

RSA-2242-2016 (O&M)

102

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

RSA-2242-2016 (O&M)

Date of decision : 30.04.2019

Swarni Devi (deceased) through LRs and others

... Appellants

Versus

Vas Dev and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Raj, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

CM-5851-C-2016

Allowed as prayed for.

CM-5852-C-2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 19 days in filing the appeal is condoned.

CM stands disposed of.

RSA-2242-2016

The present regular second appeal, at the instance of plaintiffs,
is directed against the concurrent findings of fact, whereby the suit claiming
possession by way of redemption in respect of land measuring 36 bighas 10
biswas comprising of Khasra No.531 (2-0), 533 (3-15), 534 (6-5), 547 (6-0)
548 (6-0), 550 (6-0), 551 (6-0), alleged to have mortgaged by Hari Sarup in
favour of defendant No.2-Bachani, vide mortgage deed No.25 dated
29.05.1997 and possession of land measuring 49 bighas 8 biswas by

RSA-2242-2016 (O&M)

challenging the judgment and decree dated 10.09.1983 and sale deed dated 30.06.1983, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that plaintiff No.1 along with Hari Sarup were owners in possession of the land. Both of them were in need of money and mortgaged the land, aforementioned, for a sum of ₹27,000/- by delivering the possession, to defendant No.2. However, Hari Sarup, in 1982, disappeared and could not redeem the land. In the year 2005, an application before the revenue authorities for redemption on deposit of the amount was submitted, but the same was dismissed. The plaintiffs had shifted to other village and the remaining land measuring 12 bighas 18 biswas was given to defendant Nos.2 to 5 on *Batai*, which continued to be paid till November 2004. Vas Dev/defendant No.1, taking the benefit of disappearance of Hari Sarup, produced third person in the place of Hari Sarup and obtained the power of attorney dated 10.09.1982, resulting into, sale deed dated 30.06.1983, which was without consideration and result of fraud and misrepresentation. Hari Sarup never appeared in the aforementioned suit or arrived at a compromise, resulting into, decree dated 10.09.1983.

The defendants opposed the suit and stated that it was an act of greed, whereas in a suit for injunction, filed in the year 1983, the plaintiff branded the defendant as “Mukhtiar-Am Hari Sarup”, thus, they had knowledge of the decree as well as the power of attorney. A suit, in the year 1984, was also filed challenging the decree.

Both the parties led extensive evidence.

Mr. Munish Raj, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the power of attorney was not executed by Hari Sarup. The experts always tow to the line of the party, who engages

RSA-2242-2016 (O&M)

them. Both the Courts below have abdicated in not appreciating the evidence in correct perspective and swayed away by laying focus on the decree without noticing the fact that the suit was also for redemption of mortgage, thus, urges this Court for setting aside the concurrent findings, under challenge.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, Ex.P56 reveals that the plaintiffs had filed the suit against her husband as well as the defendant No.1/Vas Dev, stated to be power of attorney holder under Order 33 Rule 1 of CPC, which was, on 20.03.1984, dismissed as withdrawn. Ex.P55 is the judgment of Civil Suit bearing No.189 dated 20.05.1984, decided on 21.11.1984, for declaration claiming the exclusive ownership of land measuring 11 bighas 18 biswas, on the basis of the sale deed, by challenging the collusive decree dated 10.09.1983, therefore, it cannot be presumed that the plaintiffs had no knowledge. Even the Advocate, who appeared, stated that he was engaged by Hari Sarup, thus, had lost the title in the aforementioned property, in such circumstances, the redemption was not permissible in law.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Munish Raj, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. Resultantly, the second appeal is dismissed.

30.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No