

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

RSA No.830 of 1987 (O&M)
Date of decision : 23.07.2018

Ram Saran

...Appellant

Versus

Uttam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. T.S. Hundal, Advocate for the appellant.

Mr. Ashok Aggarwal, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs filed a suit claiming that they alongwith defendant Nos.2 to 4 purchased the agricultural land including the land comprised in khasra No.298/1, vide sale deed No.208 dated 08.06.1937. However, inadvertently the aforesaid khasra number i.e. 298/1 was not mentioned in the sale deed and, therefore, the mutation of the land was not sanctioned. It was further pleaded that somewhere in the year 1939, the parties realized their mistake and with the consent of the parties, Assistant Collector passed an order in the presence of the parties to the sale as well as

Lambardar and other respectables of the village, wherein it was recognized that the land comprised in khasra No.298/1 (pre consolidation number) was also part of the sale deed. It is further the case of the plaintiffs that in spite of the order passed by the Assistant Collector, Ist Grade, Revenue Authorities have not corrected the revenue record by reflecting the plaintiffs and defendant Nos.2 to 4 to be the owner of the property in dispute. It was further pleaded that during consolidation of holdings, plaintiff and defendant Nos.2 to 4 were allotted khasra No.293/2.

The defendants contested the suit and pleaded that the plaintiffs never purchased any land and registered sale deed is based on fraud and misrepresentation.

Both the Courts below after appreciating the evidence available on the file have recorded a concurrent finding that the predecessor of defendant No.1 had executed the registered sale deed on 08.06.1937. It has further been found that in the year 1939, after realizing the mistake, both the parties appeared before the Assistant Collector and in the year 1939, an order was passed which is Ex.P3 on the record to this effect.

Still by mistake, the entry in the revenue record continued showing that the land is under mortgage.

Learned counsel appearing for the appellant has proposed the following substantial questions of law:-

- “1. Whether the trial Court can make out a case not pleaded by the plaintiff?”*
- 2. Whether the Courts below have misread the documents produced by the parties?”*
- 3. Whether a mortgagee can be declared owner by adverse*

possession?

4. *Whether in the absence of the proof of the terms of mortgage and without the proof of date of mortgage it can be held that the mortgagee has become owner by lapse of time?*
5. *Whether no time limit is fixed for redemption and whether once a mortgage, always a mortgage and always redeemable?"*

No doubt, there is some force in the submission of the learned counsel that the First Appellate Court has wrongly recorded that the plaintiff and defendant Nos.2 to 4 have become owners by way of adverse possession and even if the entry of mortgage is treated as correct, the defendant-appellant has not lost his right by efflux of time to redeem the land. However, that would not help the appellant because the aforesaid findings are only in the alternative.

The First Appellate Court has recorded a positive finding that it is clear from the order passed in the year 1939 Ex.P3 by the Assistant Collector that the land comprised in khasra No.298/1 was also part of the same. The Court has further noticed that the possession of plaintiff and defendant Nos.2 to 4 is admitted from the day the sale deed was executed i.e. on 08.06.1937.

Now the stage is set for dealing with the questions of law as reproduced above.

Learned counsel for the appellant could not point out as to how a new case has been made out which is not part of the pleadings. The plaintiffs while filing the suit have pleaded that they be declared owners in possession of the land in dispute and this is the relief which has been

granted by the Court.

With regard to the second question of law, it may be noted that the learned counsel for the appellants has tried to point out that the land comprised in khasra No.298/1 was not allotted new khasra No.293/2 post consolidation. However, it is not the case of the plaintiffs that new khasra number post consolidation is 293/2. The case of the plaintiffs is that they have been allotted by the Consolidation Authorities a new khasra No.293/2 (3-0). During the consolidation, it is not necessary that the land which was originally owned is to be allotted. During consolidation of holdings, the location of the land which is allotted in lieu of land changes in most of the cases. Still further, learned counsel for the appellant could not point out that this objection was ever taken by them before the Courts below. This Court for the first time in the second appeal would not permit a new argument to be raised which is based upon the facts.

With regard to question No.3, this Court has already observed that the aforesaid finding of the First Appellate Court is erroneous but such finding was only in alternative and hence does not come to rescue the appellant.

With regard to question No.4, it may be noticed that in fact the entry of mortgage was incorrect as has been found by both the Courts below. Hence, this question does not arise for determination.

Question No.5 is also redundant keeping in view the fact that plaintiff and defendant Nos.2 to 4 have been found to be the owners in possession of the property. It may be noted that the order passed by the Assistant Collector in the year 1939 has never been challenged by the

defendants-appellants in any proceedings.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.07.2018

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No