(2010) 11 P&H CK 0568

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1383 of 2010 (O and M)

Om Parkash		APPELLANT
	Vs	
Ramesh Chand Aggarwal and Others		RESPONDENT

Date of Decision: Nov. 10, 2010

Citation: (2011) 162 PLR 181

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.
Om Parkash-Plaintiff, having lost in both the Courts below, has filed the instant second appeal.

2. The case of the Plaintiff Appellant is that one Kesho Ram was tenant in the disputed shop under the Plaintiff and was running business in the name and style of M/s Hardwari Mal Kesho Ram. The Plaintiff mortgaged the suit property with Defendant-Respondent No. 1 Ramesh Chand Aggarwal vide mortgage deed dated 21.11.1978, but prior to it, Kesho Ram had vacated the disputed shop. Accordingly, vacant possession of the shop was handed over to mortgagee Defendant No. 1, who let out the same to Defendant No. 2-Hari Kishan Dass (since deceased and represented by Respondent Nos. 2 to 4). Defendant No. 2 started running business in the disputed shop in the name and style of M/s Hardwari Mal Kesho Ram to create confusion. Defendant No. 3 Ramottar Bansal (Respondent No. 5 herein) is son of Defendant No. 2-Hari Kishan Dass since deceased. According to mortgage deed, mortgagee Defendant No. 1 could not transfer possession of the disputed shop to anybody else. Accordingly, Plaintiff filed suit for possession of the disputed shop by redemption of mortgage.

3. Defendant No. 1 denied the factum of mortgage and pleaded that mortgage deed is a false document which has been created to harass Defendant No. 2.

4. Defendant Nos. 2 and 3 also contested the suit and pleaded that Defendant No. 2 was already tenant in the disputed shop prior to creation of mortgage in favour of Defendant No. 1. It was also pleaded that in fact the disputed shop was earlier mortgaged with Naresh Kumar and Ram Kumar. After creation of mortgage in favour of Defendant No. 1 (immediately after redemption of the earlier mortgage), Plaintiff started paying rent to Defendant No. 1 mortgagee. Various other pleas were also raised.

5. Learned Civil Judge (Senior Division), Bhiwani vide judgment and decree dated 18.08.2005 dismissed the Plaintiffs suit. First appeal preferred by the Plaintiff has been dismissed by learned Additional District Judge, Fast Track Court, Bhiwani vide judgment and decree dated 30.09.2009. Feeling aggrieved, Plaintiff has preferred the instant second appeal.

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

7. Learned Counsel for the Appellant vehemently contended that Defendant No. 2 was inducted as tenant by mortgagee Defendant No. 1 in violation of terms of the mortgage deed dated 21.11.1978 and, therefore, Plaintiff is entitled to possession of the disputed shop by redemption of mortgage. The contention cannot be accepted. There is concurrent finding of fact by both the Courts below that Defendant No. 2 was tenant before the creation of mortgage in favour of Defendant No. 1. There are rent receipts pertaining to the year 1974-75 depicting payment of rent by Defendant No. 2 to the earlier mortgagees Naresh Kumar and Ram Kumar. It would depict that Defendant No. 2 was already tenant in the disputed shop before creation of mortgage in favour of Defendant No. 1 vide mortgage deed dated 21.11.1978. There are also rent receipts issued by Plaintiffs father and also by Plaintiff himself depicting payment of rent by Defendant No. 2 in the name of his firm M/s -Hardwari Mal Kesho Ram. There are also receipts of payment of Teh Bazari by the said firm. It would depict that Defendant No. 2 was already tenant in the disputed shop and has not been inducted as tenant by Defendant No. 1. Murari Lal DW-5 father of earlier mortgagee Naresh Kumar has also stepped into the witness box and supported the case of Defendant Nos. 2 and 3.

8. In addition to the aforesaid, the Plaintiff very vaguely pleaded that Kesho Ram previous tenant had vacated the disputed shop prior to mortgage deed dated 21.11.1978, but the Plaintiff did not mention even the year of vacation of the shop by Kesho Ram. On the contrary, it has come in evidence that Kesho Ram was not even tenant when mortgage was created in favour of Naresh Kumar and Ram Kumar in the year 1973. Thus the Plaintiff''s version is completely falsified.

9. It is also worth mentioning that mortgage in favour of Naresh Kumar and Ram Kumar was redeemed on 07.12.1978 and, therefore, creation of mortgage in favour of Defendant No. 1 vide mortgage deed dated 21.11.1978 further falsifies the Plaintiffs case.

10. Learned Counsel for the Appellant contended that even writing regarding redemption of earlier mortgage was scribed on 21.11.1978, the date on which mortgage deed in favour of Defendant No. 1 was executed, but the said mortgage deed was registered on 07.12.1978 and on the same day, the writing regarding redemption of earlier mortgage was signed by the previous mortgagees. Even accepting the same, writing of redemption was signed on 07.12.1978 and, therefore, the redemption of the earlier mortgage took place on 07.12.1978, notwithstanding that the document writer might have written the said writing on 21.11.1978. On the contrary, mortgage deed dated 21.11.1978 became effective with effect from the same date, notwithstanding that it was registered on 07.12.1978.

11. It may also be added that mortgage deed dated 21.11.1978 has not been proved and only certified copy thereof was tendered in evidence. No attesting witness of the mortgage deed has been examined to prove its execution. It is correct that Defendant Nos. 2 and 3 did not dispute the execution of the said mortgage deed, but Defendant No. 1 vehemently disputed the said mortgage deed and since Defendant No. 1 the alleged mortgagee denied the execution of the said mortgage deed, it was imperative for the Plaintiff to prove the execution of the said mortgage deed, but the Plaintiff has failed to do so.

12. For the reasons aforesaid, I find no merit in the instant second appeal. Concurrent finding recorded by both the Courts below is fully justified by evidence on record and is supported by cogent reasons. The said finding does not warrant interference in second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is devoid of any merit and is accordingly dismissed in limine.