

(2011) 02 P&H CK 0444

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 903 of 2011

Manjit Kaur and Others

APPELLANT

Vs

Kaushalya Devi and Others

RESPONDENT

Date of Decision: Feb. 23, 2011

Acts Referred:

- Limitation Act, 1963 - Article 61

Citation: AIR 2011 P&H 75 : (2011) 5 RCR(Civil) 649

Hon'ble Judges: Sabina, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sabina, J.

The Plaintiffs had filed a suit for declaration, possession and permanent injunction alleging that they had become owners of the land measuring 8 kanals bearing khasra No. 39/23(8-0) situated in village Duttal. Plaintiff No. 1 was widow and Plaintiff Nos. 2 to 9 were children of Kapoor Chand. Inder Singh was the owner of the suit land. Inder Singh appointed Parra Singh as his attorney qua the suit land on 17.9.1969. Parra Singh mortgaged the suit property for a sum of Rs. 2,000/-with Kapoor Chand vide registered mortgage deed dated 17.7.1973. The entry was made in the revenue record qua the mortgage deed. Kapoor Chand expired on 15.5.1997. During his life time, Kapoor Chand remained in possession of the suit land as mortgagee and after his death, Plaintiffs came in possession of the suit land. In Hari 2003, Defendants took forcible possession of the suit land. Statutory period of 30 years had expired and the land had not been got redeemed. Hence, the Plaintiffs had become owners of the suit land.

2. The Defendants, in their written statement, averred that Parra Singh had sold land measuring 14 kanals 9 marlas vide sale deed dated 27.11.1975 to father of

Defendant Nos. 1 and 2 and remaining Defendants for a consideration of Rs. 8,000/- Mutation qua the sale deed was duly sanctioned. Parra Singh delivered the possession of the suit property to the purchasers at the time of execution of the sale deed. Parra Singh had paid the mortgage money of Rs. 2,000/- to Kapoor Chand and a receipt had been issued in this regard on the original mortgage deed. Kapoor Chand assured that he would get the land redeemed from the Patwari. Although Parra Singh had mortgaged 8 kanals of land with Kapoor Chand but in connivance with the revenue officials, an entry was got in the revenue record by Kapoor Chand qua mortgage of 14 kanals 9 marlas of land. An application was moved by the Defendants for correction of entry in the khasra girdawari and the same pending. An application was also moved for redemption of suit land. The Defendants were in cultivating possession of the suit land since the date of purchase of land by them.

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

1. Whether the Plaintiffs are entitled to declaration as prayed for? OPP
2. Whether the Plaintiffs are entitled to get the possession of the suit land on the basis of title as prayed for ? OPP
3. Whether the Plaintiffs are entitled to permanent injunction, as prayed for? OPP
4. Whether the suit of the Plaintiffs is not maintainable in the present form ? OPD
5. Whether the Plaintiff has no cause of action to file the present suit ? OPD
6. Relief.

4. The trial Court decreed the suit of the Plaintiffs vide judgment and decree dated 5.10.2007. Appeal filed by the Defendants against the said judgment and decree was dismissed vide judgment and decree dated 4.1.2011 passed by Additional District Judge, Fast Track Court, Patiala. Hence, the present appeal by the Defendants.

5. After hearing learned Counsel for the Appellants, I am of the opinion that the present appeal is devoid of any merit and deserves dismissal.

6. Admittedly, the mortgage deed was executed by Parra Singh in favour of Kapoor Chand on 17.9.1969. Plaintiffs examined PW-2 Avtar Singh, registration clerk, to produce the record of registered mortgage deed dated 17.7.1973 Ex.P-1. PW-3 Azad Hind Goyal, scribe of the mortgage deed, also proved the execution of the mortgage deed. He proved the entry made in his register qua mortgage deed. Mutation No. 649 dated 25.8.1973 was entered and sanctioned qua the mortgage deed. The land was mortgaged for a period of two years. After the death of Kapoor Chand, his mortgagee rights were mutated in favour of the Plaintiffs vide mutation No. 11026 dated 14.5.1999. The Courts below, after appreciating the evidence led on record, given a finding of fact that the suit land was mortgaged by Inder Singh through his attorney Parra Singh with Kapoor Chand. The period of mortgage was two years.

7. As per Article 61 of the Limitation Act, 1963, a mortgagor can redeem or recover possession of the immovable property mortgaged within 30 days when the right to redeem or to recover the possession accrues. Since the mortgage was for a period of two years, the limitation of redeem the suit land expired in July, 2005. The suit was filed by the Plaintiffs on 22.8.2005. At the time of filing of the suit the right of the mortgagor to get the suit land redeemed had already been extinguished.

8. Learned Counsel for the Appellants has placed reliance on a Full Bench decision of this Court in Ram Kishan and Others Vs. Sheo Ram and Others, , wherein it was held as under:

Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable.

9. The said decision fails to advance the case of the Appellants. In a case where no time limit has been fixed for redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when mortgagor pays or tenders to the mortgagee or deposits in the court, the mortgage money or balance thereof. However, in the present case, the mortgage was for a period of two years and the suit had been filed after the limitation to get the land redeemed by the mortgagor had expired. The Courts below had, thus, rightly decreed the suit of the Plaintiffs.

10. No substantial question of law arises in this regular second appeal, which would warrant interference by this Court. Accordingly, the same is dismissed.