

(2010) 11 P&H CK 0546

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 931 of 2010

Raj Kumar and Others

APPELLANT

Vs

Prem Parkash

RESPONDENT

Date of Decision: Nov. 8, 2010

Acts Referred:

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

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

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

This is second appeal by Plaintiffs, who were successful in the trial court, but have been non-suited by the lower appellate court.

2. Plaintiffs-Appellants filed suit against Defendant-Respondent Prem Parkash alleging that Sher Singh (predecessor of the Appellants) mortgaged the suit land measuring 08 kanals with the Respondent for Rs. 7,000/- vide registered mortgage deed dated 15.03.1989. The mortgage was with possession. Sher Singh has since died. The Appellants are his heirs. Sher Singh had redeemed the mortgage by paying Rs. 7,000/- to Defendant-Respondent on 31.01.1995 and receipt regarding the same was written on the back of the mortgage deed. Possession of the suit land was also delivered by Defendant to Sher Singh at that time. Mutation of redemption was also entered, but the same was not sanctioned due to non-appearance of the Defendant before the Revenue Officer. Since Defendant refused to get the mutation sanctioned, the Appellants filed the instant suit for redemption of mortgage.

3. The Defendant, while admitting the factum of mortgage, controverted the other plaint allegations and inter alia pleaded that after taking possession under the mortgage, the Defendant gave the suit land to Sher Singh - mortgagor himself in the year 1989 itself but the mortgagor did not pay the lease money @ Rs. 10,000/-

per annum nor paid the mortgage money of Rs. 7,000/- . Various other pleas were also raised.

4. Learned Civil Judge (Senior Division), Kurukshetra, vide judgment and decree dated 23.04.2008, decreed the Plaintiffs" suit holding that the mortgage already stands redeemed and entries in revenue record be corrected accordingly. However, first appeal preferred by the Defendant has been allowed by learned Additional District Judge, Kurukshetra, vide judgment and decree dated 10.11.2009 holding that jurisdiction of civil court to try the suit is barred in view of provisions of the Redemption of Mortgages (Punjab) Act, 1913 (in short - the Act) and consequently, suit filed by the Appellants has been dismissed. Feeling aggrieved, Plaintiffs-Appellants have filed the instant second appeal.

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

6. Learned Counsel for the Appellants vehemently contended that jurisdiction of civil court is not barred by the Act and finding of the lower appellate court to the contrary is patently perverse and illegal. On the other hand, learned Counsel for Defendant-Respondent contended that u/s 4 of the Act provides for filing of petition before Collector for redemption of mortgage and therefore, jurisdiction of civil court to try the suit for redemption of mortgage is barred.

7. I have carefully considered the aforesaid contention. Section 4 of the Act is only an enabling provision providing summary remedy to the mortgagor for redemption of mortgage by making petition before the Collector, but by no stretch, provisions of the Act bar civil suit by mortgagor for redemption of mortgagor. The Act only provides alternative summary remedy to the mortgagor for redemption of mortgage. Jurisdiction of civil court is neither impliedly nor expressly barred by provisions of the Act. On the other hand, even order of the Collector passed in a petition filed under the Act can be challenged in civil court as per provisions of the Act itself. It is thus manifest that jurisdiction of the civil court for filing suit for redemption is not barred by provisions of the Act.

8. In addition to the aforesaid, in the instant case, the Plaintiffs" version is that the mortgage already stood redeemed, but mutation of redemption could not be sanctioned due to non-appearance of the Defendant before the Revenue Authorities. Consequently, Plaintiffs could not file petition u/s 4 of the Act before the Collector for seeking redemption of mortgage because mortgage already stood redeemed. In this view of the matter also, only civil court had jurisdiction to try the instant suit.

9. From the aforesaid discussion, it emerges that following substantial question of law arises for determination in the instant second appeal:

Whether finding of the lower appellate court that jurisdiction of civil court is barred is perverse and illegal?

10. For the reasons already recorded, the aforesaid substantial question of law is answered in favour of the Appellants. It is held that jurisdiction of civil court is not barred and finding of the lower appellate court to the contrary is patently perverse and illegal and is accordingly set aside.

11. Learned Counsel for the Respondent next contended that Defendant-Respondent has right to receive rent money from the Appellants. The contention cannot be accepted. The Respondent has admitted his signatures on receipt dated 31.01.1995, whereby he received the mortgage money of Rs. 7,000/- from mortgagor Sher Singh. Perusal of the said receipt reveals that the Defendant-Respondent admitted receipt of mortgage money and also stated that no amount remained due to him under the mortgage. He also mentioned in the receipt that he had vacated possession of the mortgaged land in favour of the mortgagor. This receipt leaves no room for doubt that nothing remained to be paid by the mortgagor to the mortgagee-Defendant after the mortgage money of Rs. 7,000/- was paid by the mortgagor to the mortgagee vide receipt dated 31.01.1995 (Ex.P-1). There is also no cogent evidence on record to depict that the Defendant, after taking the land under the mortgage, had given the same on lease to the mortgagor Sher Singh. There is sole self-serving statement of Defendant in this regard. If the mortgagor had taken the suit land on lease from the date of mortgage itself, and if he had not paid the lease money, the Defendant-Respondent would not have remained silent for 14 years from the date of mortgage till the filing of the instant suit. Moreover, Defendant-Respondent would not have executed receipt dated 31.01.1995 (Ex.P-1) regarding redemption of mortgage on receipt of mortgage money of Rs. 7,000/-, if any lease money had remained due from the mortgagor to the mortgagee.

12. For the reasons aforesaid, the instant second appeal is allowed. Judgment and decree dated 10.11.2009 passed by learned Additional District Judge, Kurukshetra are set aside and judgment and decree dated 23.04.2008 passed by the trial court, thereby decreeing the suit filed by the Appellants, stand restored. The parties are left to suffer their respective costs throughout.