only one khasra No. 898 measuring 27 bighas remained under mortgage with possession while three khasra Nos. were released by the mortgagees without payment of any amount. Thus, the plaintiff claimed that in 1980 BK the mortgage amount rose to Rs. 5,075/- and the mortgaged land remained only one khasra No. 898 (27-0). The plaintiff claimed that the aforesaid mortgage of the year 1980 BK was in fact a new mortgage in suppression of the earlier mortgages. It was further claimed that he along with Hazura Singh and Niranjana Singh purchased orally the mortgagee rights of the suit land from the successors-in-interest of Gokal Chand mortgagee in the year 2003 BK and a mutation in this regard having been sanctioned on May 10, 1957, the plaintiff and the aforesaid persons had become mortgagees of the suit land. The share of the plaintiff in the aforesaid transaction was one half. During the consolidation proceedings in the village Khasra No. 898 was converted into four khasra numbers i.e. 2847 (6-5), 2848 (6-5), 2858 (6-5) and 2857 (7-0) total measuring 25 bighas and 15 biswas. The plaintiff further claimed that there was a private arrangement between plaintiff and the aforesaid Hazura Singh and Niranjana Singh and, accordingly, the remaining half share belonging to Hazura Singh and Niranjana Singh also came into the share of the plaintiff. Accordingly, the plaintiff alleged that the date of mortgage with possession being June 25, 1923 and the limitation of redemption having expired on 1.1.1971, the plaintiff had become full and absolute owner of the suit land and the defendants had lost their right to redeem the land. Accordingly, the suit was filed claiming the declaration and also the possession of the suit land.

3. The aforesaid suit was contested by the defendants. The defendants pleaded that the land in suit had already been restituted in their favour vide order dated September 24, 1974 passed by the Collector under the Punjab Restitution of Mortgaged Lands 1938. The defendants further pleaded that the aforesaid order passed by the Collector was binding on the parties and the Civil Court had no jurisdiction to try the suit as it was barred under the provisions of the aforesaid Act. In the aforesaid restitution proceedings before the Collector, the transactions of the year 1921 and 1923 had been duly admitted by the plaintiff, since only an additional charge had been created on the original mortgaged land. The defendants specifically maintained that the mortgage of the year 1923 was merely an additional mortgage on the original mortgage of 1908 and was not a new transaction in as much as all the original mortgagors were not parties to the transactions of 1921 and 1923. The defendants also stated that the possession of the suit land had been taken by the defendants in pursuance to the order passed by the Collector.

4. A replication was filed by the plaintiff. Besides reiterating the earlier pleas taken by him in the plaint, the plaintiff further claimed that since the Collector had no

jurisdiction to order restitution of the mortgaged property covered under the 1938 Act, therefore, the order passed by the Collector was without jurisdiction.

5. The learned trial Court on the basis of the evidence led by the parties held that the mortgage deed dated June 26, 1923 was merely an additional mortgage creating a further charge on the already mortgaged property which stood originally mortgaged by the mortgagees in the year 1908 and upon which an additional mortgage was created in the year 1921. It was specifically held by the learned trial Court that the aforesaid transaction of the year 1923 was neither a new transaction of mortgage nor a notation of the original mortgage transaction and as such the Collector was duly authorised and competent to order the restitution of the mortgage of 1908 under the provisions of the 1938 Act. It was also noticed by the learned trial Court that since the creation of additional charge in the year 1921 and again in the year 1923 was not by all the mortgagees, namely, Sant Singh, Jiwan Singh and Bhagwan Singh, therefore, the original transaction of mortgage created in the year 1908 still subsisted and, therefore, the Collector was duly competent to order the restitution thereof. However, the learned trial Court held that since the transactions of 1921 and 1923 were not before the Collector, therefore, the plaintiff was at the most entitled to the repayment of half of the amount of Rs. 2,618/- i.e. an amount of Rs. 1,309/- which the plaintiff could claim in accordance with law. Accordingly, the suit filed by the plaintiff for declaration and possession was dismissed by the learned trial Court.

6. The plaintiff took up the matter in appeal. The learned first appellate Court reappraised the entire evidence. On such reappraisal, the learned first appellate Court also came to the similar conclusions as had been arrived at by the learned trial Court. The learned first appellate Court also noticed that earlier mortgage was created in the year 1908 by all the three brothers but subsequently in the year 1921 and again in the year 1923, the transactions were either by one or the two brothers and not by all the three of them. On that basis, the learned first appellate Court also held that the aforesaid transaction of 1923 was not a new mortgage of khasra No. 898 but was the creation of an additional charge on the existing mortgage of 1908 which still subsisted. On the aforesaid conclusion, the learned first appellate Court also rejected the plea raised by the plaintiff and consequently dismissed the appeal filed by him.

