

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4600 of 2012 (O&M)
Date of decision 02.07. 2015.

Mahma Singh @ Maha Singh and others
..... Appellants.

versus

Gurmej Singh
..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present : Mr. C.B.Goel, Advocate for the appellant.
Mr. Arvind Bansal, Advocate for the respondent.

K.C.PURI, J.

Defendant-appellant-Mahma Singh @ Maha Singh and others have directed the present appeal against the judgment and decree dated 04.08.2012 passed by Shri D.S.Sheoran, learned District Judge, Kaithal vide which the appeal preferred by the defendant against the judgment and decree dated 03.03.2010 passed by Mr. Devinder Singh, learned Additional Civil Judge (Senior Division), Guhla, was dismissed.

2. The case of the plaintiff in brief is that suit land comprising of Khasra No.187/6/1 situated at village Bhagal along with other land was

mortgaged with possession by one Kanha, predecessor-in-interest of the defendants vide mutation No.480 dated 27.6.1992. He along with other mortgagors namely Chanan Singh, Massa Singh and Hardial Singh have initiated separate proceedings for redemption of the land. The defendants have no right, title or interest to change the nature or user of the land in dispute by raising construction thereon forcibly and illegally. Despite repeated requests, the defendants are not admitting the claim of the plaintiff. Hence the suit.

3. On put to notice, defendants appeared and filed written statement taking preliminary objections qua maintainability, barred by limitation bad for non-joinder of necessary parties etc. . On merits, it is pleaded that right of the plaintiff to get the suit land redeemed stood extinguished. They have become the owners in possession of the suit land. The mortgage in question is more than 80 years old. The right of the plaintiff stands extinguished by lapse of time. The defendants have acquired the ownership rights being mortgagees with possession by prescription. All other averments of the plaint were denied being wrong and incorrect.

4. Replication was filed. From the pleadings of the parties, following issues were framed :-

1. Whether the defendants are not entitled to change the nature and user by way of raising construction or otherwise in any manner ?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus standi to file the present suit ?OPD
4. Whether the suit is barred by limitation ?OPP

5. Whether the suit is bad for misjoinder of necessary parties ? OPD
6. Relief.
7. The parties have led their respective evidence on the aforesaid issues. After appraisal of the same, the trial Court decreed the suit of the plaintiff and restrained the defendants from changing the nature and user of the suit land by way of raising construction or otherwise in any manner, illegally and forcibly vide judgment and decree dated 03.03.2010.
8. Feeling dissatisfied with the aforesaid judgment and decree dated 03.03.2010, the defendants directed the First Appeal, which was dismissed by learned District Judge, Kaithal vide judgment and decree dated 04.08.2012 after re-appraisal of the evidence.
9. Still feeling dissatisfied with the judgment and decree dated 03.03.2010 and judgment and decree dated 04.08.2012, the present regular second appeal has been directed.
10. The appellant in paragraph No.14 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present regular second appeal :-
 - i) Whether a suit for injunction is maintainable at the instance of plaintiff who admittedly is not in possession and the defendants are in possession for the last over 80 years as mortgagees ?
 - ii) Admittedly, the defendants/respondents have already raised construction as admitted by the plaintiff-respondent in his replication. Whether in view of the said fact, suit for injunction filed by the plaintiff/respondent was/is maintainable?
 - iii) Admittedly, the suit has been filed by the Appellants against the order of the Collector, ordering redemption,

which is pending decision. Whether in view of the said fact when the Defendants/Appellant are in settled possession for the past over 80 years as mortgagees of the suit land, a decree for injunction can legally be sustained ?

- iv) In view of the pendency of the Appeal before the Hon'ble Supreme Court against the judgment the judgment in Ram Kishan's case (supra) and the Hon'ble Supreme Court having granted stay and in the light of Full Bench decision by the Hon'ble Himachal Pradesh High Court taking a dissenting view to the judgment in Ram Kishan's case, whether the plaintiff/respondent was left with any right, title or interest over the suit land, having failed to redeem the mortgage which was executed in 1922 ?
- v) Whether the judgment and decrees of the Courts below are legally not sustainable being perverse and result of non-consideration of pleadings and evidence on record ?
- vi) Whether in the facts and circumstances of the present case, the judgments and decrees of Courts below are liable to be set aside being perverse ?

Affidavit of appellant has been placed on record in which it has been mentioned that the plot measuring 1 kanal 12 marlas the dimensions of which is 18' x209'. The defendants have constructed the boundary wall and have raised the level of plinth of 16 shops to the extent of 3½ feet. It is submitted that map has been placed on the record. So, the plaintiff has no right to seek the injunction against the appellants. The order of redemption passed by the Collector is wrong. Otherwise also, the plaintiff can get the possession by due course of law.

Learned counsel for the appellants has submitted that plaintiff has the alternative remedy and as such in view of Section 41h of the Transfer of the Property Act (in short – the Act), the suit of the plaintiff is not maintainable. The defendants/appellants being mortgagees are entitled

to raise the construction.

I have carefully considered the said submission but do not find any force in that submission.

The factum of mortgage of the suit property with the defendants has not been disputed during the course of arguments. It is also not disputed during the course of arguments that order of redemption has been passed by the Collector. After passing of the order of redemption, the appellants have not been left with any right in the property. The provisions of Section 41h of the Act are not attracted in the present case, as order of redemption has already been passed against the appellants. The affidavit regarding construction shows that only foundations of the proposed shops had been made, which fact has been disputed by the plaintiff. However, the fact remains that plaintiff being the owner of the property has right to protect the suit property. So, both the Courts below have rightly passed the decree of injunction against the defendants/appellants and I have no hesitation in holding that no substantial questions of law, as raised in paragraph No.14 of the grounds of appeal, have arisen in the present case.

12. Consequently, the appeal is without any merit and the same stands dismissed.

13. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

March 02 , 2015

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