

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

439

RSA No.1492 of 1991 (O & M)
Date of Decision:28.02.2018

Bhagwant Kaur

...Appellant

Versus

Sukhjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurbachan Singh Bhatia, Advocate
for the appellant.

Mr. Kamal Goyal, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

This is a classic case where a brother is trying to usurp the rights of other brothers and sisters. It is undisputed that originally Bishan Singh predecessor-in-interest of the defendants was owner of the property. Jarnail Singh is one of the son of Bishan Singh and plaintiff/appellant before the Court is wife of the aforesaid Jarnail Singh. Late Sh. Bishan Singh had mortgaged the land measuring 38 kanals and 18 marlas in favour of late Shri Bhagwan Singh in the year 1968 and both died. Rights of the mortgagor i.e. Bishan Singh were inherited by Jarnail Singh, Amarjit Singh, Karamjit Kaur and others. Similarly, Bhagwan Singh, the mortgagee also died and leaving behind defendants No.4 to 6 as natural heirs.

Plaintiff claims that she purchased mortgagee rights from legal heirs of Bhagwan Singh vide deed dated 14.05.1980 for the same amount i.e.

Rs.3,000/-. As noticed above, the plaintiff is a wife of Jarnail Singh one of

the son of the mortgagor. Sukhjit Kaur wife of Amar Singh son of Bishan Singh filed an application for redemption of the mortgage. Application is dated 12.05.1980. Jarnail Singh was one of the respondent in the aforesaid application, which was allowed by the Collector vide order dated 25.03.1982. Now the plaintiff has challenged the order passed by the Collector, allowing application for redemption of the mortgage, by filing the suit from where this appeal has arisen. Entire effort is to keep the property in possession without giving anything to other legal heirs of Bishan Singh.

Both the Courts after examining the evidence available on the file, dismissed the suit.

Learned counsel for the appellant has made following submissions:-

(i) Plaintiff was not heard before passing an order of redemption.

(ii) The Courts below have considered the evidence, which is beyond pleadings.

(iii) Appellant had filed an application for additional evidence before the learned First Appellate Court, which was not decided.

With respect to first argument of learned counsel for the appellant, it is sufficient to notice that the application for redemption is dated 12.05.1980, although in the order, date of institution has been mentioned as 15.05.1980. However, the Courts as a matter of fact after appreciating the evidence, have found that the application was filed on 12.05.1980. The Courts have given following reasons to counter the arguments of the learned

counsel for the appellant:-

(i) Husband of the plaintiff was respondent before the Collector. It is admitted by the plaintiff that she is living in the same house along with her husband.

(ii) the plaintiff never informed the mortgagors about purchase of mortgagee rights so that the mortgagors could inform the plaintiff or implead her as a party in the aforesaid application seeking redemption of the mortgage.

(iii) Learned trial Court has also observed that the plaintiff being mortgagee is entitled only to redemption money, which has been deposited with the Collector and she can withdraw the same.

This Court repeatedly asked learned counsel for the appellant that whether the mortgage by Bishan Singh is in dispute. He admitted that such mortgage is not in dispute. Learned counsel was once again asked whether the plaintiff claims any other right apart from being purchase of the mortgagee rights. The answer to this question was that she is only having mortgagee rights. Such being the position and particularly taking note of the fact that her husband was respondent No.7 in the proceedings before the Collector when the application for redemption of the mortgage was filed, plaintiff cannot claim that she does not know anything particularly when she is residing in the same house with Jarnail Singh.

Still further, the plaintiff never took any step to inform the mortgagors that she has purchased the mortgagee rights. Plaintiff is wife of Jarnail Singh. Jarnail Singh along with legal heirs of Bishan Singh were mortgagors, so it was all in the family. Apart from that, Courts have also noticed that the suit filed by the plaintiff is barred by time. The Collector

passed the order redeeming the mortgage vide order dated 25.03.1982, whereas the suit was filed on 30.08.1983. As per Article 100 of the Schedule to The Limitation Act, 1963, suit to challenge the order passed by an officer of the Government is one year. The limitation begins to run from the date of the final decision.

Learned counsel for the appellant vehemently argued that since the plaintiff was not party, therefore, the limitation would start from the date of filing of the suit. In the facts of the present case, it cannot be said that the plaintiff was not in knowledge of the proceedings of redemption of the mortgage.

Next argument of learned counsel is that the Courts below have considered certain evidence, which was beyond pleadings. As per Order 6 Rule 2 of the Code of Civil Procedure only facts are to be pleaded in brief and not the evidence. Order 6 Rule 2 of the Code of Civil Procedure provides that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies upon. The documents are in the shape of evidence, which are not required to be pleaded. Anyhow the documents Ex.D-1 to Ex.D-7 would have no material bearing on the decision of the case.

Last argument of learned counsel is that an application for additional evidence was filed before the learned First Appellate Court but the same has not been decided. It may be noticed that before the learned First Appellate Court, the appellant filed an application under Order 18 Rule 17-A of the Code of Civil Procedure. No application under Order 18 Rule 17-A of the Code of Civil Procedure was maintainable. Anyhow ignoring the fact that incorrect provisions have been mentioned, this Court has considered the

effect of the application. Plaintiff-appellant in the additional evidence before the learned First Appellate Court has stated as under:-

“2. That the appellant wants to file a certified copy of the judgment passed by Addl. District Judge (II) Sangrur dt. 19/9/1986 which has been decided in favour of appellant-applicant.

3. That the said copy of the judgment is necessary to be filed in the interest of justice.”

Copy of the judgment dated 19.09.1986 was not filed. Counsel for the appellant was requested to prove that the aforesaid judgment has any relevance to the decision of the case. However, he has also expressed his inability to provide a copy of the judgment. Before an application for additional evidence is allowed, the party is required to satisfy the requirements of Order 41 Rule 27 of the Code of Civil Procedure. A reading of the application is extracted above shows that the requirements of Order 41 Rule 27 of the Code of Civil Procedure were not even pleaded. Learned counsel for the appellant failed to show that the judgment which was sought to be produced before the learned First Appellate Court as additional evidence had any relevance.

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

Appeal is dismissed with the exemplary cost of Rs.1,00,000/- which shall be recoverable by the contesting defendants.

28.02.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No