

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5789 of 2014 (O&M)
Date of Decision: July 31, 2015

Rajinder Singh and another

...Appellants

Versus

Balvir Singh and others

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jasdeep Singh Gill, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Rajinder Singh and Shinderpal Kaur have filed this regular second appeal against respondent-plaintiff Balvir Singh and respondents-defendants Ajaib Singh and others, challenging the impugned judgment and decree dated 19.01.2012 passed by learned Civil Judge (Junior Division) Phul, vide which the suit of the plaintiff for declaration and permanent injunction was decreed and also the judgment and decree dated 04.08.2014 passed by learned Addl. District Judge, Bathinda, vide which the appeal filed by appellants-defendants was dismissed.

The brief facts of the case are that plaintiff-respondent Balvir Singh filed a suit against Balwant Singh and other defendants, for declaration and permanent injunction. It is the case of the plaintiff that Maan Singh was the owner of land measuring 17 kanals 8 marlas

and he mortgaged the said land with the plaintiff and Teja Singh along with possession and plaintiff along with Teja Singh continued with possession on the said land as mortgagees and after the death of Teja Singh, his sons defendants Balwant Singh and Ujagar Singh came into possession over the property along with the plaintiff as mortgagees. After the death of Ujagar Singh, his LRs defendants No.2 and 3 came into possession over the suit property as mortgagees. Maan Singh died and his property was inherited by defendants No.4 to 15 and after the death of Harnam Kaur wife of Maan Singh, property was inherited by Billo, Putto and Gezo, who had given their 1/6 share in the property through a transfer deed to their brothers Chand Singh and Mukand Singh. Therefore, defendants No.4 to 15 became owners of the suit property. It is further the case of the plaintiff that he has $\frac{1}{2}$ share, defendant No.1 has $\frac{1}{4}$ share and defendants No.2 and 3 jointly have $\frac{1}{4}$ share in the suit property as mortgagees. Defendants No.4 to 15 never got the property redeemed from the plaintiff and defendant No.1 to 3 and also never took the possession back. Therefore, the plaintiff has now become the owner of $\frac{1}{2}$ share. Regarding the suit property, the defendant Balwant Singh and his brother Ujagar Singh filed a suit, which was decided on 19.03.1982 and the same was filed against Bharpoor Singh, Kulwant Singh and Balbir Singh. The said suit was decreed for the relief of permanent injunction on 19.03.1982 but Balwant Singh and Ujagar Singh in connivance with the revenue officials, got the mutation No.1221 sanctioned in their favour regarding transfer of ownership of

the suit property without giving any notice to the plaintiff. The said mutation was wrongly sanctioned as on 19.03.1982, a simple decree for permanent injunction was passed and Balwant Singh and Ujagar Singh had no right to get the ownership over the property transferred in their favour on the basis of said decree.

Defendants No.2 and 3, in the written statement, admitted that property was mortgaged by Maan Singh to Balvir Singh and Teja Singh but they submitted that plaintiff never came in possession of the suit property. Balwant Singh died during the pendency of the suit and his property was inherited by answering defendants through Will dated 10.03.1998. It is further submitted that mutation No.1221 dated 15.05.1990 is validly and legally sanctioned on the basis of the judgment and decree dated 19.03.1982.

Defendants No.16 and 17 also stated that plaintiff has concealed material facts from the Court. Defendants No.1 to 3 and their elders were in possession over the suit property for more than 100 years and answering defendants are bonafide purchaser of the suit property.

After framing the issues and after the parties led evidence, learned Civil Judge (Junior Division) Phul, decreed the suit of the plaintiff for the relief that plaintiff is a mortgagee to the extent of ½ share in the suit property and ownership over the suit land was illegally transferred in favour of defendants No.1 to 3 through mutation No.1221 and in favour of defendants No.16 and 17 vide sale deed No.46 dated 04.04.2002 and for the relief of permanent injunction

restraining defendants No.1 to 3 and 16 to 18 from illegally and forcibly alienating the suit property to any third person taking benefit of wrong revenue entries. Appeals were filed by appellants-defendants and other defendants, which were dismissed by learned Addl. District Judge, Bathinda, vide judgment and decree dated 04.08.2014.

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

At the time of arguments, learned counsel for the appellants argued that findings given by the Courts below are perverse and not as per evidence.

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

From the record, I find that it is admitted fact that the suit property was earlier owned by Maan Singh, who mortgaged the same to Balbir Singh plaintiff and Teja Singh. After the death of Teja Singh, Balwant Singh and Ujagar Singh inherited the mortgagee rights. This fact regarding mortgage in favour of plaintiff and Teja Singh has been admitted by defendants No.2 and 3 also in the written statement. When the plaintiff is mortgagee to the extent of $\frac{1}{2}$ share, then how his mortgagee rights have been extinguished. Nothing has been said in the written statement by the defendants. The suit for permanent injunction in which the decree has been passed on 19.03.1982, is between the defendants and other persons. The plaintiff was not a party in that suit. Therefore, the judgment and decree dated

19.03.1982 is having no affect on the rights of the plaintiff. Otherwise also, in a suit for permanent injunction, mutation cannot be entered regarding change of ownership in favour of the defendants No.1 to 3.

In view of the above discussion, in no way, the concurrent findings given by the Courts below can be held as against the evidence or law. Nothing has been shown as to which evidence has been misread by the Courts below nor there is anything on the record to show that the judgments and decrees are perverse.

Keeping in view the above discussion, I find that the findings given by both the Courts below are correct, as per evidence and law and do not require any interference from this Court. 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 31, 2015
Vgulati

(INDERJIT SINGH)
JUDGE