

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3606 of 2006 (O&M)
Date of decision:10.02.2016

Krishan Kumar and others

... Appellants

Vs.

Rakesh Roshan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Anand Chibber, Senior Advocate with
Mr. Gaurav Mankotia, Advocate,
Mr. Anupam Singla, Advocate and
Mr. Lalit Thakur, Advocate
for the appellants.

Mr. Jai Vir Yadav, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

C.M.No.153-C of 2011

For the reasons stated in the application, duly supported by an affidavit, delay of 1476 days in re-filing the application bearing No.154-C of 2011, is condoned.

C.M. stands disposed of.

RSA No.3606 of 2006 (O&M)

The appellant-plaintiffs are aggrieved of the findings rendered by the lower Appellate Court in the impugned judgment and

decree dated 18.08.2005, whereby, while accepting the appeal filed at the instance of defendant No.8, the entire judgment and decree vis-a-vis other defendants, has been reversed.

Mr. Anand Chibber, learned Senior counsel assisted by Mr. Anupam Singla, Advocate for the appellant-plaintiffs submits that predecessors-in-interest of plaintiff filed a suit for recovery of the mortgage amount which was decreed. However, only part of the mortgage amount was realized and rest of land owned by the mortgagor was attached. Since the property was not redeemed, suit claiming relief of declaration and possession was filed. The trial Court on the basis of the oral and documentary evidence decreed the suit. However, the appeal was preferred only by defendant No.8, who alleged to have purchased the mortgaged property measuring 8 kanals 4 marlas from Sunder on 27.07.1991. At the best, appeal vis-a-vis land owned by defendant No.8, could have been accepted and not the entire judgment and decree, rather should have been affirmed in the absence of appeal filed by other defendants. He further submits that plaintiffs are entitled to the declaration and possession vis-a-vis entire land measuring 19 kanals 8 marlas, thus, urges that following substantial questions of law arise for adjudication of the present appeal:-

“i) Whether in the absence of appeal filed by other defendants, except defendant No.8, the judgment and decree in favour of the appellant-plaintiff in toto can be

set aside?

ii) Whether there is illegality and perversity in the judgment and decree of lower Appellate Court?"

Mr. J.V.Yadav, learned counsel appearing on behalf of respondent No.1 submits that defendants No.1 to 6 are the predecessors-in-interest of the property measuring 8 kanals 4 marals from whom defendant No.8 had purchased. In fact, property/land belonging to Sunder, Shedhu and Harphool, sons of Asha Ram, was never subject matter of attachment/mortgage, but was of Chuna only. It is in these circumstances, the Lower Appellate Court accepted the appeal and set aside the judgment and decree of the trial Court. He further submits that there is no illegality and perversity in the impugned judgment and decree and prays for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and am of the view that Lower Appellate Court ought not to have set aside the entire judgment and decree of the trial Court in the absence of the appeal filed by other defendants. Once the lower Appellate Court accepted the appeal filed by defendant No.8, who, has acquired the right and interest of defendants No.1 to 6, vide registered sale deed dated 27.07.1991 by proving that property measuring 8 kanals 4 marlas was not attached, therefore, the appellant-plaintiffs are not entitled to claim declaration of entire land including the share of

defendant No.8, same has no substance as the property belonging to Chuna was under mortgage.

In view of the aforementioned observations, judgment and decree of the Lower Appellate Court is required to be modified. It is made clear that judgment and decree of the trial Court shall be confirmed to have been set aside vis-a-vis defendant No.8, whereas, against other defendants, it is ordered to be upheld. The substantial questions of law, as noticed above, are answered in favour of the appellants and against the respondents.

Accordingly, the appeal is partly allowed.

Decree sheet be prepared.

(AMIT RAWAL)
JUDGE

February 10, 2016
savita