

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4801 of 2017(O&M)
Date of Decision:31.7.2018

Takha Singh

---Appellant

vs.

Lal Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kanwal Goyal, Advocate
for the appellant

Mr. Vivek Gupta, Advocate
for the respondent-caveator

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for specific performance of agreement of mortgage dated 28.4.2008, permanent and mandatory injunction was decreed by the trial court vide judgment and decree dated 20.8.2014 and the appeal preferred by unsuccessful defendant (appellant herein) did not find favour with the District Judge, Sangrur.

The respondent-plaintiff sought relief on the basis of agreement dated 28.4.2008 with the averments that the appellant delivered possession of land measuring 8 kanal bearing khasra No. 26//4, situated in village Ratta Khera for consideration of Rs. 81,000/- and agreed to execute the registered

mortgage deed on or before 15.8.2010. The appellant failed to execute the registered mortgage deed on or before the stipulated date. On 16.8.2010, the respondent appeared before the Sub-registrar, Lehra and purchased stamp papers for execution of affidavit. He waited for appearance of the appellant till 19.8.2010 and eventually got his presence marked by way of affidavit dated 19.8.2010. During pendency of the suit, appellant in connivance with local police, unlawfully harvested crop from the land in possession of the respondent by taking undue advantage of entry in the revenue record and also got FIR No. 65 dated 5.11.2010 under Section 379 of the Indian Penal Code registered against the respondent. The respondent filed complaint to the Senior Superintendent of Police, Sangrur on 14.12.2010 but no action was taken against the appellant.

The appellant filed the written statement, raised preliminary objections inter alia that the suit is not maintainable, plaintiff has got no locus standi and cause of action to file the suit and the plaintiff has not come to the court with clean hands. He has denied material averments with regard to execution of agreement to mortgage, receipt of Rs. 81,000/- and mortgage deed to be executed and registered on or before 15.8.2010. It is averred that the respondent and his companions tried to interfere in his possession on 5.11.2010 and FIR No. 65 dated 5.11.2010 was got registered with Police Station Dharamgarh.

The trial court framed issues, reproduced in para 3 of the judgment, permitted the parties to adduce evidence in support of their respective contentions.

After having heard counsel for the parties in the light of

materials on record, suit filed by the respondent-plaintiff was decreed. As has been noticed hereinbefore, the appellant remained unsuccessful before the first Appellate Court.

Counsel for the appellant would urge that agreement to mortgage dated 28.4.2008 propounded by the respondent-plaintiff is a forged and fabricated document. To bring home his contention, he has two fold submissions to make. The first contention raised by counsel is that respondent examined the stamp vendor Bhagwan Dass PW2 and in his cross examination, he has deposed that Takha Singh purchased stamp papers on 28.4.2008 for affidavit and not for agreement. One of the attesting witnesses of the agreement Balwinder Singh PW6 in the opening lines of his cross examination had deposed that when the agreement was executed, they had appeared before the Tehsildar. All acts were done before the Tehsildar as per Ex. P11. It is argued with vehemence that the agreement to mortgage is not a registered document nor it bears endorsement of any Tehsildar.

Counsel representing the respondent-caveator has supported consistent findings recorded by the courts with the contention that the same are based upon detailed and correct appreciation of the materials on record in the light of settled principle of law that civil disputes are to be decided on the basis of preponderance of probabilities. It is vehemently argued that Takha Singh appeared in the witness box and in his cross examination, he has admitted correctness of documents Ex. P12 to P15 wherein Takha Singh had categorically admitted the factum of execution of agreement of mortgage and receipt of Rs. 81,000/- from the respondent-plaintiffs though

with the plea that the said money has been returned by him to the respondent-plaintiff.

I have heard counsel for the parties, perused the paper book particularly the judgments impugned and copies of documents supplied during the course of hearing, correctness whereof has been vouched by counsel for the parties.

The agreement of mortgage is notarized by Notary Public. The document was executed in the year 2008. Balwinder Singh PW6 was cross examined in the year 2013 after a gap of about five years. In place of saying that he had appeared before the Notary, he has wrongly deposed about appearance before the Tehsildar. However, the two contentions raised by counsel for the appellant lose its relevance/significance in the light of facts elicited in cross examination of Takha Singh particularly the documents Ex. P12 to P15. Document Ex. P12 is the statement recorded by Takha Singh for lodging FIR No. 65 dated 5.11.2010. In the opening line of his statement, he has admitted execution of agreement of mortgage qua land measuring 1 acre in the year 2010 on receipt of Rs. 81,000/-. Similarly, in his statement recorded in the criminal proceedings, he has admitted execution of the agreement in question and the same has been marked as Ex. P1 in his testimony recorded on 23.4.2013. Taking into consideration the clear admission of the appellant with regard to execution of agreement of mortgage and receipt of Rs. 81,000/- and his failure to prove that he has already returned the amount of Rs. 81,000/- to the respondent, I do not find an error much less illegality in the concurrent findings recorded by the courts accepting claim of the respondent-plaintiff. This apart, intervention

in regular second appeal is warranted only if judgments suffer from perversity or raise a question of law.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

31.7.2018.
paramjit

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