

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1009 of 2015 (O&M)
Date of Decision: May 26, 2015

Inder Singh and another

...Appellants

Versus

Daya Nand Mittal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Manoj K. Tanwar, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Inder Singh and Smt. Indro Devi have filed this regular second appeal against Daya Nand Mittal and Manmohan Mittal respondents-plaintiffs, challenging the impugned judgment and decree dated 12.11.2012 passed by learned Addl. Civil Judge (Senior Division) Panipat vide which the suit for declaration, possession and permanent injunction filed by the plaintiffs was decreed and also the judgment and decree dated 31.01.2015 passed by learned Addl. District Judge, Panipat, vide which the appeal filed by the appellants-defendants was dismissed.

The brief facts of the case are that plaintiffs-respondents filed a suit against Inder Singh and Smt. Indro for declaration with possession with consequential relief of permanent injunction. It is mainly stated in the plaint that plaintiffs are real brothers. Father of

the plaintiffs was the owner of agricultural land measuring 4 kanals 8 marlas situated in village Bhapra Tehsil Samalkha vide jamabandi for the year 1981-82. Earlier the aforesaid land was owned and possessed by Lakhi Ram, father of the defendants. Said Lakhi Ram mortgaged the land in dispute with the father of the plaintiffs vide registered mortgage deed dated 18.02.1955 and the suit property was never got redeemed by Lakhi Ram. It is further stated that after expiry of prescribed period of limitation, father of plaintiffs filed a civil suit titled as 'Kishan Chand vs. Ranbir Singh and others' which was decreed in favour of the plaintiffs' father vide judgment and decree dated 07.01.1993 vide which, Kishan Chand was declared as owner of the suit property. It is also stated that father of the defendants died and thereafter, defendants No.1 and 2 succeeded to his property being LR's. They filed a case No.16/redemption on 13.06.2003 in the Court of Sh.Satya Parkash T.L., IAS, exercising the powers of Collector, Samalkha, for redemption of the land in dispute titled as 'Inder Singh etc. vs. Kishan Chand'. In the said case, the defendants got notices issued in the name of father of the plaintiffs and got prepared false report of refusal on the summons in collusion with Ram Kumar, Numberdar and one Ramesh Kumar. Kishan Chand was proceeded ex parte and defendants succeeded in obtaining the ex parte order for redemption in their favour on 18.04.2005, by playing fraud upon the Court as the father of the plaintiffs had already died on 24.02.1994. It is further stated that this order dated 18.04.2005 has no sanctity in the eyes of law and further the defendants cannot

become owner of the suit property because Kishan Chand has already become owner of suit land vide judgment and decree dated 07.01.1993, which has become final between the parties.

On the other hand, the case of the defendants in the written statement is that the suit land was owned and possessed by the father of the defendants and their father Lakhi Ram had got redeemed the suit land during his life time and revenue entries remain continued in the name of Kishan Chand. It is further stated that defendants have deposited the mortgaged money qua the suit land. The judgment and decree dated 07.01.1993 never came in the knowledge of the defendant and their father and as such, the same is not binding on the rights of the defendants.

Learned Civil Judge (Senior Division) Jind, after appreciating the evidence, decreed the suit of the plaintiffs vide judgment and decree dated 12.11.2012. Against the above-said judgment and decree, an appeal was filed by the appellants-defendants before learned District Judge, Panipat, which was dismissed by learned Addl. District Judge, Panipat vide judgment and decree dated 31.01.2015

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-defendants.

At the time of arguments, learned counsel for the appellant argued that the suit land has already been got redeemed by father of the appellants-defendants during his life time but revenue entries were

not corrected and lateron, defendants themselves deposited the mortgaged amount and the order has been passed by the Collector for redeeming the property. Learned counsel for the appellant further argued that ex parte decree is not binding upon the appellants as they had no knowledge regarding the same.

I have heard learned counsel for the appellants and have gone through the record.

From the record, first of all, I find that both the Courts below have given concurrent findings as per evidence and law. The Courts below have correctly appreciated the evidence in right perspective. There is nothing on the record to show that the Courts have misread the evidence. The judgments and decrees passed by the Courts below are correct, as per law. No substantial question of law arises in this regular second appeal. The civil Court decree cannot be held as having no effect on the defendants by simply saying that they were not knowing the ex parte decree. The defendants after coming to know the ex parte decree, have not filed any application to set aside the ex parte decree. Rather, as per the judgments passed by the Courts below, the defendants have filed a civil suit challenging the ex parte decree and their civil suit has already been dismissed and the appeal against the dismissal of the suit is pending. When the Civil Court has already passed the decree declaring the plaintiffs' predecessor as owner of the suit property, then the revenue authority has no right to pass the order for redemption of the land. Otherwise also, as per the evidence Kishan Chand had died in the year 1994,

therefore, the report of refusal on the summons is illegal. Again Kishan Chand had already died in the year 1994 and the proceedings filed against dead person, also have no binding effect on the plaintiffs. Furthermore, when the Civil Court has already decided the matter, therefore, revenue authorities have no right to pass order regarding redemption. The ex parte decree, unless set aside, is a valid decree and binding upon the parties as that ex parte decree is between the parties or their predecessors.

In view of above discussion, I find that the findings given by both the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. Moreover, no substantial question of law arises in this present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 26, 2015
Vgulati

(INDERJIT SINGH)
JUDGE