

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.935 of 2001 (O&M)
Date of decision: 14.01.2019

Bir Singh and others

..... Appellants

Versus

Nihali and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Jai Vir Yadav, Advocate for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Manvir Singh Rana, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Smt. Phusli had sold the land measuring 37 bighas and 10 biswas vide sale deed dated 4 kartik 2000 which will be equivalent to 1944 approximately as per English calendar. Two reversioners namely Lakhi Ram and Sukhdeo challenged the aforesaid sale deed executed by Smt. Phusli in favour of predecessor-in-interest of the defendants namely Desh Raj. The aforesaid suit was decreed by the trial Court vide judgment dated 02.05.2005 kartik. It was held that the sale deed would be treated as a mortgage for a sum of Rs.707.10. The decree was passed that the plaintiff in the previous suit shall be entitled to redeem the land after the death of Smt. Phusli. This decree was passed on the basis of customary law.

The judgment passed by the trial Court was challenged in appeal and thereafter in second appeal vide judgment dated 18.01.1952 (English calendar), the decree passed by the Courts was modified and it was ordered that the plaintiffs will be entitled to take possession of the land in dispute after

the death of Smt. Phusli on payment of Rs.710.80.

Smt. Phusli died on 30.05.1988. The plaintiffs-respondents namely Nihali and Chhima filed the present suit for passing a decree of possession after deposit of the aforesaid amount. Both the Courts have decreed the suit.

Learned counsel for the appellants submitted that Nihali and Chhima, daughters of Phusli Devi have no locus standi as the decree was not in their favour. He submitted that Smt. Nihali and Chhima-plaintiffs could only file an independent suit establishing their right.

This Court has considered the submission, however, find no substance therein.

The decree passed on the basis of customary law enure to the benefit of natural heirs irrespective of the fact that whether they were plaintiffs in the previous suit which resulted in decree or not. These decrees are not only for the benefit of plaintiffs in the previous suit. These decrees are called declaratory decrees on the basis of customary law and ultimate result is that the sale deed does not affect reversioner's rights of the plaintiffs in the suit. It is for this reason, the decrees are passed with rider that the parties would be entitled to take possession after the death of the vendor.

In view of the aforesaid, the suit filed by the plaintiffs for possession is very much maintainable.

Learned counsel for the appellants has further drawn attention of the Court to para 11 of the judgment wherein learned First Appellate Court has found that Desh Raj was owner of 44 bighas of land which included 37 bighas and 10 biswas sold by Smt. Phusli Devi. He submitted that in lieu of 44 bighas of land, after consolidation Desh Raj or his heirs were allotted the land measuring 70 kanals and 5 marlas. Hence, he submitted that there could not

be any decree for 70 kanals and 5 marlas as the plaintiffs are only entitled to land which was allotted to Desh Raj or his heirs in lieu of land measuring 37 bighas and 10 biswas.

On the other hand, learned counsel for the respondents has pointed out that First Appellate Court has found that Desh Raj was only owner of 6 bighas of land apart from 37 bighas and 10 biswas but since such land was not identifiable, therefore, the decree has been rightly passed.

This Court has considered the submissions. The decree which has been passed by the Courts with respect to the land measuring 70 kanals and 5 marlas is clearly erroneous. The sale deed of the land measuring 37 bighas and 10 biswas was held to be affected by declaratory decree which was confirmed upto the High Court vide judgment and decree dated 18.01.1952. The plaintiffs are only entitled to the land to that extent. Thus, the plaintiffs shall be required to prove that in lieu of 37 bighas and 10 biswas of land, how much land was allotted post consolidation of holdings. However, this should not detain the Court from proceeding to decide the appeal.

Keeping in view the aforesaid facts, the decree passed by the Courts below is modified. Learned Executing Court would determine what was the land allotted in lieu of 37 bighas and 10 biswas of land which was subject matter of sale by Smt. Phusli Devi and the Court would only execute the decree to that extent.

With these observations, the appeal is disposed of.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

14.01.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No