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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2846-2017 (O&M)
Date of decision : 08.05.2019

Swarn Singh and another

... Appellants

Versus

Baldev Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.M. Munjal, Advocate
for the appellants.

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AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of the appellants-defendants, is directed against the concurrent findings of fact, whereby the suit of the plaintiffs seeking declaration has been decreed by the trial Court and affirmed in appeal and the counter-claim set up by the appellants-defendants has bee, dismissed

The plaintiffs sought the aforementioned declaration to the effect that the land measuring 26 kanals comprised in Sq. No.34, Killa No.3/2 (6-18), 8 (8-0), Sq. No.93, Killa No.2/2/2 (2-10), 17-8 and Sq. No.87, Killa No.21/2/2 (2-14), Sq. No.93, Killa No.1/1 (0-8), 2/1 (3-16), 2/2/1 (1-14), 8 kanals 12 marlas, comprised in Khewat No.227, Khatoni No.520 and 521, situated in Village Taruana, District Sirsa, vide which, the occupancy tenancy rights were mortgaged, vide mutation No.493 dated 05.07.1914, for a sum of ₹1530/- with Ishar Singh and vide mutation

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No.538 dated 20.03.1915, for a sum of ₹1087 and 10 annas with Harchand Singh son of Bela Singh, who further sold the mortgagee rights to Ishar Singh, vide mutation No.783 dated 20.06.1919. The land measuring 21 bighas 1 biswas, vide order of the Collector, Sirsa, dated 23.07.1957, passed under Punjab Redemption of Mortgage Act (in short 'the Act') on payment of ₹2617/- and 62 paisa, was redeemed along with other land, but not the whole land as the subsequent records i.e. jamabandi and khasra girdawaris revealed 26 kanals still remained mortgaged with the defendants, therefore, a cause of action accrued to file the suit.

The defendants opposed the suit and denied the aforementioned fact and set up the claim of ownership by way of efflux of time, even the objection qua limitation was also taken.

On the basis of the pleadings, the trial Court framed the as many as ten issues including issue No.7 of limitation.

Both the parties led extensive evidence in support of their respective cases.

Mr. C.M. Munjal, learned counsel appearing on behalf of the appellants-defendants submitted that the suit was *ex facie* time bared, dehors of the fact that the order of 1957, evidencing the redemption of the suit property, the plaintiffs have lost the right to claim declaration in the tittle by filing a suit in the year 2011. The counter-claim has erroneously been rejected as the ownership of plaintiffs, on account of long and settled possession from 1957 till filing of the suit of defendants, extinguished ownership rights. The Courts below have not noticed the provisions of Section 27 of the Limitation Act.

I have heard learned counsel for the appellant and appraised the

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paper book.

The order dated 23.07.1957 as well as the mortgage of the entire land, is not in dispute.

It is only an error in the order, which was rectified by way of decree and instead of entire land, 26 kanals of land still remained as mortgaged with the defendants and therefore, conscious possession was with the plaintiffs. It was only the entries in the khasra girdawaris and jamabandi. There is no limitation for claiming the right in the title, particularly when the possession was with the plaintiffs. It is only when the possession sought was disturbed, a cause of action arose to the parties, even otherwise, in the counter-claim, the plea of adverse possession, reflects the admission of the title of the plaintiffs.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Munjal, 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. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

08.05.2019
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**