

In the High Court of Punjab and Haryana at Chandigarh

RSA- 129 of 2011(O&M)
Date of Decision:18.3.2019

Jugraj Singh and others

---Appellants

vs.

Surjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. B.S.Bhalla, Advocate
for the appellants
Mr. J.S.Brar, Advocate
for respondents Nos. 1 to 3
None for respondent No. 4

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration, consequential relief of symbolic possession and permanent injunction filed by the appellants was dismissed by the trial court vide judgment and decree dated 6.8.2008 but counter claim preferred by respondents No. 1 to 3 (defendants No. 1 to 3 therein) for possession of suit land was decreed. The appeal preferred by unsuccessful appellants-plaintiffs did not find favour with the Additional District Judge, Moga except that findings of trial court on issue No. 3-C were modified.

Plaintiffs No. 1 and 2 claimed ownership of land measuring 13

kanal 2 marlas bearing khasra No. 138M//5/2 (3-2), 6 min west (2-0), 8(8-0), plaintiffs Nos. 3 to 7 and defendant No. 4 in respect of land measuring 27 kanal 4 marlas bearing khasra No. 138 M//6 (6-0), 7 (8-0), 14/2(5-4) and 15(8-0), by lapse of time. They further claimed ownership of land measuring 8 kanal 16 marlas of khasra No. 138M//14/1(2-16), 13/2 (6-0) as the same was not got redeemed within the stipulated period of limitation.

Defendants/respondents No. 1 to 3 filed the written statement and raised preliminary objections of concealment of material facts, cause of action, misjoinder of parties and name of husbands of defendants No. 1 and 2 being wrongly written. They have denied the allegations that plaintiffs have become owner of the suit land either on the basis of adverse possession or on account of alleged mortgage by Sucha Singh in favour of Puran Singh, predecessor in interest of the plaintiffs. It is averred that Sucha Singh remained in possession of suit land during his life time and after his death the land was off and on given on lease on yearly basis to the plaintiffs and some other cultivators of the village. After sanction of mutation of ownership of Sucha Singh in favour of answering defendants, they took possession of suit land. Entries in column No. 5 of jambandi and khasra girdawari are wrong and against facts at spot. Sucha Singh died on 17.6.1986 and the defendants came in possession of suit land. In case the defendants failed to prove their possession, they are entitle to recover possession by way of counter claim filed by them.

The plaintiffs filed reply to counter claim filed by defendants No. 1 to 3 as well as replication to the written statement controverting the

preliminary objections and asserting their claim set up in the plaint.

The trial court framed issues, reproduced in para 5 of the judgment of said court. To prove their case, one of the plaintiffs Surjit Singh appeared in the witness box. To rebut evidence of the plaintiffs, defendants examined Amrik Singh.

The trial court negated plea of the appellants that they have become owners of suit land measuring 40 kanal 6 marals on the basis of adverse possession and due to lapse of time. The court also rejected plea of the appellants that land was mortgaged by Sucha Singh in favour of Puran Singh, predecessor in interest of the plaintiffs or they have become owner of the alleged mortgaged land. However, counter claim preferred by the contesting defendants-respondents was allowed and they were held entitle to possession of suit land.

The Appellate Court affirmed findings of the trial court on all other issues except issue No. 3 -C reads thus:-

“Whether the land measuring 8 kanals 2 marals was mortgaged by Sucha Singh in favour of Puran Singh predecessor of the plaintiffs and whether the mortgage has become irredeemable and plaintiffs have become owners of the land by lapse of time?OPP”

The Court accepted claim of the appellants-plaintiffs that land was mortgaged with possession by Sucha Singh in favour of Puran Singh predecessor in interest of the appellants but findings of the trial court allowing counter claim for possession filed by the respondents-defendants were affirmed.

The appellants-plaintiffs asserted their having become full owner of land measuring 40 kanal 6 marals, detailed hereinabove, by claiming themselves to be in adverse possession of the suit land and title of true owner having got extinguished by lapse of time. Counsel for the appellants is not in a position to substantiate plea of the appellants in this regard in view of the fact that plea of adverse possession or ownership on the basis of adverse possession could only be used as a shield and not as a sword. That being so, consistent findings of the courts negating plea of the appellants of their having become full owner of land measuring 40 kanal 6 marlas on the basis of adverse possession due to lapse of time do not warrant intervention. As a consequence, claim of the respondents-defendants for possession of land measuring 40 kanal 6 marlas in unauthorized occupation of appellants by way of counter claim, needs affirmation.

Another issue involved in the present case is in respect of land measuring 8 kanal 16 marlas, stated to be mortgaged by Sucha Singh in favour of Puran Singh predecessor in interest of the plaintiffs-appellants. Indisputably, the first Appellate court set aside/modified findings of the trial court on issue No. 3-C and it was held that Sucha Singh mortgaged land measuring 8 kanal 16 marals in favour of Puran Singh. Defendants have neither filed any counter appeal/cross objections nor advanced any arguments to assail findings of the Appellate Court on the question of mortgage and as such findings of the Appellate Court on this aspect of the matter are affirmed.

The question for consideration is, whether the Appellate Court

despite reversing findings of the trial court on issue No. 3-C to the aforesaid extent has rightly affirmed findings of the trial court on counter claim in respect of land measuring 8 kanal 16 marlas, held to be mortgaged by Sucha Singh in favour of Puran Singh. Counsel for the appellants, in response to orders dated 26.2.2019 and 7.3.2019, would state on instructions that defendants have not redeemed the mortgage in respect of land measuring 8 kanal 16 marlas. Counsel for contesting respondents has not controverted this plea of the appellants. Though the appellants cannot claim that they have become owner in respect of land mortgaged by Sucha Singh in favour of Puran Singh in the light of full Bench decision of this Court **Ram Kishan and others vs. Sheo Ram and others 2008(1) RCR (Civil) 334** affirmed by Hon'ble the Supreme Court in **Singh Ram (D) through LRs vs. Sheo Ram and others 2014(9) scale 411** but at the same time, the respondents-defendants cannot recover possession of the said mortgaged land except by filing appropriate proceedings seeking redemption of mortgage, in accordance with law. In this view of the matter, counter claim for possession in respect of land measuring 8 kanals 16 marlas in respect whereof mortgage was created by Sucha Singh in favour of Puran Singh allowed by the courts cannot be allowed to sustain being erroneous and perverse. That being so, decree passed by the courts for possession of land measuring 8 kanal 16 marlas pertaining to mortgaged land cannot be allowed to sustain and accordingly set aside.

To be fair to the appellants, it is pertinent to mention that defendants-respondents have already recovered possession of the entire land in execution of decree passed in counter claim without redemption of

mortgage qua land measuring 8 kanals 16 marlas, detailed hereinbefore.

The appellants are left at liberty to take recourse to remedy in law for recovering possession of that land.

In view of what has been discussed hereinbefore, the appeal stands disposed of with the aforesaid observations, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

18.3.2019
paramjit

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