105 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.563 of 2014 (O&M)
Date of Decision: September 28, 2015

Lehri Singh and others .... Appellants

vs.

Amit and others .... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Mani Ram Verma, Advocate for the appellants.

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

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 13.08.2013 passed by learned Addl. District Judge, Bhiwani, reversing the judgment and decree dated 10.02.2011 passed by learned Civil Judge (Jr. Divn.), Bhiwani, vide which the suit of the plaintiff was decreed.

The plaintiffs had filed a suit for declaration to the effect that defendant No.2 in collusion with defendant No.1 made the entry of self cultivation in column of cultivation in jamabandi for the year 2002-03 and thereafter, defendant No.2 corrected the aforesaid wrong and illegal act by entering the name of the plaintiffs in column of cultivation in jamabandi for the year 2002-2003 in place of self cultivation and got prepared the fard badar. Further, defendant No.1 illegally took the loan of ₹17,50,000/- from defendant Nos.3 and 4 in collusion with defendant Nos.2 to 4.

Brief facts of the case are that defendant No.5, namely Parul Jain, daughter of Kulbhushan Jain, is the owner of the suit land, wherein the plaintiffs were recorded in possession of the suit land. Defendant No.1 purchased the suit land on 30.07.2003 vide registered sale deed and the entry was made in the cultivation column was changed regarding self cultivation in collusion with defendant No.2 Patwari. Thereafter, he obtained a loan of Rs.17,50,000/- from defendant No.3-Bank. Therefore, the said charges/changes were not binding upon the plaintiff and defendant No.3-Bank cannot recover the loan amount from the suit land.

The lower court decreed the suit to the effect that the loan of Rs.17,50,000/- advanced by defendant No.3-Bank to defendant No.1 on the basis of wrong entry in his favour. Therefore, the loan so advanced does not create any legal charge on the suit land and the defendant-Bank cannot recover the loan amount by putting the suit land on auction. The findings were reversed in appeal.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

The lower court recorded the following findings, on the basis of which, the suit was decreed:

> "*The defendant bank has advanced loan of Rs.17,50,000/- against the mortgage of the suit property. DW3 Shri S.N. Chawala examined on behalf of defendant bank admitted in his cross-examination that in the Jamabandi for the year 1997-98, entire land has been shown under the cultivation of tenants and in*

the sale deed also this factum has been recited that the possession of land is with the tenants for the last 40 years. He has further deposed that the bank would not have advanced the loan to the defendant if the property would have shown under the cultivation of tenants. Thus, the witnesses have categorically stated that the bank would not have advanced the loan if the land was not shown under the self cultivation of owners. As already discussed above that entry of self cultivation was wrongly made in favour of defendant No.1 which was corrected vide Farad Badar No.3. Therefore, the loan of Rs.17,50,000/- so advanced by the defendant bank to defendant No.1 does not create any legal charge on the suit land as possession of land in dispute was never with the owners, therefore, loan was advanced by the defendant bank while relying upon the wrong entery of self cultivation and the bank would not have advanced loan if the possession was shown with the tenants as already deposed by DW3. In view of the above discussion, I am of the considered view that loan was produced by defendant No.1 on the basis of wrong entry in his favour, therefore, loan so advanced does not create any legal charge on the property in dispute and defendant bank cannot recover the loan amount by putting the suit land at auction. Accordingly, issue No.1 and 2 are decided in favour of plaintiffs and against the defendants."

However, the first appellate court while reversing the findings made the following observations:

"*The plaintiff failed to prove that defendant No.1 get the revenue entries corrected himself later on. The advancement of loan by the bank of Rs.17,50,000/- to* *defendant No.1 and mortgage the suit land has been proved by both the parties. The defendant proved that the document of loan was taken from defendant No.1 Amit Kumar on the basis of sale deed No.687 dated 20.01.2003, Rapt No.409 dated 25.09.2003 was also noted in the revenue record on the basis of mortgage of suit property. If the possession of plaintiffs and their predecessor-in-interest have been recorded as Gair Marusi tenant on the suit land to the extent of their respective shares, then advancement of loan by the bank does not affect as ownership of defendant No.1 has not denied by plaintiffs. The defendant bank advanced the loan after verification. The plaintiff being tenants have no right to restrain the bank or original owner of the suit property, to get the loan amount by way of mortgaging the suit land owned by defendant No.1. Hence, it is proved by defendant No.1 took loan from bank as per rules of defendant No.3 & 4. The plaintiffs failed to prove how they have right to restrain the defendants from creating any change over the suit land as the plaintiffs were simply tenants in possession of the suit property. The defendant bank is also entitled to recover the loan amount from defendant No.1 as per law and from the mortgage land. The plaintiffs have no right to file the suit for declaration against true owner and bank.---"*

Learned counsel for the appellants has argued that the plaintiffs are occupancy tenants and they are in possession of the land since long on the payment of nominal rent and, therefore, the result of the mortgage would be that the bank will be entitled to recover the same by the sale of the mortgaged property, which will adversely affect the right of the plaintiffs-tenants.

I am of the view that the plaintiffs are merely tenant in the land of defendant No.1, who was admittedly owner of the land and he had mortgaged the same.

The Bank Manager during the evidence stated that if the possession was not with defendant No.1, the bank would not have advanced the loan, does not affect the right of the plaintiffs. If the bank wrongly advanced the loan, it is the bank, which will suffer. So far as the right of the plaintiffs is concerned, they are merely tenants. They have no right to challenge the mortgage of the land by the owner. Assuming that the land is sold for recovery of the loan, the tenancy rights of the plaintiffs will still be protected as any sale is subject to the rights and encumbrances already existing on the land.

It being so, the plaintiffs have no right to challenge the grant of loan by the bank to defendant No.1, who is owner of the land. Therefore, there is no error in the findings of facts recorded by the first appellate court. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

(KULDIP SINGH)
JUDGE

September 28, 2015
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