

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

R.S.A.No.327 of 1988 (O&M)

Date of Decision: February 01, 2019

Goverdhan Lal alias Babu Ram (since deceased) through L.Rs

...Appellants

Versus

Devki Nath (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr. I.K.Mehta, Senior Advocate with
Mr. R.K.Dogra, Advocate,
for the appellant.**

**Mr. R.S.Randhawa, Advocate,
for respondent Nos.1, 5 & 7 to 12.**

AMIT RAWAL, J.

The appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby the suit for possession of the shop as shown red in the site plan by seeking redemption of mortgage deed dated 19.02.1941 on payment of ₹ 1400/- had been decreed by the trial court and affirmed in appeal.

It was averred that the plaintiff along with defendant Nos. 8 to 13 were in joint ownership of the land which was mortgaged to Ram Lal deceased brother of defendant No.1 by plaintiff and Mukand Lal father of defendant Nos.8 to 10 along with defendant Nos. 11 to 13 and Dropti widow of Nathu Ram by registered mortgage deed dated 19.02.1941. Terms and conditions of the mortgage did not award any rate of interest, but the same was with possession. Redemption period was specified as fifteen

years from the date of mortgage. As per the mortgage deed, the mortgagee was given right to repair the roof of the shop by keeping regular account. Ram Lal, the original mortgagee, died issueless and succeeded by defendant No.1 as his legal representative. Defendant Nos.2 to 6 were impleaded as they were claiming to be the members of the Joint Hindu Family with defendant No.1. The defendants despite repeated, did not redeem the property.

Defendant Nos.1 to 6 hotly contested the suit by raising all possible preliminary objections with regard to the maintainability, locus standi etc. On merits, it was asserted that plaintiff had no concern with the shop in dispute as defendant No.6 got the suit property from his father in a family partition. The pith and substance of the written statement revealed that the execution and existence of the mortgage deed was denied.

On receipt of the replication, the trial Court framed the following issues:-

- “1) Whether the plaintiff has no locus-standi to file the present suit? OPD*
- 2) Whether shop in dispute was mortgaged to Ram Lal deceased the predecessor of defendant No.1 to 6? If so for what amount and to what effect? OPP*
- 3) Whether suit is properly valued for the purposes of court fee and jurisdiction? OPP*
- 4) Whether defendants No.1 to 6 brought any improvement on the suit property? If so of what value and to what effect? OPD*
- 5) Whether defendants No.1 to 6 are the owners of the shop in dispute? If so to what effect? OPD*
- 6) Relief.”*

Plaintiff, in support of the aforementioned pleadings, examined

PW-1 Madan Mohan Draftsman, PW-2 Gian Chand, PW-3 Khariti Lal, PW-4 Bhagat Ram Draftsman, PW-5 Parkash Chand, PW-6 Devki Nath, PW-7 Gurdev Singh Registration Clerk from the office of Deputy Commissioner, Hoshiarpur, PW-8 Dhun Chand and PW-9 Prem Nath and also brought on record site plan Ex.P1, death certificate of Ram Lal Ex.P2, legal notice Ex.P3, telegraph Ex.P4, approximate estimate of property Ex.PB, certified copies of the mortgage deeds dated 19.02.1941 and 17.09.1936 as Ex.PX and Ex.PY. On the other hand, the defendants examined eleven witnesses, namely, DW-1 Balwant Singh, DW-2 Amrik Singh, DW-3 Charan Dass, DW-4 Gian Chand, DW-5 Gian Chand Secretary, M.C.Tanda, DW-6 Goverdan Lal Advocate, DW-7 Karam Chand, DW-8 Rawal Singh Accountant Punjab National Bank, Tanda, DW-9 Rajinder Nath, DW-10 Gian Chand and DW-11 Shiv Dayal attorney of defendant No.1 Nand Lal and also brought on record Ex.D1 copy of assessment register, Ex.DW5/1 to Ex.DW5/14, copies of notices regarding production of mortgage deeds, Ex.DW6/A special power of attorney, Ex.DW7/1 to Ex.DW7/19 record of service book of Pirthi Raj, Ex.DW8/A and Ex.DW8/B specimen signatures of Nand Lal Jain son of Ralla Ram Jain in respect of account in Punjab National Bank, Ex.DW11/F partnership deed etc.