7. Still dissatisfied, the plaintiff has approached this Court through the present regular second appeal.

8. I have heard Shri Sanjay Majithia, the learned counsel appearing for the appellant and Shri G.S.Punia, the learned counsel for the respondents and with their assistance have also gone through the record of the case.

9. Opening his arguments, Shri Sanjay Majithia, the learned counsel appearing for the appellant has made a grievance that the two courts below have wrongly refused

to admit the mortgage deed Ex. P-3 into evidence on the ground that the said document was inadmissible. According to the learned counsel, the factum of the execution of the aforesaid mortgage deed dated June 26, 1923 was never disputed by the defendants in their written statement nor during their evidence and since the entire basis of the claim of the plaintiff was the aforesaid deed, therefore, the said document could not be ruled out from consideration.

10. I have duly considered the aforesaid contention of the learned counsel for the appellant.

11. A perusal of the record of the case shows that the plaintiff had come up with a specific plea that the aforesaid mortgage dated June 26, 1923 was created by Sant Singh, Bhagwan Singh mortgagors through a registered mortgage deed. It was only on that basis that the plaintiff had set up his claim that the right of redemption had been lost by the defendants through efflux of time. The said plea of the plaintiff was contested by the defendant when they claimed that the said mortgage on the original subsisting mortgage of the year 1908 upon which, on an earlier occasion, an additional charge was created in the year 1921. In these circumstances, it is almost apparent that there was no dispute with regard to the due execution of the said mortgage dated June 26, 1923. Thus, I find that the grievance made by the plaintiff-appellant with regard to non-admission of the aforesaid document is well founded.

12. On merits of the controversy, Shri Majithia has vehemently argued that as per provisions of the Punjab Restitution of Mortgaged Lands Act, 1938 (hereinafter referred as "the Act"), Section 2 specifically provided that the provisions of the aforesaid Act were merely applicable to subsisting mortgages of land which were effected prior to June 8, 1901 in the territories which immediately before the 1st November, 1956 were comprised in the State of Punjab and prior to 17th February, 1915 in the territories which immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union (PEPSU). On that basis, Shri Majithia contended that since the mortgage deed Ex.P-3 was executed on June 26, 1923 and the land in question admittedly was situated in an area in the State of erstwhile (PEPSU), therefore, the Collector under the provisions of the Act had no jurisdiction to order the restitution of the land. Elaborating the aforesaid argument further, Shri Majithia argued that the aforesaid mortgage of the year 1923 was totally a fresh and a new transaction of mortgage and had no connection with the earlier transaction of mortgage which was executed by the mortgagees Sant Singh, Jiwan Singh and Bhagwan Singh in the year 1908. However, Shri Majithia has very fairly conceded that in case this Court was to come to the conclusion that the aforesaid transaction of creation of an additional mortgage on the original mortgage of 1908, then the provisions of the Act would fully apply.

13. In support of the aforesaid contention Shri Majithia has referred to the document Annexure PI dated 21 Jeth, Samvat 1965 (3.6.1908) vide which Bhagwan

Singh, Jiwan Singh and Sant Singh had mortgaged land measuring 56 bighas and 18 biswas in favour of Gokal Chand for a sum of Rs. 3,087/-. Shri Majithia has specifically pointed out that the aforesaid mortgage was with regard to four khasra numbers 898, 626, 755 and 785. However, subsequently through another transaction dated 13 Baisakh, 1978 Samvat (25.4.1921) Sant Singh one of the original mortgagors created an additional charge of Rs. 900/- on the aforesaid property. Later on through the transaction Ex.P3 dated Har 13, 1980 BK (25.6.1923), the other two mortgagors Sant Singh and Bhagwan Singh received an additional amount of Rs. 1,718/-. However, this time it was stipulated by the parties that the aforesaid additional mortgage would be only with regard to the land comprised in khasra No. 898 (27 bighas -0 biswas) since the remaining land had already been got restored by the mortgagors. On that basis, Shri Majithia has argued that the aforesaid transaction Ex.P-3, for all, practical purposes, was a fresh transaction of mortgage and, therefore, the same was not only a novation of the original transaction of mortgage of the year 1908 but was a new and fresh transaction between the parties. Accordingly, the learned counsel has contended that the provisions of the Act were not at all applicable and; therefore, the order of restitution passed by the Collector was totally without jurisdiction and non-est in the eyes of law. It is thus, maintained by Shri Majithia that since the aforesaid mortgage had not been redeemed by the mortgagors within the period of limitation, therefore, the plaintiff was entitled to the declaration and possession as was claimed by him in the suit.

