

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

1. RSA No.1833 of 2017 (O&M)
Date of decision : 07.08.2018

Sunita Rani @ Sunita Dua

...Appellant

Versus

Amarjit Singh and others

...Respondents

2. RSA No.4884 of 2017 (O&M)
Date of decision : 07.08.2018

Sunita Rani @ Sunita Dua

...Appellant

Versus

Amarjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Jain, Advocate for the appellant.
(In both the appeals)

ANIL KSHETARPAL, J.

Defendant No.3-appellant has filed these two appeals which are arising from the one suit and the two appeals which were also disposed of by a common judgment by the First Appellate Court.

Learned counsel for the appellant has submitted that both these appeals can be conveniently disposed of by a common judgment.

The plaintiffs and defendant Nos.13 to 21 claiming to be the

successor-in-interest of Kartar Singh, claimed that they are owners in possession of the land, which was purchased by Kartar Singh from Mool Raj vide registered sale deed dated 01.05.1969 with respect to the land measuring 10 Kanal and 1 marla. The plaintiffs also claimed that Kartar Singh had executed a registered Will dated 22.07.1994 in favour of plaintiff Nos.1 to 4, defendant Nos.13, 17, 18 and Baldev i.e. predecessor-in-interest of defendant Nos.19 to 20, whereas, residential plot was bequeathed in favour of defendant No.13. It is further pleaded case of the plaintiffs that the predecessor-in-interest of defendant Nos.9 to 12 filed a suit against the plaintiffs and defendant Nos.16 to 21 and in the aforesaid suit, the plaintiffs came to know that the mutation of the land in question has not been sanctioned in favour of Kartar Singh on the basis of the sale deed. Subsequently, defendant Nos.9 to 12 admitted the sale deed and withdrew the previous suit on the basis of the compromise. The mutation of the land purchased by Kartar Singh was sanctioned in his favour on 22.09.2008 and, thereafter, the mutation was sanctioned in favour of his heirs, on the basis of the registered Will dated 22.07.1994 with respect to land measuring 8 kanals and 1 marlas but Revenue Authorities refused to sanction the mutation of remaining land measuring 2 kanals although Kartar Singh had purchased the land measuring 10 kanals and 1 marlas. The Revenue Authorities have refused on the ground that defendant Nos.5 to 8 in the meantime, taking the advantage of the wrong entry, have further sold the property to one Krishna Sharma, mother of defendant No.4 who has further sold it to defendant Nos.1 to 3.

Only defendant Nos.3 and 4 appeared and contested the suit.

They denied the ownership of Kartar Singh over the suit property. It was pleaded that the land was mortgaged with possession with one Dogar Ram and Kartar Singh was to get it redeemed but he did not do so. As a result thereof, he never came in possession of the property. It is further pleaded by the defendants that Amar Nath, predecessor-in-interest of defendant Nos.5 to 8 and son of Mool Raj had redeemed the mortgage and the judgment and decree dated 30.08.1976 was passed in their favour. On the death of Amar Nath, his estate was inherited by defendant Nos.5 to 12, which was sold to Krishna Sharma, mother of defendant No.4 who had further sold the property to defendant No.3 by way of sale deed dated 26.10.1983.

Learned trial Court, after appreciating the evidence available on the file, found that the sale deed in favour of Kartar Singh dated 01.05.1969 is proved. The trial Court further found that Kartar Singh had in fact redeemed the mortgage and it is specifically recorded in the judgment and decree dated 30.08.1976. However, the learned trial Court, dismissed the suit on the following ground:-

“However, since the plaintiffs did not claim the relief of getting Kartar Singh declared as owner of the suit property and claimed themselves as owners of the suit property, this issue stands decided against the plaintiffs.”

The trial Court further dismissed the suit on the ground that the Will dated 22.07.1994 has not been proved.

Two appeals were filed, one by the plaintiffs and second by defendant Nos.3 and 4. Learned First Appellate Court after re-appreciating the evidence held that the sale deed dated 01.05.1969 which was registered on 02.05.1969, Ex.P4 is proved and the sale was subject to the payment of

mortgage amount of ₹19,000/- to Dogar Ram, the mortgagee. The Court has further noticed that as per the recital in Ex.PW4/1, on the reverse page of Ex.P4, it is recorded that the terms settled on 01.05.1969, at the time of the execution of the sale deed, have been complied with before the registration of the sale deed on 02.05.1969 including the condition of payment of the mortgage money for redemption of the mortgage to Dogar Ram, mortgagee, hence, the rights of Mool Raj stood extinguished from the suit property on the execution and registration of the sale deed.

Learned Court further held that even if the Will dated 22.07.1994 is not proved, still there is no dispute inter se between the descendants of Kartar Singh. Hence, the trial Court committed an error in dismissing the suit.

This Court has heard the learned counsel for the parties at length.

Learned counsel for the appellant has submitted that the suit was only filed for declaration and since the relief of possession has not been sought, therefore, the suit was not maintainable. He further submitted that the redemption of the mortgage was by Amar Nath and, therefore, Kartar Singh never came in possession.

This Court has considered the submissions of the learned counsel, however, finds no substance therein. The plaintiffs, in the present case, have filed the suit claiming that they are owners in possession. Once, they are themselves owners in possession which have been found by both the Courts below, there is no substance in the argument of the learned counsel that relief of possession has not been sought. Still further, the

plaintiffs had already, in the alternative, pleaded for relief of possession, if the defendants succeed in dispossessing them. In view of the aforesaid, the relief of possession has already been sought for, therefore, in any case, the suit cannot be held to be barred as per the proviso to Section 34 of the Specific Relief Act.

With regard to the second argument of the learned counsel, it is apparent that in the judgment and decree dated 30.08.1976, which has been pleaded by the defendants, it is specifically recorded that Kartar Singh had got his share redeemed by paying the amount to the mortgagee i.e. Dogar Ram. Still further, as per Ex.PW4/1, it is apparent that after the execution of the sale deed and before the registration thereof, the mortgage amount had been paid to Dogar Ram and the property had been redeemed.

In these circumstances, the argument of the learned counsel for the appellant is against the record.

In view thereof, there is no ground to interfere.

Both the Regular Second Appeals are dismissed.

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

07.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No