

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3905 of 2013(O&M)

Date of Decision:21.5.2018

Mam Chand

---Appellant

vs.

Dharambir and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. N.D.Achint, Advocate
for the appellant
Mr. Amit Jain, Advocate
for the respondents

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 17.4.2013 passed by the Additional District Judge, Gurgaon whereby judgment and decree dated 17.9.2012 passed by the trial court dismissing suit of the respondents/plaintiffs was reversed and the respondents/plaintiffs are held to be owner in possession of suit property, entries showing half share of suit land under mortgage with Man Kaur or her successors in interest are wrong and illegal, hence liable to be corrected accordingly.

As per case set up by the respondents/plaintiffs that revenue entries in favour of Mam Chand continued from date of purchase till the suit land came in the name of plaintiffs showing them to be owner in possession of Rect. No. 81, killa No. 1/2(4-0) in the name of Dharambir and killa No. 1/1 (4-0) in the name of Dharamraj but wrongly showing mortgage of 1/2 share of land in favour

of Man Kaur and after her death in the name of Sohan Dei. The land stood redeemed before purchase vide sale deed dated 19.12.1957 for a sum of Rs. 1600/- from one Har Chand son of Gangan vide mutation No. 956 sanctioned on 17.4.1958. It is further averred that 1/2 share of said land under mortgage was got redeemed on 4.11.1957 and entries in this regard were effected on 3.4.1958. However, even after 1/2 of the land in dispute was redeemed on 4.11.1957, no entry in this regard came on record and the plaintiffs prayed for correction of entries accordingly.

The defendant (since deceased) represented by her legal representatives including the appellant filed the written statement and denied ownership and possession of respondents/plaintiffs over the suit land with the averments that land in question is still under mortgage and none of the plaintiffs or their predecessor in interest ever got the land redeemed. As land was not got redeemed within the prescribed period and as such plaintiffs have lost their right of redemption. She claimed ownership and possession of the suit property and prayed for dismissal of the suit.

The trial court framed issues, reproduced in para 4 of the judgment, permitted the parties to adduce evidence in support of their respective claims.

Having heard counsel for the parties in the light of evidence on record, suit filed by the respondents/plaintiffs was dismissed with no order as to costs as issues No. 1 to 3 were determined against the respondents/plaintiffs. Appeal preferred by the unsuccessful plaintiffs was decided by the Additional District Judge, Gurgaon, judgment and decree passed by the trial court were reversed and suit filed by the respondents was decreed in terms indicated hereinbefore.

The precise question that calls for determination is “whether the respondents/plaintiffs have been successful to establish their plea that suit land to the extent of 1/2 share which was mortgaged in favour of Smt. Man Kaur,

predecessor-in-interest of Sohan Dei stood redeemed on 4.11.1957 in regard whereof mutation No. 956 dated 17.4.1958 was sanctioned.

Indisputably, 1/2 share of land purchased vide sale deed dated 19.12.1957 was under mortgage with Smt. Man Kaur, mother of Sohan Dei defendant (since deceased). The plea of the respondents/plaintiffs is that mortgage was got redeemed on 4.11.1957. The respondents/plaintiffs have not examined a witness to prove the factum of redemption and they have only relied upon mutation that was also not given effect to in the revenue documents i.e. jamabandis that record possession of mortgaged land earlier in the name of Smt. Man Kaur and after her death in the name of Sohan Dei which are sought to be got corrected by the respondents/plaintiffs.

Indeed, mutation is not a document of title nor can it create or extinguish any title or right in immovable property. One of the respondents/plaintiffs appeared in the witness box to establish that the suit land to the extent of 1/2 share was got redeemed on 4.11.1957. He stated himself to be 55 years old in February 2011 meaning thereby that he was born sometime in 1956/57 and as such he cannot prove the factum of redemption of mortgage. In the mutation, there is no reference as to how the land was mortgaged, who paid the money to the mortgagee and by what means. Further, the fact that mutation qua redemption of mortgage was not given effect to in the revenue record also creates a doubt with regard to the mortgage actually having been redeemed. In this view of the matter, it can be safely held that the Court in Appeal committed a serious error rather illegality by holding that the land in question to the extent of 1/2 share was already got redeemed by mortgagor before the land was sold vide sale deed dated 19.12.1957 or the revenue entries regarding possession qua 1/2 share of the suit land in favour of the mortgagee are liable to be corrected accordingly.

To be fair to the respondents, counsel has made an attempt to argue

that the defendant did not produce copies of khasra girdawaris recording possession of Man Kaur or Sohan Dei or their successors-in-interest to prove their possession. Firstly, the respondents/plaintiffs have knocked at the door of the Court to seek declaration and correction of revenue entries. It was obligatory for the respondents/plaintiffs to prove their case that mortgage in favour of Man Kaur stood redeemed in November 1957 before the land was purchased vide sale deed dated 19.12.1957. The said factum of redemption of mortgage could also be established by the respondents/plaintiffs by proving that they are in possession of that land duly recorded in khasra girdawaris. As per the settled position in law, presumption of correctness is attached to entries in jamabandis and not to khasra girdawaris. Since in the jamabandis, original mortgagee or her successors-in-interest have been recorded to be in possession of 1/2 share of suit land, the respondents cannot derive any advantage to their contention from failure of the defendant to produce copies of khasra girdawaris. This apart, there cannot be any denial that in order to be successful, plaintiff has to stand on his own legs and cannot derive any strength from weakness of defence. In this view of the matter, contention raised by counsel for the respondents is not meritorious and liable to be rejected.

Counsel for the respondents would argue that the defendant has raised a plea of ownership on the basis of adverse possession, contradicting her stand of permissive possession on the basis of mortgage. The defendant can raise alternative and even contradictory pleas. The mere fact that defendant is not successful to prove her plea of adverse possession would not enure to benefit of respondents/plaintiffs to establish their plea of mortgage having been redeemed. This apart, the respondents/plaintiffs have failed to adduce sufficient much less convincing evidence to establish that they are in possession of suit land since its purchase in the year 1957. In view of the above, plea of the respondents that 1/2 share of suit land mortgaged in favour of Smt. Man Kaur stood redeemed or the

revenue entries regarding possession of Man Kaur or her successors in interest are liable to be corrected is devoid of merit and accordingly rejected. The judgment and decree passed by the Court in Appeal holding in favour of the respondents/plaintiffs with regard to redemption of mortgage or correction in revenue entries in this regard are liable to be set aside and ordered accordingly.

For the foregoing reasons, the appeal is allowed. Judgment and decree passed by the appellate court are set aside and that of the trial court are restored. The suit filed by the respondents/plaintiffs is dismissed with costs throughout.

(Rekha Mittal)
Judge

21.5.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No