It is a matter of record that defendants were called upon to produce the original mortgage deed but on having refused to adhere to the request, the trial Court granted the permission to the plaintiff to prove and lead evidence in support of the mortgage deed by way of secondary evidence since it was a registered document.

The trial Court by noticing the aforementioned fact as the plaintiff examined Gurdev Singh PW-7 Registration Clerk from the office

of Deputy Commissioner, who brought the record with regard to the execution of the mortgagee deed. Certified copies Ex.PX and Ex.PY and Dhun Chand PW-8 compared the contents of the certified copies and asserted that the same were correct, decreed the suit. Appeal preferred before the Lower Appellate Court was also dismissed.

Mr. I.K.Mehta, learned Senior Counsel assisted by Mr.R.K.Dogra, learned counsel appearing for the appellant-defendant submitted that throughout the stand of the appellant-defendant was that he was owner of the property and the aforementioned pleadings were not specifically denied. The trial Court, vide order dated 18.09.1986, erroneously rejected the application dated 17.09.1986 for additional evidence to the effect that Piare Lal, mortgagor-defendant No.11 had executed a registered sale deed dated 11.09.1986 in respect of land measuring 1 kanal 19 marlas as the plaintiff in his statement as PW-6 stated that Piare lal was not in good senses and also unfit to appear in the court, but no medical record regarding the ailment had been brought on record. The proof of mortgage deed by way of secondary evidence did not have the effect of proving execution of the same or its authenticity. Certified copy of the mortgage deed revealed that Daropti, mortgagor had affixed her thumb mark on the document, whereas the register of the Deed Writer reflected the signatures. Devki Nath, who was minor at the time of mortgage had only one Anna share in the suit property, while Mukand Lal, Piare lal and Daropti had four Annas share each. Respondent-plaintiff made a complete departure from the mortgage deed by asserting that defendants had a right to repair the roof. In fact, it clearly recited that right to raise the construction was also granted and, thus, urged this court for setting-aside

the judgments and decrees under challenge.

Per contra, Mr. R.S.Randhawa, learned counsel appearing on behalf of respondent Nos.1, 5 and 7 to 12 submitted that the secondary evidence has been proved to the hilt through the testimony of witnesses, i.e., PW-7 and PW-8. No challenge has been laid to the order permitting the secondary evidence in terms of provisions of Order 43 Rule 1A CPC. It is settled law that if a person has proved the registered document from the register owing to the fact that the scribe or the other witnesses had died, the document deemed to have been proved. Defendants failed to prove on record any material in support of the defence in the written statement qua the ownership and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Mehta.

The pith and substance of the written statement revealed that the defendants had claimed the title in the suit property, but no evidence has been brought on record. PW-7 and PW-8 were not contradicted with any suggestion of non-execution of the mortgage deed. Registered document carries presumption of truth, particularly when the same was permitted to be produced on record by way of secondary evidence and the order had attained finality. Dhun Chand retired Kanungo had proved certified copy of the mortgage deed. Execution of the mortgage deed by Mukand Lal, Piare Lal and Devki Nath in favour of Ram Lal had conclusively been proved. No evidence with regard to ownership has been led, therefore, onus regarding issue No.5 remained undischarged.

I cannot remain unmindful of the fact that the trial court had no

other occasion but to allow the application for secondary evidence as the defendants on receipt of the application for production of mortgage deed Ex.DW6/A did not bring it on record. The defendants also failed to place on record any maintenance or proper account of construction, though DW-1 Balwant Singh proved the estimate regarding costs of construction of Rs.5442/-, but in cross-examination he did not know as to when the shop was constructed or prevailing rates.

No other argument has been led.

As an upshot of my aforementioned findings, the concurrent findings of fact do not call for any interference or suffer from any illegality or perversity. Resultantly, the appeal is dismissed.

February 01, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No