

(1992) 01 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Regular Second Appeal No. 985 of 1979

Mukh Ram (Deceased)
and Others

APPELLANT

Vs

Mangat Ram
(Deceased) and
Others

RESPONDENT

Date of Decision: Jan. 22, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Citation: (1992) 102 PLR 265

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: H.L. Sarin and Ashish Handa, for the Appellant; C.B. Goel and R.C Chauhan, for Respondent Nos. 2 and 3, S.K. Goel and Rajmohan Singh, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Kapoor, J.

This is plaintiff's appeal against the judgments and decrees of the Courts below by which his suit stands dismissed.

2. The plaintiff brought a suit for possession with respect to land in suit against Surjit and Hem Kaur. To finance the said litigation, he borrowed a sum of Rs. 13,000/- from Mangat Ram-defendant No. 1. On the basis of compromise between the plaintiff and said Surjeet, the suit was decreed. The plaintiff at the time of borrowing Rs. 13,000/- had agreed with defendant No. 1 to mortgage the land after getting the same in pre-emption suit with defendant No. 1 with possession. Since the plaintiff did not comply with the agreement, defendant No. 1 brought a civil suit No. 171 of 1959 against the plaintiff for possession and also sought relief that plaintiff be directed to mortgage the land with him. This suit was decided on the

basis of compromise arrived at between the parties vide judgment and decree dated 18-2-1959 ("Exhibit P. 6). As per the terms of the compromise, the plaintiff agreed that the land will be on mortgage with possession with defendant No. 1 for a sum of Rs. 13,000/-. It was also stipulated in the agreement that in case the said amount was not paid within a period of three years, defendant No. 1 would become owner of the suit property. Admittedly the plaintiff did not pay the amount within the stipulated period. Defendant No. 1 filed suit for declaration that since the amount had not been paid in terms of the compromise, he had become owner of the suit land. In the said case a compromise (Exhibit D-2) was filed. As per terms of Exhibit D-2, the plaintiff admitted the claim of defendant No. 1 to be correct.

3. The plaintiff has brought the present suit for possession by way of redemption alleging that decree passed in Civil Suit No. 131 of 1965 (Exhibit P. 8) being a consent decree does not decide the rights of the parties and is, in fact, an agreement between the parties and is a clog on equity of redemption and as such the mortgage which has not been fore-closed subsists. So he claimed redemption of the said mortgage and also claimed possession.

4. Defendant No. 1 in his written statement controverted the averments made in the plaint. It was specifically pleaded that decree passed in Civil suit No. 131 of 1965 is neither void nor a clog on equity of redemption. It was further alleged that the decree has a force of res judicata. Besides, the defendant alleged that the plaintiff is estopped by his own conduct to file the present suit. In addition, defendant No. 1 alleged that after the passing of decree in civil suit No. 131 of 1965, Surjit and Hem Kaur, vendee defendants of the preemption suit, on the basis of compromise arrived at between the plaintiff and the said vendees in the said suit, brought a suit for possession by way of specific performance of the said agreement against defendant No. 1 and the plaintiff. The said suit was dismissed by the trial Court, but in appeal there was a compromise in pursuance of which defendant No. 1 paid Rs. 10,000/- to Surjit and Hem Kaur whereupon the appeal was withdrawn. In that suit also the plaintiff admitted defendant No. 1 to be the owner of land, thus, he is estopped from filing the present suit.

5. Defendants Nos. 2 to 4 denied all the allegations of the plaintiff and alleged that they have taken the land on mortgage from defendant No. 1 after paying Rs. 40,000/- vide registered mortgage deed and thus claimed that their interests are protected under law.

6. On the pleadings of the parties, the following issues were framed :-

"1. Whether any relationship of mortgagor and mortgagee exists between the parties with regard to the suit land ? OPP.

2. Whether the impugned decree dated 5-4-1965 is illegal, void and without jurisdiction ? OPP.

3. Whether the suit is properly valued for purposes of Court fee and jurisdiction ?
OPP.
4. Whether the suit is not maintainable in the present form ? OPP.
5. Whether the suit is time barred ? OPD.
6. Whether the suit is barred by res judicata as alleged ? OPD.
7. Whether the plaintiff is estopped by his act and conduct from filing the suit ? OPD.
8. Relief."

7. The trial Court under issues Nos. 1 and 2 came to the conclusion that the plaintiff is estopped from challenging the decree and as such held that relationship of mortgagor and mortgagee came to end on the passing of the decree dated 5-4-1965. Under issue No. 3 it was held that suit is properly valued for purposes of Court fee and jurisdiction. Under issue No. 4 the Court held that there is no relationship of mortgagor and mortgagee between the parties and, as such, suit for possession is not maintainable. Under issue No. 5 the suit was held to be within time. Under issue No. 6 it was held that the suit is not barred by the principle of res judicata. Under issue No. 7 the trial Court held that the plaintiff is estopped by his own act and conduct from filing the present suit. The trial Court accordingly dismissed the suit.

8. Before the appellate Court, the question debated was-what is the effect of consent decree dated 5-4-1965 obtained by defendant No. 1 and whether such a decree will operate as res judicata or the same will operate as estoppel. The lower appellate Court, relying upon the judgment reported as [Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others](#), arrived at the conclusion that this being a compromise decree could not be said to have decided the matter finally in terms of Section 11 of the Code of Civil Procedure; and thus would not operate as res judicata. All the same, the appellate Court held that the said decree would operate as estoppel thereby preventing the plaintiff from re-opening the matter settled long back. The appellate Court accordingly dismissed the appeal.

9. This appeal was admitted on the following substantial question of law :-

"Whether the consent decree operates as estoppel on the facts and circumstances of this case."

There is no dispute between the parties with regard to the facts as have come on record. The matter stands settled by the decision of the Apex Court in *Byram Pestonji Gariwala v. Union Bank of India and Ors.* A. I. R. 1991 S. G 2234. wherein it has been held that:-

"A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long

drawn out fight. A compromise decree creates an estoppel by judgment."

There is no material on record that the impugned judgment and decree was, in any manner, vitiated by fraud or misrepresentation. The learned counsel for the appellant has not been able to cite any judgment taking a contrary view to the one taken in Byram Pestonji Gariwala's case (supra).

10. Consequently I find no merit in this appeal and hereby dismiss the same. No costs.