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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1309-1988 (O&M)
Date of decision : 06.07.2018

Mihan Singh

... Appellant(s)

Versus

Surjan (deceased through LRs) and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Rana, Senior Advocate with
Mr. Parveen Kaushik, Advocate
for the appellant.

None for the respondents.

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AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in obtaining the claim in a suit seeking declaration with consequential relief of injunction.

Succinctly, the facts which are enumerated from the pleadings of the parties, are that one Bal Kishan resident of Ahmadpur, Tehsil Thanesar, owned land measuring 18 bighas i.e. land in dispute. The aforementioned land stated to have been mortgaged in favour of Mihan Singh-plaintiff on 03.09.1966 for a sum of ₹1,800/-. The plaintiff acquired the knowledge that out of the aforementioned land, the Collector Agrarian Karnal, vide order dated 02.07.1960, declared the area measuring 15 bighas 3 biswas as surplus. An application dated 07.11.1996 was submitted before the Collector stating therein that the plaintiff was a *bona fide* transferee and was not related to transferrer and therefore, be exempted from the

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utilization. The aforementioned application, vide order dated 13.03.1967, was accepted. The, aforementioned order, was not challenged by anyone, thus, became final. However, vide order dated 29.09.1978, the land measuring 15B-03B was allotted to the defendants. The plaintiff again submitted an application, dated 28.05.1979, seeking cancellation of the allotment order. Vide order dated 04.02.1980, it was accepted, which also remained un-assailed. In the meantime, Bal Kishan died and his estate was inherited by his sons. They submitted an application under Section 10A(b) of the Punjab Security of Lands Tenures Act, 1953. The prescribed authority i.e. Collector, Thanesar, vide order dated 01.10.1980, exempted the land, in question, from surplus area. The defendants submitted an application before the Collector, Thanesar under the provisions of Punjab Redemption of Mortgages Act, seeking redemption of the suit land. Vide order dated 30.05.1984, the land was ordered to be redeemed in favour of the defendants. The aforementioned order has been assailed before the Civil Court below on the premise that once the allotment in favour of the defendants had been cancelled, they had no right to claim redemption of the property.

The aforementioned suit was contested by the defendants by raising numerous preliminary objections qua maintainability, *locus standi* etc. On merits, it was averred that the mortgage was in contravention of the Agrarian Laws because the land had been declared as surplus, therefore, original owner Bal Kishan could not mortgage the same and that too, in favour of his close relation Mihan Singh, who was none-else, but his wife's brother's son. It was averred that once the land had declared surplus, it would continue to remain surplus and therefore, could be utilized.

Since the parties are at variance, the trial Court framed the following issues:-

1. *Whether the order dated 30.05.1984 is bad because of the reasons stated in para No.11 of the plaint?*
2. *Whether the suit is not maintainable?*
3. *Whether the civil Court has no jurisdiction?*
4. *Relief.*

On the basis of the oral and documentary evidence, the trial Court dismissed the suit by rejecting the plea of applicability of the provisions of Section 91 of the Transfer of Property Act. The appeal laid before the lower Appellate Court also met with the same fate, in essence, the judgment and decree of the trial Court was affirmed.

Mr. B.S. Rana, learned Senior Counsel assisted by Mr. Parveen Kaushik, learned counsel for the appellant in support of the contentions mentioned in the memorandum of appeal raised the following arguments:-

1. Once the allotment, vide order dated 04.02.1980 (Ex.P-1), was cancelled and land was released from the surplus vide order dated 01.10.1980 (Ex.P-2), the Authority could not entertain the application for redemption of the mortgage, for, neither the respondents-defendants were owners or the allottees as per the provisions of Section 91 of the Transfer of Property Act. The orders, aforementioned, have never been challenged, therefore, could not have been ignored, thus, there is a gross illegality and perversity.

2. The respondents-defendants were not personally interested in the property and therefore, could not seek redemption. The defendants-Surjan and Bachna, had no right to get mortgage redeemed from

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the plaintiff-mortgagee. The land measuring 18 bighas was under mortgage with the plaintiff and the integrity of mortgage could not be broken. In the present case, the allotment was made to defendants only after redemption of the mortgage, therefore, they did not have a proprietary interest or charge upon the mortgage land, thus, there is illegality and perversity in the judgments and decrees of the Courts below and liable to be set aside.

3. The respondents had been appearing through counsel, but thereafter, on 27.02.2016, the appeal was dismissed for non-prosecution. However, an application seeking restoration of the appeal, vide order dated 16.02.2017, was allowed and the appeal was restored. There had been no appearance on behalf of the respondents, despite office report dated 14.07.2017, whereby respondent No.2 had been served. Respondent No.1 had died and respondent No.2 was legal heir of respondent No.1.

I have heard learned counsel for the appellant, appraised the paper book as well as the records of the Courts below and of the opinion that there is no merit and force in the submissions of Mr. Rana, for, order dated 04.02.1980 (Ex.P1) cancelling the allotment in favour of defendants, was conditional. It was ordered that until and unless, the land is not redeemed, it could not be allotted and it also made clear that once the land is redeemed, the allotment would automatically follow. There was a technical defect in the allotment, thus, the provisions of Section 91 of the Transfer of Property Act, specifying the persons eligible for redemption, could not be applicable. This fact has been noticed threadbare by the Courts below, thus, argument of Mr. Rana, with regard to the fact that orders dated 04.02.1980 (Ex.P-1) and 01.10.1980 (Ex.P-2) remained unchallenged, pales into insignificance. The factum of mortgage has been admitted. No documentary

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evidence has been placed on record to establish that on demise of Bal Kishan and the land having taken out from surplus, the property was mutated in favour of legal representatives of Bal Kishan. As per the provisions of Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, which was made applicable w.e.f. 23.12.1972, it is the State Government, which has become the owner of the property and therefore, is competent to deal with the property by allotting to the eligible persons.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the present Regular Second Appeal is dismissed.

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**

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