

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

**RSA No.2275 of 2004 (O&M)
Date of Decision: August 09,2019**

Sita Ram and others

.....Appellants

Versus

Bedi @ Bed Ram and others

..... Respondent

And

RSA No.2280 of 2004 (O&M)

Smt. Kunti and others

.....Appellants

Versus

Bedi Ram @ Bhool Ram Bedi son of Devi Sahai

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Adarsh Jain, Advocate
for the appellants (in both the appeals).

Mr. Sanjay Vij, Advocate
for the respondents (in both the appeals).

LISA GILL, J.

This judgement shall dispose of R.S.A No. 2275 of 2004 and 2280 of 2004 as both these appeals arise from judgement and decree dated 13.11.1999, passed by the learned Additional Civil Judge (Sr. Division), Faridabad, as well as judgement and decree dated 13.11.2003, passed by the learned Additional District Judge, Faridabad.

Appellants are the plaintiffs in Civil Suit No. 298 of 1990, titled

'Daya Ram (deceased) through his LRs Vs. Bedi @ Bed Ram and others', and the defendants in Civil Suit no. 313 of 1991, titled 'Bed Ram @ Bhool Ram Bedi Vs. Daya Ram (deceased) through his LRs and others'. Both the civil suits were consolidated by the learned trial Court on 29.01.1999.

Appellants-plaintiffs in Civil Suit No. 298 of 1990, sought the relief of permanent injunction for restraining the defendants from interfering in their possession or in raising of construction thereon. It is pleaded that Daya Ram (since deceased) and his predecessors-in-interest were the owners in possession of a plot situated within the Abadi Deh of village Fatehpur Biloch, Tehsil Ballabgarh, District Faridabad as described in the plaint. It is pleaded that the suit property was mortgaged with possession by its owner Suraj Kaur widow of Matru, vide registered mortgage deed dated 15.10.1910 in favour of Harchandi, predecessor-in-interest of the plaintiffs. The successors-in-interest of Suraj Kaur namely Girraj son of Moti Ram, filed a Civil Suit No. 290 of 1982, which was dismissed on 11.10.1985 by the learned Sub Judge Ist Class, Faridabad. It was held in the said suit that the plaintiff become the owner in possession of the plot in question having acquired ownership rights by prescription and lapse of time. Appeal filed by Girraj and others, was dismissed by the learned District Judge, Faridabad. It is further stated that there exists a '*Keekar*' tree in the said plot. The plaintiff wish to raise construction therein, but the defendants being head strong persons were bent upon to interfere in the possession and construction sought to be raised by the plaintiff on the plot in question. It is pleaded that the defendants had no right, title or interest to interfere in the possession and construction to be raised by the plaintiff. Despite request, defendants did not

desist from their acts. Therefore, the suit was filed.

Defendants resisted the suit and in the joint written statement filed by them, various preliminary objections were raised. It is stated that the plaintiff has himself admitted and acknowledged the defendants and their predecessors-in-interest to be the owners in possession of the suit property. Plaintiff, it is claimed in collusion with Girraj instituted a false and frivolous suit with an ulterior motive of obtaining wrongful gain to the prejudice of the defendants. It is stated that the property in dispute originally belonged to Matru son of Ratana, who had mortgaged the same in favour of Har Sahai son of Chaina, vide mortgage deed dated 05.07.1882. The said mortgage deed is much prior to the alleged mortgage claimed to have been executed by Suraj Kaur. The mortgage deed executed by Suraj Kaur, itself mentions the earlier mortgage by Matru in favour of Har Sahai. The property in dispute was never got redeemed by Matru or his successors. Judgement and decree passed in Civil Suit no. 290 of 1982, it is submitted was an outcome of fraud, collusion, misrepresentation and without impleading the defendants as parties, therefore was not binding upon them. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of the plot in dispute as alleged in the plaint?OPP
2. Whether the plaintiff is entitled to injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff has no locus-standi to file the present suit?OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD

6. Whether the plot in question was earlier mortgaged in favour of Budha predecessor-in-interest of the defendant long before 1910?if so, its effect?OPD
7. Whether the mortgage had never been redeemed by Smt. Suraj Kaur or her successor-in-interest, if so its effect? OPD
8. Relief.

