

(2001) 02 P&H CK 0134

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 60 of 1999

Karnail Singh

APPELLANT

Vs

Dalip Singh

RESPONDENT

Date of Decision: Feb. 12, 2001

Citation: (2001) 4 RCR(Civil) 301

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Mr. Rajesh Kumar Gidhar, for the Appellant; Mr. N.S. Thind, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Singhal, J.

Dalip Singh filed suit for joint possession of 1/3rd Share of land measuring 34 Kanals 16 marlas situated within the revenue state of village, Khera through redemption on payment of Rs. 2900/-or the amount to be adjudged by the Court as payable against Karnail Singh and Ajaib Singh sons of Gurdit Singh son of Kheta Singh and others. It was alleged in the plaint that he and his brothers Karnail Singh and Ajaib Singh defendant Nos. 1 and 2 mortgaged land measuring 34 Kanals 16 marlas with Lal Singh, Jaswant Singh, Gulwant Singh and Gurdev Singh sons of Roor Singh. Plaintiff and his brothers Karnail Singh and Ajaib Singh got the land redeemed from Lal Singh etc. and mortgaged the same with Ajaib Singh son of Ghona Singh. Again this land was redeemed and given to Kheta Singh-defendant No. 7 for a sum of Rs. 8700/-. Defendant Nos. 1 and 2 Karnail Singh and Ajaib Singh got that land redeemed from Khata Singh. Plaintiff is entitled to have his share of the land redeemed from defendant No. 1 and 2 and get joint possession of the land. Lal Singh and Gulwant Singh have died and their heirs have been impleaded in the suit.

2. Karnail Singh and Ajaib singh-defepdants No. 1 and 2 contested the suit of the plaintiff urging that they got the whole land redeemed and they are in possession of whole of the land for more than 12 years. As such, they have become owners by adverse possession on account of their possession being open, hostile, without

interruption and for more than 12 years. Plaintiff has failed to redeem the property within 30 years from the date of mortgage and as such plaintiffs suit is barred by time.

3. On the pleadings of the parties, the following issues were framed by the learned trial Court :

1. Whether the plaintiff is entitled to get his share in the suit land redeemed from defendants Nos. 1 and 2 on the payment of his share of the mortgage money ? OPP

2. Whether the plaintiff is entitled to joint possession of 13rd share of the suit land ? OPP

3. Whether the suit is maintainable in the present forrri ? OPP

4. Whether the suit is bad for non-joinder of necessary parties ? OPD

5. Whether the suit is within time ? OPP

6. Whether the suit is properly valued for the purpose of court fee and jurisdiction ? OPP

7. Relief.

4. Vide order dated 10.1.1996, Civil Judge (Jr. Division), Faridkot preliminarily decreed the plaintiffs suit in view of his finding that the plaintiff is entitled to redeem his share from defendants No. 1 and 2 on payment of his share of the mortgage money to them as he became mortgagee qua them in the sum of Rs. 2900/-when he redeemed the entire land from Kheta Singh on payment of the entire amount of the mortgage money to the tune of Rs. 8700/-. Plaintiff's suit was found within time.

5. Aggrieved by this judgment and decree dated 10.1.1996 of Civil Judge (Jr. Division), Faridkot, Karnail Singh and Ajaib Singh defendants went in appeal, which was dismissed by Additional District Judge, Faridkot vide order 12.6.1998.

6. Still not satisfied, defendants No. 1 and 2 have come up in further appeal to this Court.

7. I have heard the learned counsel for the parties and have gone through the record.

8. It is admitted case that the land was mortgaged by the plaintiff and his brothers Karnail Singh and Ajaib for a sum of Rs. 8700/- with Lal Singh etc. sons of Roor Singh. Plaintiff, Karnail Singh and Ajaib Singh redeemed the land from them. After redeeming the land from them, they mortgaged the land with Ajaib Singh son of Ghona Singh. Land was redeemed from Ajaib Singh but it was again mortgaged with Kheta Singh for a sum of Rs. 8700/-. Karnail Singh and Ajaib Singh redeemed the entire land from Kheta Singh including the share of Dalip Singh. With the redemption of the share of Dalip Singh, Karnail Singh and Ajaib Singh-defendants

became mortgagee qua him and he became mortgagor qua them in the sum of Rs. 2900/- with regard to 1/3rd share of the land measuring 34 kanals 16 marlas. Gurdev Singh PW3 stated that Karnail Singh and Ajaib Singh-defendants and the plaintiff mortgaged the suit land with them for Rs. 8700/- through registered mortgage deed and thereafter they got it redeemed from them and mortgaged it with Ajaib Singh or his sons. He further stated that plaintiff and defendants No. 1 and 2 got the land re-deemed from them in the year, 1972 and mortgaged it with Lal Singh etc, vide Ex.P-2. Kheta Singh PW-1 stated that defendants No. I and 2 got the land redeemed from him about 5 years ago and since then they are in possession of the suit land. Karnail Singh-defendant DW-2 on the other hand stated that they got the land redeemed about 14-1/2 years ago and they have become owner thereof.

9. Learned counsel for the appellant submits that the respondent-plaintiff Dalip Singh should have redeemed the mortgage within 30 years of the date when it was originally created.

10. Suffice it to say, mortgage originally created in fa-vour of the Lal Singh etc. was redeemed by him, de-fendant Nos. I and 2. After redeeming the mortgage from Lal Singh etc. mortgage was created afresh in fa-vour of Ajaib Singh son of Ghona Singh. This mortgage was also redeemed and then mortgage was created in favour of the Kheta Singh. From Kheta Singh, defendant Nos. 1 and 2 alone redeemed the entire land. Thus they became mortgagees qua Dalip Singh with regard to his 1/3rd share of the land in the sum of Rs. 2900/-. Limitation for suit for redemption would commence when the mortgage was redeemed by Karnail Singh and Ajaib Singh alone from the Kheta Singh. It is in evidence that from Kheta Singh mortgage was redeemed only 5/6 years earlier to the institution of the suit, which was instituted on 7.6.1994. In the year, 1994 thus plaintiffs suit was obviously within time. For the reasons, given above, this appeal fails and is dismissed. No order as to costs.

11. Appeal dismissed.