14. On the other hand, Shri G.S.Punia, the learned counsel appearing for the defendant-respondents, with equal vehemence, has argued that the nomenclature of the document Ex.P-3 as well as the recitals contained therein would show that the same was merely intended to be an additional mortgage deed. Shri Punia has drawn my pointed intention to the recitals contained in the aforesaid document Ex.P-3 to argue that it was specifically provided by the parties that the land in question was already on mortgage with possession with the mortgagees and since the mortgagors required some more money, therefore, an additional charge was being created on the mortgaged property. Shri Punia has contended that although it was provided that some land out of the original mortgaged land stood released but the remaining land bearing khasra No. 898 was still with the mortgagees on the basis of the original mortgage of the year 1908. The learned counsel has, thus, argued that the Collector having ordered the restitution of the mortgaged property under the provision of the Act and the jurisdiction of the Civil Court having been barred under the Act, the suit filed by the plaintiff was not even legally maintainable.

15. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties.

16. In my considered view there is no merit in the present appeal.

17. The two courts below on the basis of the interpretation of the documents as well as on the basis of the other available record have held that the transaction of 1923 was not a new transaction and could not be taken to be totally detached from the transaction of the years 1908 and 1921. A reliance has been placed by the courts below on mutations Ex.D-16 and Ex.D-17 wherein an amount of Rs. 900/- was raised by Sant Singh in the year 1921 and an additional sum of Rs. 1,718/- was raised by Sant Singh and Bhagwant Singh in the year 1923. It is apparent that the original mortgage was created by three brothers Sant Singh, Jiwan Singh and Bhagwan Singh. At the time of creation of additional charge in the year 1921, Jiwan Singh and Bhagwan Singh did not participate in the said transaction. It was only Sant Singh who had raised an additional amount of Rs. 900/-. Subsequently in the year 1923 also all the three original mortgagors did not join to create any new transaction. At that time, it was only Sant Singh and Bhagwan Singh who had received an additional amount of Rs. 1,718/-. It was thus, clear that the original transaction of the year 1908 was at no point of time substituted by a new contract by all the three mortgagors. Of course, some land comprised in the original mortgage was released and on two occasions additional charge was created by receiving more amount but that by itself could not be taken to mean that land comprised in khasra No. 898 was in fact at any point of time either released or in the year 1923 any fresh mortgage was created on the aforesaid land.

18. I have also perused the document Ex.P-3. The very title of the aforesaid document shows that it was an additional mortgage deed with regard to agriculture land measuring 27 bighas and 0 biswas. The language of the aforesaid document further reveals that the parties had recited that the mortgagee was already in possession of the land and the mortgagor had created an additional charge of Rs. 1,718/- on the mortgaged property. It has also been specifically recited that the mortgagors were receiving an additional amount from the mortgagee and it was also stipulated between the parties that without making payment of the additional amount the mortgagors would not get the mortgaged land redeemed. The intention of the parties is apparent from the language of the said document. The parties had intended to treat the aforesaid transaction of relating the additional charge as a continuation of the already subsisting mortgage of the year 1908. It is, thus, clear that the plea raised by the plaintiff that the said mortgage deed was in fact a new transaction is totally without any justification.

19. That being the factual position, it is apparent that provisions of Section 2 of the Act would have no application to the controversy in hand. Since the Collector vide order dated April 24, 1974 had merely ordered the restitution of the original mortgage of 1908, therefore, the provisions of the Act were duly applicable and it could not be suggested at all that the Collector had no jurisdiction to pass the aforesaid order. No other point has been urged before me.

In fact from the perusal of the judgments of the courts below and after going through the record of the case, I do not find that the findings recorded by the learned courts below suffer from any infirmity or are contrary to the record.

No substantial question of law arises in the present appeal.

In view of the aforesaid discussion, I do not find any merit in the present appeal. The same is, accordingly, dismissed. There shall be no order to costs.