Civil Suit no. 313 of 1991, was thereafter filed by Bed Ram seeking a decree for permanent injunction for restraining the defendants from interfering in his peaceful possession and from taking forcible possession of the property, with the pleadings that he was the owner in possession of the residential house situated in *Abadi Deh* of village Fatehpur Biloch. He also claimed to be the owner of the area marked by letters 'DEF' in the attached site plan. It is further pleaded that the said area was recently encroached by one Moola son of Bhulan in regard to which a separate suit would be filed. The property in question, it is stated is a part and parcel of the residential house of Bed Ram and was being used by the plaintiff and his forefathers since over the past 50 years. The property in dispute, is claimed to be the ancestral property of the plaintiff. Plaintiff and his predecessor-in-interest have been in open, peaceful and continuous possession of the suit property as full-fledged owners without making any payment to any person and they had also become owners of the suit property by way of adverse possession. The defendants sought to take a forcible possession of the disputed area and did not desist despite request. Therefore, the suit was filed seeking permanent injunction for restraining the defendants from dispossessing the plaintiff by interfering in their peaceful possession. It is further prayed that in case, the defendants succeed in dispossessing the plaintiff or taking forcible possession or raised any construction on the suit

property during the pendency of the suit, a decree for possession by way of demolition was also sought.

Written statement was filed by the defendant-Daya Ram/his legal representatives while claiming that the property was mortgaged by one Suraj Kaur widow of Matru, vide mortgage deed dated 15.08.1910. The averments which are pleaded in Civil Suit no. 298 of 1990, have been reiterated in the written statement and are not being repeated for the sake of brevity.

Replication was filed, wherein it is stated that the suit property was mortgaged by Matru son of Ratna in favour of Har Sahai son of Chaina, on 05.07.1882. Har Sahai was the predecessor-in-interest of Bed Ram. It is further stated in the replication that the suit property is different from the property which is referred to in the mortgage deed dated 15.08.1910. The property in question, was never mortgaged with the defendants or the predecessors-in-interest, therefore there is no question of redemption of mortgage.

From the pleadings of the parties, the following issues were framed by the learned trial Court in Civil Suit No. 313 of 1991:-

1. Whether the plaintiff is owner in possession of the suit property?OPP
2. Whether the plaintiff is entitled to injunction as prayed for?OPP
3. Whether the plaintiff has no locus-standi to file the present suit?OPD
4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
5. Whether the suit is bad for mis-joinder of parties and cause of action?OPD
6. Whether the suit is not maintainable?OPD
7. Whether the suit is time barred?OPD
8. Whether the suit is liable to be stayed under Section 10 CPC?OPD

9. Relief.

The following additional issue was framed by the learned trial Court in Civil Suit No. 313 of 1991:-

8-A. Whether the report of L.C. dated 15.09.1994 is liable to be set aside on the grounds as alleged in the objection petition?OPP

It is to be noticed that proceedings were conducted in Civil Suit no. 298 of 1990 and evidence was also led in this suit for disposal of both the civil suits. Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record decided issue no. 1 in Civil Suit No. 298 of 1990 against the plaintiffs therein to the effect that the plaintiffs are not the owners in possession of the plot in dispute and issue no. 6 was decided in favour of the defendant-Bedi Ram @ Bhool Ram Bedi to the effect that the plot in question was earlier mortgaged in favour of the predecessors-in-interest of Bed Ram etc., long before 1910 and that the defendants are in possession of the disputed plot. It is observed by the learned trial Court that as per the mortgage deed dated 16.08.1910, Ex.P-1, mortgage is in favour of Bhola son of Sukhdev and Harchandi son of Kalua. Harichandi was the father of Daya Ram. There is a mention of mortgage of property i.e. one 'Kotha, dalan, sehan, inner chowk'. There is a further recital, that besides the said property she mortgaged the rest of the property in favour of Bhola son of Sukhdev and Harchand son of Kalua Caste Brahman, resident of Fatehpur Biloch, in equal shares. Total area of the mortgage deed is 414 sq. yards. It is concluded that the plaintiff-Daya Ram could not prove his possession over the suit property. The earlier

civil suit between Daya Ram and Girraj was considered to be of no avail to the plaintiff-Daya Ram for the simple reason that the defendants-Bedi Ram and others were not a party to the said proceedings. The right of Bedi Ram @ Bhool Ram Bedi had to be determined independently keeping in view the mortgage deed, Ex.D-2. Accordingly, suit no. 298 of 1990, titled as 'Daya Ram (deceased) and others Vs. Bedi @ Bed Ram son of Devi Sahai', was dismissed and suit no. 313 of 1991, titled 'Bed Ram @ Bhool Ram Bedi son of Devi Sahai Vs. Daya Ram (deceased)/his LRs and others', was decreed to the effect that Daya Ram/ his LRs were restrained from interfering in the peaceful possession of the plaintiff over the suit property.

