

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.2383 of 2011
Date of decision : 08.01.2016**

Kashmir Singh and others

.....Appellants

Versus

Jagir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Kuldeep Sanwal, Advocate for the appellants.

Mr. Vipin Mahajan, Advocate for respondents.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment and decree dated 16.11.2010, passed by learned Additional District Judge (Fast Track Court), Gurdaspur, vide which the appeal preferred against the judgment and decree dated 15.09.2009 passed by learned Civil Judge (Junior Division), Gurdaspur has been dismissed.

2. For the sake of convenience, the status of the parties will be referred as per the original suit.

3. Plaintiff-respondent Jagir Singh filed the suit for declaration to the effect that he has become owner by efflux of time of the

land measuring 02 Kanal 10 Marla comprised in Khewat No.400, Khatauni No.465, rectangle No.42, Killa No.12/2 (1-18), 13/1 (0-12) as per the Jamabandi for the year 2000-01 situated in revenue estate of village Sahoor, Tehsil & Distt. Gurdaspur, with consequential relief of permanent injunction restraining the defendants-appellants from forcibly and illegally interfering in the peaceful physical possession of the plaintiff over the suit land.

4. As per the case of the plaintiff, Harnam Singh the predecessor-in-interest of defendants had mortgaged the land measuring 03 Kanal with possession comprised in Khasra No.4109/1 to 3828 and Khasra No.4110/1 to 3828 vide registered mortgage deed dated 10.12.1943 situated in village Perhewal, Distt. Shakargarh now Sialkot in Pakistan, in favour of the plaintiff. After the partition of the country, the land comprised in Khewat No.275/559, Khasra No.3451/3219/381/5/1 and during consolidation of the holdings the present land was allotted in lieu of the mortgaged land. The mortgage was for a period of two years. The defendants have failed to get the suit land redeemed within the stipulated period. The plaintiff was in continuous possession of the land since the date of mortgage. Thus, he has become the owner of the suit land by afflux of time.

5. In the written statement, the appellants-defendants denied the mortgage of the suit land with possession in favour of the plaintiff. It was also denied that the land was allotted in village Sahoor in lieu of the mortgage land. It was further pleaded that since the land in dispute was never mortgaged, the question of redemption does not arise at all. They

also denied the possession of the plaintiff and refuted all other averments raised in the plaint.

6. The plaintiff also filed the replication, controverting the pleas raised in the written statement. The following issues were framed by the learned trial Court :-

1. Whether the plaintiff is entitled for decree of declaration as prayed for? OPP
2. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP
3. Whether suit of the plaintiff is not maintainable in the present form? OPD
4. Whether suit of the plaintiff is time barred? OPD
5. Relief.

7. The learned trial Court returned the findings on all the issues in favour of the plaintiff and ultimately the suit of the plaintiff was decreed vide impugned judgment and decree dated 15.05.2009.

8. The defendants preferred the first appeal against the aforesaid judgment and decree passed by learned trial court. Their appeal was also dismissed by the learned Additional District Judge, Gurdaspur vide impugned judgment and decree dated 16.11.2010. Hence, this regular second appeal.

9. I have heard Mr. Kuldeep Sanwal, Advocate, learned counsel for the appellants, Mr. Vipin Mahajan, Advocate, learned counsel for respondent and carefully gone through the paper-book.

10. Initiating the arguments, learned counsel for the appellants contended that the mortgage deed was not legally proved. He

further contended that it is also not established that the suit land was allotted in lieu of the alleged mortgaged land. The plaintiff was required to establish that the suit land has been allotted in lieu of the alleged mortgage land situated in Pakistan. In the absence of that evidence, the respondent-plaintiff was not entitled for any decree. Thus, he contended that the impugned judgment and decree are not sustainable.

11. On the other hand, Mr. Vipin Mahajan, Advocate, learned counsel for the plaintiff contended that the plaintiff was granted permission to lead secondary evidence. In the secondary evidence, the plaintiff has proved the mortgage deed Ex.P5. Even the mutation regarding mortgage was entered in favour of plaintiff, which was further reflected in the revenue record. So, it is established that Harnam Singh, the predecessor-in-interest of the defendants, had mortgaged the suit land in favour of the plaintiff. The plaintiff was in possession of the suit land as mortgagee which is also established in the revenue record. There is no dispute about the identity of the suit land as the same was allotted in lieu of the land left in Pakistan as a result of the partition of the country. He further contended that the mortgage was for a fixed period of two years. The same was never redeemed by the defendants, so the plaintiff has become owner by efflux of time.

