

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2133 of 2014 (O&M)
Date of Decision: July 14, 2015

Bachan Singh and others

...Appellants

Versus

Shyam Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amandeep Singh Cheema, Advocate
 for the appellants.

INDERJIT SINGH, J.

CM No.5198-C of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 433 days in re-filing the appeal is condoned.

RSA No.2133 of 2014

Appellants-plaintiffs No.1 to 3 Bachan Singh, Balbir Singh and Bant Singh have filed this regular second appeal against respondents-defendants Shyam Lal and others, challenging the impugned judgment and decree dated 21.05.2010 passed by learned Addl. Civil Judge (Senior Division) Mansa, vide which the suit filed by the plaintiffs-appellants for declaration and permanent injunction was dismissed and also the judgment and decree dated 28.09.2012 passed by learned Addl. District Judge, Mansa, vide which the appeal filed by the appellants was dismissed.

The brief facts of the case are that plaintiffs Bachan Singh, Balbir Singh, Bant Singh, Smt.Gurdev Kaur and Smt.Bachan Kaur (sons and daughters of Sucha Singh) filed a suit against defendants-respondents Hans Raj through his LRs and others, for declaration and for permanent injunction. As per the case of the plaintiffs, Sucha Singh and Sobha Singh, both sons of Ghula Singh, were the owners in joint possession of land measuring 15 bighas and 8 biswas, which was inherited by them from their father. Sucha Singh mortgaged his half share with Sobha Singh for a sum of ₹360/- vide mutation No.1009 in the month of Kartika 1983 (Bikrami Samvat). Sobha Singh also mortgaged his half share with Sucha Singh for a sum of ₹150/-. Sobha Singh died without leaving any legal heir and property was inherited by Sucha Singh. Sucha Singh executed sale deed in favour of Gurmail Kaur, Indra Devi, Bushan Kumar etc. as fully mentioned in the plaint. It is also case of the plaintiffs that Sita Singh and Bhupinder Singh purchased the said land mortgaged by Sucha Singh in favour of Sobha Singh. Sobha Singh did not get redeemed his land from Sucha Singh and Sucha Singh stepped into the shoes of Sobha Singh, mortgagor of the property in dispute and became mortgagee of the property in dispute. Then Sita Singh and Bhupinder Singh became mortgagors. Sita Singh and Bhupinder Singh did not get redeemed the property from Sucha Singh mortgagor. Similarly, it is stated regarding other sale deeds etc. It is further stated that Sucha Sindh has died now and plaintiffs being legal heirs of Sucha Singh, by efflux of time, on expiry of period of redemeption became owners.

On the other hand, the case of the defendants is that the plaintiffs have no locus standi or cause of action to file the suit and the suit is not maintainable. It is also stated that suit of the plaintiffs challenging all the sale deeds is not properly valued. The plaintiffs never produced alleged mortgage deed and alleged mutation No.1009 sanctioned on the basis of the said mortgage deed despite moving application dated 27.05.2004 for production of the same. It is further stated that plaintiffs have also not filed the suit for possession. Sucha Singh inherited the property of Sobha Singh mortgaged with Sobha Singh. The said property inherited by Sucha Singh thereafter was not mortgaged but was owned and in possession of Sucha Singh after the death of Sobha Singh. Then resultantly, the property in dispute, was no more mortgaged with Sucha Singh or plaintiffs. It is also stated that Fard Badar No.18 was prepared on enquiry of Jamabandi for the year 1970-71 and said mutation could not be reflected in the revenue record by the revenue authorities but was reflected thereafter vide Fard Badar No.1.

Learned Addl. Civil Judge (Senior Division) Mansa, after framing the issues and after giving opportunity to the parties to lead evidence, on the basis of evidence, dismissed the suit of the plaintiffs vide judgment and decree dated 21.05.2010. Aggrieved from the above-said judgment and decree, plaintiffs No.1 to 3 filed appeal before learned District Judge, Mansa and learned Addl. District Judge, Mansa, to whom appeal was assigned vide judgment and decree dated 28.09.2012, dismissed the appeal.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-plaintiffs No.1 to 3.

Learned counsel for the appellants argued that the suit property which was mortgaged with Sobha Singh or Sobha Singh's property which was mortgage with Sucha Singh, have not been got redeemed till now and the plaintiffs being legal heirs of Sucha Singh have become owner on the expiry of redemption period. He next argued that the judgments and decrees passed by the Courts below are incorrect and not as per law.

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

From the record, I find that relationship that Sucha Singh and Sobha Singh were real brothers, is not disputed. There is also no dispute regarding inheritance of Sobha Singh. The property owned by Sobha Singh was inherited by Sucha Singh. Sucha Singh has also died now. The sale deeds have been executed by Sucha Singh in favour of the defendants etc. The perusal of the sale deeds Ex.D1 to D5 shows that the property has been sold by Sucha Singh to various persons including defendants and there was no recital that he was transferring his mortgagee right. The corresponding mutations have been sanctioned on the basis of those sale deeds. These sale deeds have not been challenged within three years by Sucha Singh. The present plaintiffs have come in the foot steps of Sucha Singh. They cannot blow hot and cold at the same time. On one hand, plaintiffs'

case is that they became owner of the whole property after death of Sobha Singh as Sobha Singh died without leaving any LRs and on the other hand, now they are taking the plea that properties were mortgaged and these have not been redeemed.

The findings by the Courts below are correct, as per evidence and law. There are concurrent findings of both the Courts below. No evidence has been misread. The findings are given as per evidence and law by appreciating the evidence in right perspective.

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

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

July 14, 2015
Vgulati

(INDERJIT SINGH)
JUDGE