Two appeals were preferred by the present appellants, which were however dismissed by the learned Additional District Judge, Faridabad, vide impugned judgement and decree dated 13.11.2003.

Aggrieved therefrom, present appeals have been filed.

Learned counsel for the appellants vehemently argued that both the learned Courts below have grossly erred on facts and in law, in decreeing the civil suit no. 313 of 1991 and dismissing the Civil Suit No. 298 of 1990. Appellants have duly proved the mortgage deed dated 15.10.1910, which is a registered instrument. Suraj Kaur, who was the owner of the property in question had mortgaged the suit property to one Harchandi, father and predecessor-in-interest of the plaintiff-Daya Ram. Daya Ram, after his father's death, was in possession of the land in question. It was further argued that mortgage deed, Ex.D-2, dated 05.07.1882, is an unregistered instrument and is not proved in accordance with law. The property which is the subject matter of both the mortgage deeds, Ex.P-1 and D-2 is different

from each other, thus both the learned Courts below have erred in concluding that the property in dispute and the said instrument of 1882 is the same. Therefore, a perversity has crept in the impugned judgements inasmuch as it is observed that mortgage deed dated 05.07.1882, being earlier in time, the subsequent mortgage deed was invalid. It was submitted by learned counsel for the appellants that the defendants-Bed Ram and others had raised a plea of adverse possession, which indicates that they accepted that Bed Ram @ Bhool Ram Bedi was not the owner of the suit property. Thus in view of the alternate plea of adverse possession taken by the defendants, the suit filed by the present appellants should have been decreed. The following substantial questions of law, were set-forth for adjudication of these cases:-

1. Whether the judgement and decree of both the Courts below are not liable to be set aside on the ground of misreading of evidence?
2. Whether the property mentioned in Mortgage Deed dated 15.08.1910 can be said to have been mortgaged in the earlier mortgage deed dated 05.07.1882 inspite of the fact that the properties do not tally?
3. Whether the relief of permanent injunction can be denied to a person who is in possession of the suit property vide a registered mortgage deed?

Learned counsel for the appellants prayed that the judgements and decrees passed by the learned Courts below be set aside and the present appeals be allowed. Consequently, civil suit no. 298 of 1990 be decreed and civil suit no. 313 of 1991, be dismissed throughout.

Per contra, learned counsel for the respondent-Bedi Ram @ Bhool Ram Bedi and others, submitted that both the learned Courts below

have rendered concurrent findings of fact after considering the entire evidence on record. It was argued that Ex.P-1, is a document on which no credence can be placed. Suraj Kaur, has claimed the property to be her ancestral property ('Dada Lai' property i.e., property which devolved upon her from her paternal grandfather's side), whereas it is an admitted position that the property belonged to her husband, Matru. The said mortgage deed, Ex.P-1, itself talks of the earlier mortgage deed executed by the owner of the property i.e. Matru son of Ratana, in favour of Har Sahai son of Chaina, predecessor-in-interest of Bedi Ram. Furthermore, the mortgage as per the instrument of 1910 is in favour of two persons. The appellants were never found in possession of the suit property at any point of time. The site plan does not stand proved. The same property could not have been mortgaged twice. Mere registration of the mortgage deed, does not have the effect of imparting genuineness to it. Plaintiff-Daya Ram and others could not prove their possession over the suit property. Moreover, in case, it is the case of the appellants that the property in question is different, no cause of action in any case arises to them. Learned counsel for the respondents further argues that even if mortgage deed Ex.P-1 is accepted, it is the mortgage prior in time which shall prevail. Reference is made to Section 48 of the Transfer of Property Act. It is contended that the earlier decision in the civil suit filed by Girraj, is not binding upon the respondents. It is submitted that testimony of PW-1-Sita Ram, was rightly found to be uncreditworthy. It is thus prayed that both the judgements be upheld and the present appeals be dismissed.

I have heard learned counsel for the parties and have gone

through the record with their assistance.