12. I have duly considered the aforesaid contentions raised by learned counsel for both the parties.

13. This is the second regular appeal against the concurrent findings of fact recorded by both the learned courts below. It is settled principle of law that it is not permissible for the High Court to interfere

with the concurrent findings of fact recorded by the learned courts below except where the material and relevant evidence is not considered, which if considered, would have led to an opposite conclusion. Secondly, if the findings arrived at by the learned courts below are based on inadmissible evidence, which if omitted, would have led to opposite conclusion. Further, the powers under Section 100 of the Civil Procedure, 1908 exercising the jurisdiction in the second appeal, are limited. The High Court will not disturb the concurrent findings of fact as a general principle of law. In the regular second appeal, the High Court can only interfere if there is perversity in the approach of the learned courts below and the case involves a substantial question of law.

14. In the instant case, the defendants have pleaded the following substantial question of law in the grounds of appeal : -

1. Whether the mortgage deed was proved as per law?
2. Whether the suit of respondent-plaintiff was within limitation?
3. Whether the findings of the courts below are against the record?
4. Whether there is non-appreciation and mis-appreciation of evidence on the record?

15. This fact is not disputed that Harnam Singh, the predecessor-in-interest of the defendants was the owner of the land in dispute. As per the case of the plaintiff, the suit land was mortgaged with possession in his favour by Harnam Singh vide registered mortgage deed Ex.P5 on 10.12.1943. Since then he is in possession of the suit land as a mortgagee. The appellants have simply denied the factum of the mortgage. They have deposed that the suit land was never mortgaged

with the plaintiff, so there was no question of any redemption thereof. It is evident from the observations of learned trial court that the plaintiff was allowed to lead secondary evidence to prove the mortgage deed. PW4 Balwinder Singh has deposed about the certified copy of mortgage deed Ex.P5 obtained by him by visiting Pakistan. He has placed on file the documents in support of his oral deposition. The plaintiff has also examined PW5 Dhanwant Singh the son of Bur Singh the attesting witness of the mortgage deed, as the attesting witness of the mortgage deed had died.

16. The mortgage of the suit land by Harnam Singh, the predecessor-in-interest of the defendants, is further corroborated from the revenue record. The learned courts below have consistently mentioned that Harnam Singh, the predecessor-in-interest of the defendants was the owner of the suit property as per Jamabandi Ex.P1/A. He mortgaged the suit property with possession vide mortgage deed Ex.P5 (Ex.P5/A – translation in Punjabi) for a consideration of Rs.300/- for a period of two years. The name of the plaintiff was reflected in the Jamabandi Ex.P2 for the year 1946-47 as a mortgagee in possession on the basis of mutation Ex.P3. The subsequent Jamabandi Ex.P6 to Ex.P12 and Ex.P16 further indicates the plaintiff to be in possession of the suit property as mortgagee. The same position is reflected in the Khasra Girdawari Ex.P13 and Ex.P18. The appellants-defendants have not led any cogent and convincing evidence to negate the factum of mortgage and execution of mortgage deed Ex.P5 by their predecessor-in-interest Harnam Singh except the bald denial in their oral depositions.

17. Thus, I do not find any illegality in the conclusion arrived at by the learned courts below that the execution of mortgage deed Ex.P5 by Harnam Singh the predecessor-in-interest of the defendants is established.

18. There is also no doubt about the identity of the mortgage land. As per observations of the learned trial court, the land comprised of Khasra No.3451/3219/381/5/1 (3-0) was allotted to Harnam Singh after the partition of the country as indicated in Jamabandi Ex.P15. During the consolidation of holdings, the present land was allotted in lieu thereof which is evident from document Ex.PW3/C. The defendants have not led any documentary evidence to show that any other land was allotted to Harnam Singh in lieu of the land held by him in Pakistan except the suit land. So, there can be no scope of doubt about the identity of the mortgaged land by Harnam Singh deceased in favour of the plaintiff.

19. As per the mortgage deed Ex.P5, the mortgage was executed for a fixed period of two years on 10.12.1943. So, the mortgage was required to be redeemed within the period of limitation prescribed in the Limitation Act.

20. The limitation to redeem the mortgage was 60 years in the old Limitation Act and same was reduced to 30 years as per the new Limitation Act, 1963. The defendants or their predecessor-in-interest have never got redeem the suit land within the stipulated period. Thus, there is no illegality or perversity in the findings arrived at by the learned courts below.

21. Consequently, no question of law, much less, the

substantial question of law, arises in the present appeal.

22. Resultantly, the present appeal, having no merits, is hereby dismissed with no order as to costs.

08.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**