

(2010) 10 P&H CK 0284

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3067 of 2003

Ram Rattan

APPELLANT

Vs

Narata Ram and Others

RESPONDENT

Date of Decision: Oct. 25, 2010

Acts Referred:

- Redemption of Mortgages (Punjab) Act, 1913 - Section 4

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Judgement

L.N. Mittal, J.

This is second appeal by Ram Rattan defendant No. 1 having remained unsuccessful in both the courts below.

2. Suit was filed by respondents No. 1 to 6-plaintiffs Narata Ram etc. against appellant and respondents No. 7 to 15.

3. It is undisputed that Shankar and Parmanand who were occupancy tenants over certain land mortgaged the same in favour of one Chuni Lal. In view of provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, occupancy rights matured into full ownership. Plaintiffs inherited the share of Shankar whereas defendants No. 1 to 4 i.e. appellant and respondents No. 7 to 9 inherited the share of Parmanand. Defendants No. 1 to 4 purchased mortgagee rights from the successors of mortgagee Chuni Lal on 14.4.1960. Plaintiffs filed application u/s 4 of the Punjab Redemption of Mortgages Act, 1913 for redemption of the mortgage of the suit land but the Collector, Naraingarh vide order dated 12.3.1992 dismissed the said application. The plaintiffs in the suit have challenged the said order of the Collector as being illegal and null and void and have also claimed joint possession of 35 kanals 11 marlas being 2/3rd share of the mortgaged land measuring 53 kanals 7 marlas.

4. Defendants while admitting the factual position, inter alia, pleaded that the suit is barred by limitation and they have become owners of the suit land by efflux of time as the mortgage was not redeemed within limitation period of 30 years. Various other pleas were also raised.

5. Learned Additional Civil Judge (Senior Division), Ambala vide judgment and decree dated 23.3.2001 decreed the plaintiffs' suit. First appeal preferred by defendant No. 1 stands dismissed by learned Additional District Judge, Ambala vide judgment and decree dated 31.3.2003. Feeling aggrieved, defendant No. 1 has preferred the instant second appeal.

6. I have heard learned Counsel for the parties and perused the case file.

7. Learned Counsel for the appellants vehemently contended that the mortgage was not redeemed within limitation period of 30 years and therefore, defendants No. 1 to 4 mortgagees became absolute owners of the suit land. The contention cannot be accepted in view of Full Bench judgment of this Court in Ram Kishan and Ors. v. Sheo Ram and Ors. 2008(1) PLR 1.

8. Learned Counsel for the appellant next contended that even according to the plaintiffs' version, they inherited half share of Shankar and therefore, the suit has been wrongly decreed for 2/3rd share of the mortgaged land. Learned Counsel for respondents No. 1 to 6-plaintiffs could not advance any meaningful arguments to controvert the aforesaid submission. As noticed hereinabove, it is plaintiffs' own case that Shankar and Parmanand were original mortgagors and plaintiffs are successors of Shankar and therefore, the plaintiffs have got only half share in the suit land and not 2/3rd share as claimed by them. Even learned Counsel for the plaintiffs is unable to explain as to how the plaintiffs claimed 2/3rd share instead of half share in the total land. Consequently, judgments and decrees of the courts below suffer from patent illegality and perversity.

9. Learned Counsel for the appellant also contended that the courts below have decreed the plaintiffs' suit without requiring plaintiffs to pay mortgage money. It is contended that as per mutation of mortgage, the total mortgage money was Rs. 2152/-. Learned Counsel for respondents No. 1 to 6 - plaintiffs submitted that the plaintiffs are ready to pay mortgage money of their share.

10. Following substantial questions of law arise for determination in this second appeal:

1. Whether the plaintiffs have only half share in the suit land and their suit has been illegally decreed for 2/3rd share in the suit land?

2. Whether the mortgagees - defendants No. 1 to 4 are entitled to proportionate amount of mortgage money and the courts below have committed illegality in decreeing the suit without requiring the plaintiffs to pay mortgage money?

11. For the reasons already recorded, both these substantial questions of law are answered in favour of the appellant.

12. As a necessary upshot of the aforesaid discussion, the instant appeal is allowed partly and judgments and decrees of the courts below are modified and suit filed by respondents No. 1 to 6 - plaintiffs is decreed partly declaring that order dated 12.3.1992 passed by Collector, Naraingarh is illegal and null and void and plaintiffs are allowed relief of joint possession of half share of 53 kanals 7 marlas land in suit by redemption of mortgage on payment of Rs. 1076/- as proportionate mortgage money to be deposited by the plaintiffs in the trial court within three months failing which the suit shall stand dismissed.