Appellant-plaintiff-Daya Ram and others have laid the foundation of their case on the mortgage deed dated 15.08.1910, Ex.P-1. The said deed reveals the same to be executed by Suraj Kaur, widow of Matru in respect of a house, Nohra and Gait. It is mentioned that total land was measuring 414 'Morabba Gaj'. Details of the surrounding property is mentioned. It is further mentioned therein that the said property is the ancestral property of Suraj Kaur (Dadalai property) and is in her possession. It is further stated that one 'kotha, dalan, sehan, inner chowk' towards the inside of the chowk already stand mortgaged to Budha son of Har Sahai by Matru. Further recital is that while leaving the house already mortgaged, rest of the houses 'Nohra and Gait' was being mortgaged to Bhola son of Sukhdev and Har Chandi son of Kalua for a sum of ₹200/- by Suraj Kaur without any pressure and in her full senses. During the course of arguments, learned counsel for the appellants did not deny that the land in question in fact belonged to Matru and Suraj Kaur being his widow was entitled to the property in question. However, it was sought to be explained that the recital in Ex.P-1 to the effect that the land in question was the Dada Lai property of Suraj Kaur, should be ignored being irrelevant.

At this stage, it is relevant to refer to the mortgage deed dated 05.07.1882, Ex.D-2, which was executed by Matru in favour of Har Sahai son of Chaina. Admittedly, Buddha was the son of Har Sahai. Devi Sahai son of Buddha was the father of Bedi Ram. It is stated in Ex.D-2 that the property being mortgaged measured 414 Morabba Gaj. It is specifically mentioned therein that Matru is the owner of 'Kotha, dalan, sehan, inner

chowk', in Mohalla Brahmnan, Kasba Fatehpur Biloch and is in possession of the same. It is stated that the said property was being mortgaged for a sum of ₹99/- to Har Sahai son of Chaina. I do not find any merit in the argument raised by learned counsel for the appellants that it was only one house which was mortgaged to Har Sahai son of Chaina by Matru, therefore, Suraj Kaur, was well within her rights to mortgage the rest of the property to the appellants/their predecessors-in-interest. The entire property measuring 414 'Morabba Gaj' is stated to be mortgaged by Matru to Har Sahai who is admittedly the predecessor-in-interest of the respondent-Bedi Ram. Ex.P-1, clearly mentions the property in question to be 414 Morabba Gaj. There is no ambiguity therein, as is sought to be urged by learned counsel for the appellants.

Reliance by the appellants on the judgements and decrees dated 11.10.1985 and 12.03.1986, in the suit preferred by Girraj *qua* Daya Ram and others, is of no avail to them. Girraj, had filed the suit for permanent injunction against Daya Ram and others, claiming to be the sole surviving heir of Suraj Kaur, claiming peaceful possession of the property bearing Khasra No. 2393. It was observed by the learned trial Court that Suraj Kaur is accepted to be the owner in possession of the suit property because Daya Ram, himself claimed to have derived his title from Suraj Kaur. In this situation, suit for permanent injunction filed by Girraj, was dismissed while holding that the suit property was mortgaged by Suraj Kaur in favour of Daya Ram/his predecessors-in-interest. However, it is not in dispute that the plaintiff-Bedi Ram @ Bhool Ram Bedi, was not a party to the said suit. Mortgage deed dated 05.07.1882, Ex.D-1, was not before the learned trial

Court in the said proceedings and neither was it adjudicated upon.

Plaintiff-Bedi Ram @ Bhool Ram Bedi, has taken a specific stand that Daya Ram and others in connivance with Girraj etc., filed a civil suit culminating in the judgment and decree dated 12.03.1986. It is thereafter, that the present suit, seeking permanent injunction, was filed by Daya Ram. Resultantly, Bedi Ram @ Bhool Ram Bedi, also filed a suit for permanent injunction. Both the learned Courts below have rightly observed that the suit property being already mortgaged by Matru on 05.07.1882, Suraj Kaur was not competent to execute mortgage deed dated 15.08.1910. Moreover, the finding in the judgement Ex.P-4, in which Bedi Ram @ Bhool Ram Bedi etc., are not a party, cannot be binding upon his rights. The matter necessarily has to be adjudicated upon, on the basis of evidence led by the parties in the present suit. Possession of the present appellants over the suit property on the basis of mortgage deed dated 15.08.1910, does not stand proved from the evidence on record. Both the learned Courts below have rightly dismissed the suit filed by the appellants and allowed the one filed by Bedi Ram @ Bhool Ram Bedi.

Both the learned Courts below have returned concurrent findings of fact vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference. The substantial questions of law are thus answered against the appellants and in favour of the respondents.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 13.11.1999 and 13.11.2003

passed by the learned Additional Civil Judge (Sr. Division), Faridabad and learned Additional District Judge, Faridabad, respectively, are upheld.

Both the appeals are, consequently, dismissed with no order as to cost. Pending applications, accordingly stand disposed of, as well.

August 09,2019
s.khan

[LISA GILL]
Judge

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