

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.1567 of 2011 (O&M)

Date of decision: 24.01.2019

Harinder Singh and others

..... Appellants

Versus

Sahib Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. A.P.S. Sandhu, Advocate
for the appellants.

Mr. Prateek Gupta, Advocate
for respondents No.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

CM-4359-C-2011

Exemption is allowed as prayed for.

Main Case

Plaintiffs-appellants are in the regular second appeal against the findings of fact arrived at by the Courts below dismissing their suit for declaration to the effect that they are owners in possession of the land measuring 27 kanals and 9 marlas being 4/15th share of the land measuring 102 kanals 19 marlas fully described in the headnote and the prayer clause with a consequential relief restraining defendants No.1 to 3 from interfering in the lawful possession of the plaintiffs and further restraining defendants No.1 to 3 from selling, mortgaging or transferring any part of the land belonging to the plaintiffs and in the alternative the suit for joint possession of 4/15th share of the land measuring 102 kanals and 19 marlas.

In the considered view of this Court, the following substantial question of law requires determination:-

“Whether a mortgagee after having transferred his mortgagee rights which later on enlarges into ownership is entitled to transfer of ownership rights of the same land subsequently.”

Some facts are required to be noticed. Sohan Singh was admitted owner of 102 kanals and 19 marlas. He mortgaged two separate parcels of land. One through mortgage deed dated 28.02.1929 with respect to 46 kanals and 13 marlas which has been described as property 'A' in favour of Sher Singh for a sum of Rs.600/-. Thereafter, he also mortgaged 56 kanals which has been described as property 'B' to same Sher Singh vide mortgage deed dated 24.07.1934. Sohan Singh died issueless and he was succeeded by Labh Kaur, his niece. Similarly, Sher Singh, the mortgagee also died and he was succeeded by Darshan Singh, his nephew. Darshan Singh thereafter transferred mortgagee rights with respect to the property under heading 'A' i.e. 46 kanals 13 marlas in favour of Didar Singh and Avtar Singh, brothers. He also transferred his mortgagee rights in property 'B' i.e. 56 kanals in favour of Kishan Singh, Shingara Singh and Lehna Singh, Didar Singh and Avtar Singh again all brothers. It will be noted that Didar Singh and Avtar Singh are common in both the transfer deeds. Lehna Singh died issueless and his share devolved upon Avtar Singh, Shingara Singh and Baljit Kaur. There is no dispute in this respect. Thus, Shingara Singh became owner of mortgagee rights to the extent of 4/15th share. Shingara Singh sold his mortgagee rights to the plaintiffs-appellants vide sale deed dated 02.12.1987. Thereafter, heirs of Didar Singh and Avtar Singh filed a suit No.233 dated 04.09.1982 for declaration and permanent injunction. In this suit, Labh Kaur, Shingara Singh and the plaintiffs-

appellants were defendants. In the aforesaid suit, a decree for declaration was granted to the effect that the plaintiffs No.1 to 5 are owners in possession of the land measuring 23 kanals and 6 marlas whereas plaintiff No.6 is owner in possession of remaining half share in the land measuring 46 kanals and 13 marlas i.e. under heading 'A'. Similarly, with regard to property 'B', declaration was granted that plaintiffs No.1 to 5 are owners in possession to the extent of 1/5th share equivalent to 11 kanals and 6 marlas whereas plaintiff No.6 is owner of 16 kanals and 4 marlas being 3/10th share. The plaintiffs-appellants who were defendants in the suit challenged the aforesaid decree by filing the appeal and the Court modified the decree after recording a finding that brothers had inter se settled the dispute through a settlement Ex.DW-1/1 and therefore, all the brothers have mortgagee rights over entire property i.e. 102 kanals and 19 marlas in equal proportion. The findings of the learned First Appellate Court in this regard in the judgment is as under:-

“Perusal of this document leaves no room for doubt that Didar Singh and Avtar Singh had agreed to share mortgagee rights of the land of head note (A) with his brothers. Lower Court took view that endst. Ex.DW/1/1 was not signed by all the brothers. Both these endst. on the back of mortgage deeds Ex.DW/1/1 and DW/1/2 were got made on the same day. Admittedly endst. Ex.DW/1/2 was signed by all the brothers. Therefore, when both these endorsements are considered along with family settlement document copy of which is Ex.DY, there remains no doubt in my mind that Didar Singh and Avtar Singh had shared their mortgagee rights with their brothers.”

Regular second appeal against the aforesaid judgment was dismissed.

Shingara Singh after having been declared owner has further sold the property vide sale deed dated 11.10.2004 in favour of Sahib Singh and Sukhjinder Singh i.e. defendants No.2 and 3. Thus, the plaintiffs who were defendants No.5 to 8 in the previous round of litigation have filed this suit.

Both the Courts have taken a strange view which in the considered view of this Court is not correct. The Courts have drawn a conclusion that since Shingara Singh when he sold his mortgagee rights vide deed dated 02.12.1987, he was not owner of the property, hence once he became owner through the decree dated 27.08.1998 modified vide judgment and decree of the First Appellate Court on 03.09.2004, therefore, he was justified in selling the property. The reason given by the Court below are patently erroneous. Shingara Singh was only having mortgagee rights when he transferred in favour of plaintiffs-appellants, defendants No.5 to 8 in the previous suit. Those mortgagee rights enlarged into ownership rights by efflux of time as period for redemption had come to an end. Once the rights enlarged, the basis for enlargement was those mortgagee rights. Even this aspect can be examined from another angle. After transfer of the mortgagee rights vide deed dated 02.12.1987, Shingara Singh was left with no right, title or interest in the property. Obviously he could not transfer any right in favour of defendants No.2 and 3 by sale deed dated 11.10.2004.

Accordingly, the question which has been framed earlier, is answered in favour of the plaintiffs-appellants.

In view thereof, the judgments passed by both the Courts below are set aside and the declaration is granted in favour of the plaintiffs-

appellants that they are owners in possession of the property described in the plaint and the sale by Shingara Singh in favour of defendants No.2 and 3 would not affect their rights. The defendants are also restrained from selling, mortgaging, transferring any part of the land which belongs to the plaintiffs.

Regular Second Appeal is allowed.

The pending miscellaneous application, if any, shall stand disposed of in view of the above-said judgment.

24.01.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No