
Mohti Singh Vs Bogha Singh and Others

Civil Revision No. 532 of 1965

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 27, 1965

Acts Referred:

Court Fees Act, 1870 & Section 7#Transfer of Property Act, 1882 & Section 91

Citation: (1966) 1 ILR (P&H) 793

Hon'ble Judges: Mehar Singh, J

Bench: Single Bench

Advocate: Dalip Chand Gupta, for the Appellant; J.C. Verma, for the Respondent

Final Decision: Allowed

Judgement

Mehar Singh, J.

There was a mortgage created by Pritam Singh, mortgagor, on the land in question for an amount of Rs. 5,340 in favour

of Mohti Singh, Defendant. After that the mortgagor created a second mortgage for an amount of Rs. 8,000 on the same land in favour of the

Plaintiffs, taking from them cash amount of Rs. 2,660, and leaving with them Rs. 5,340 for payment to the prior mortgagee, Mohti Singh,

Defendant. This Defendant, having refused to accept the money and give possession of the land to the Plaintiffs, the latter have sued him for

possession of that land on payment of the amount of the mortgage money of the previous mortgage. They have paid court-fee on the plaint u/s 7(v)

of the Court Fees Act, 1870. Mohti Singh, Defendant, objected in the trial Court that the Plaintiffs are liable to pay court-fee u/s 7(ix) of that Act.

The learned trial Judge overruled the objection of Mohti Singh, Defendant, following Sheo Ram Singh v. Barkau Singh AIR 1931 Oud 366. This is

a revision application by Mohti Singh, Defendant, from the order of the learned trial Judge in this respect.

2. The only authority to which reference has been made at the hearing, and upon which the learned trial Judge has relied, is Sheo Ram Singh's

case, but, on facts, that case has no bearing so far as the facts of the present case are concerned. It is true that in that case a part of the mortgaged

property was already with prior mortgagees under previous mortgages, but the learned Judges made it clear that ""Certain houses and groves are

free from the mortgagees" occupation, and in the suit, out of which this matter arises, the Plaintiffs seek to obtain possession of those houses and

groves in the character of mortgagees."" So that, what the Plaintiffs in that case were suing for was not to redeem the property, subject of the prior

mortgage, but to have possession of the property free from the prior mortgagees" occupation. In other words, that was clearly a suit for possession

of mortgaged property on the basis of the title emanating from the mortgage-deeds in favour of the subsequent mortgagees. It was not a suit either

to redeem the previous mortgage or to discharge the encumbrances of the previous mortgagees. It was a case of a simple possessory suit by the

subsequent mortgagees to recover possession of the mortgaged property under a title, which they hold under the mortgage deeds. It was in these

circumstances that the learned Judges held that the case came within the scope of Section 7(v) and not Section 7(ix) of the Act. This case,

therefore, is not helpful here.

3. There is no other case cited by the learned Counsel on either side, which directly comes near the present case. Section 7(v) of the Act relates to

court-fee payable ""In suits for the possession of land, houses and gardens" according to the value of the subject-matter ... and Section 7(ix)

refers to court-fee payable ""In suits against a mortgagee for the recovery of the property mortgaged, Section 7(v) refers to a simple suit for

possession; whereas, obviously, Section 7(ix) refers to recovery of property mortgaged from the mortgagee, which means redemption of such

property from the mortgagee. Section 7(ix) does not say, who is to bring the suit against a mortgagee for recovery of the property mortgaged.

Obviously, it is the person, who has a right to recover such property from the mortgagee, who can bring the suit. Section 91, Clause (a) of the

Transfer of Property Act (IV of 1882) provides that besides the mortgagor, any person (other than the mortgagee of the interest sought to be

redeemed), who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same, may redeem, or institute a

suit for redemption of, the mortgaged property. Thus, apart from the mortgagor, a person, who has interest in the property mortgaged or has a

charge upon such property or any interest in or upon the right to redeem the same, has also a right to redemption. A subsequent mortgagee qua the

prior mortgagee is a person falling in this category. The reason is that he is an assignee of the equity of redemption, and he, thus, has the right to

redeem the prior mortgage. He has, therefore, interest in the right to redeem the property mortgaged with the prior mortgagee. When, therefore,

the subsequent-mortgagee seeks possession of the property mortgaged, by discharging the mortgage debt, he is then exercising his right of

redemption as an assignee of that right from the mortgagor. His is not a suit for simple possession of the land, and it does not come within the

scope of Section 7(v) of the Act. It is the right that such subsequent mortgagee is exercising, which explains the nature of suit, and from that it is

clear that his suit is, in substance, one to redeem the prior mortgage.

4. On this conclusion, the court-fee is payable u/s 7(ix) and not u/s 7(v) of the Act.

5. This revision application is accepted, order of the trial r. Judge reversed, and it is found that the Plaintiffs are liable to pay court-fee on the

mortgage amount of the prior mortgage u/s 7(ix) of the Court Fees Act. They are allowed two months from today to make up the court fee in the

trial Court. There is no order in regard to costs in this application.