

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

**RSA No. 4506 of 2019 (O&M)
Date of Decision:03.10.2019**

Jai Parkash

.....Appellant

Versus

Manoj Kumar

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. A.K.Jindal, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant, has filed this appeal being aggrieved of judgment and decree dated 20.08.2016, passed by the learned Civil Judge (Jr. Division), Gurgaon, as well as judgment and decree dated 20.05.2019, passed by the learned Additional District Judge, Gurugram, whereby suit filed by the plaintiff-respondent, has been decreed.

Brief facts necessary for the adjudication of the case are that respondent-plaintiff filed a suit for redemption of the property as detailed in the plaint. It is pleaded that the plaintiff was the absolute owner in possession of the said property. Earlier, Savitri Devi daughter of Phool Singh was the owner of this property. Plaintiff claimed to be the nephew of Savitri Devi and she statedly executed a registered will dated 04.03.2008 in favour of the plaintiff. Consequent to the death of Savitri Devi, plaintiff became the owner of the property. It is further pleaded that Savitri Devi took

a loan of ₹1,00,000/- from the defendant-appellant in February 2003 and in lieu thereof, a mortgage deed No. 1472 dated 20.02.2013 in respect to the suit property was executed. The plaintiff sought to return the mortgage amount of ₹1,00,000/- and he sought vacant possession of the property in lieu thereof. However, the defendant is claimed to have avoided the matter. Legal notice dated 16.07.2013, was served upon the defendant, but to no avail. Accordingly, suit for redemption of the property was filed.

Appellant-defendant contested the suit while taking various preliminary objections. Plaintiff was denied to be the owner in possession of the suit property. It is stated that the defendant had purchased the suit property from Savitri Devi for a sum of ₹5,00,000/- and the defendant was running a cloth showroom in the suit property over the last 12-13 years. The said shop was once damaged due to a fire and in the Rapat Rojnamcha report no. 28 dated 13.11.2004, the defendant was reflected to be the absolute owner of the suit property. Furthermore, a suit titled as 'Hari Singh Vs. Dr. Premchand Gupta', was filed before the Collector, Gurgaon, wherein the defendant is reflected to be the absolute owner of the suit property. It is stated that once Savitri Devi sold the suit property to the defendant during her lifetime for a consideration of ₹5,00,000/-, the will in question is irrelevant. 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 entitled to a decree for redemption as prayed for?OPP
2. Whether the plaintiff has filed false and bogus suit?OPD
3. Whether the plaintiff has suppressed true and material facts from the Hon'ble Court?OPD
4. Whether suit of the plaintiff is neither maintainable nor

- tenable and liable to be dismissed?OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act, conduct, admission, commission and latches?OPD
 6. Whether the suit is barred by non-joinder and mis-joinder of necessary parties?OPD
 7. Whether the plaintiff has no cause of action to file the present suit?OPD
 8. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, held that in view of the provisions of Order 34 Rule 7 CPC, the plaintiff had succeeded in proving its case. Preliminary decree was accordingly passed. Plaintiff was directed to deposit a sum of ₹1,00,000/- within three months and the defendant was accordingly directed to handover possession of the suit property to the plaintiff or to any such person as the plaintiff may appoint, free from all encumbrance if any, created by defendant or any person under him. No order regarding interest was passed as no such terms were mentioned in the mortgage deed. Learned trial Court further held that the present appellant failed to prove that the property in question was sold to him by Savitri Devi on receipt of a sum of ₹5,00,000/-.

Appeal filed by the present appellant was dismissed by the learned Additional District Judge, Gurugram, vide impugned judgement and decree dated 20.05.2019.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant.

Learned counsel for the appellant vehemently argues that first and foremost the plaintiff is not proved to be the owner of the property in

question, as details of the property are not mentioned in the will dated 04.03.2008, Ex.P-2. It is further contended that it was not a mortgage deed (Ex.P-5) which was executed on 20.02.2003 for ₹1,00,000/- but a rent deed/sale deed for a sum of ₹5,00,000/- which was given to the plaintiff. In this view of the matter, it is submitted that both the learned Courts below have grossly erred on facts and in law in decreeing the suit for redemption filed by the plaintiff-respondent. It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-respondent be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Plaintiff-respondent in this case set up a categoric case that the property in question was mortgaged by the original owner-Savitri Devi vide registered mortgage deed dated 20.02.2003. Execution of the said mortgage deed, Ex.P-5, is duly proved on record. Execution of the will dated 04.03.2008, Ex.Ex.P-2 is also proved on record on the basis of the evidence led by the plaintiff. PW-3-Ashok Kumar, Registration Clerk, Sub-Registrar, Office, Farrukhnagar, has verified the registration of the documents Ex.P-2 as well as Ex.P-5. Sandeep Yadav, Advocate, scribe of the will has been examined as PW-6. Naresh Kumar Rao, Advocate, the scribe of mortgage deed, Ex.P-5, as well as the advocate who had issued legal notice, EX.P-6 was examined as PW-7. PW-4-Lal Singh, is the one of the attesting witness of the will dated 04.03.2008, who has duly proved its execution. PW-5-Lal Chand, husband of Savitri Devi, and the plaintiff's uncle has categorically

deposed, that in February 2003, Savitri Devi was in need of money and accordingly the shop in question was mortgaged with the defendant-appellant on 20.02.2003 in lieu of ₹1,00,000/-. PW-5 further deposed that he had four daughters but no son and it was the plaintiff who was taking care of them in all aspects. Plaintiff indeed successfully proved his case on the basis of the evidence on record, whereas the defendant-appellant was unable to prove that the property in question was purchased by him for a sum of ₹5,00,000/- from Savitri Devi in February 2003. Admittedly, no sale deed was executed in respect to the property in question.

Appellant testified before the learned trial Court as DW-1. He admitted his signatures over the mortgage deed, EX.P-5. Receipt of legal notice, Ex.P-6, was also accepted by DW-1. Learned counsel for the appellant is unable to point out any evidence on record to indicate that the defendant-appellant had attained ownership of the property in question at the time of execution of will dated 04.03.2008, or at any other point of time. Therefore, both the learned Courts below have rightly decreed the suit filed by the plaintiff-respondent to the extent as mentioned above after proper appreciation of the evidence on record.

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 20.08.2016 and 20.05.2019 passed by the learned Civil Judge (Jr. Division) Gurgaon and learned Additional District Judge, Gurugram, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

03.10.2019

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.