IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.800 of 2019 (O&M)
Date of Decision:06.01.2020

Sardool Singh and others

......Appellants

Versus

Kashmir Kaur

...... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. A.S.Manaise, Advocate for the appellants.

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LISA GILL, J.

Appellants-defendants, have filed this appeal being aggrieved of judgement and decree dated 22.10.2018, passed by the learned Additional District Judge, Gurdaspur, whereby judgement and decree dated 15.02.2017, passed by the learned Civil Judge (Sr. Division), Gurdaspur, has been set aside and the plaintiff's suit for recovery, has been decreed.

Brief facts necessary for the adjudication of the case are that the plaintiff-respondent filed a suit for recovery of ₹2,35,058/- with interest at the rate of 18% p.a. It is pleaded that the plaintiff is the daughter of Lachman Singh son of Gehna Singh, who was the owner in possession of the land as described in the plaint. Defendant no.1-Sardool Singh, is the son of Lachman Singh and defendants no.2 and 3 i.e. Gurmit Kaur and Amarbir Singh are the wife and son of Sardool Singh, respectively. Lachman Singh (since deceased) filed a suit no 103 of 01.10.1990, for declaration that his son-Sardool Singh and the judgement debtor has obtained a collusive decree by way of coercion and fraud and the same be declared null and void. The said suit was decreed in favour of Lachman Singh on 10.01.1996. Executing

Court put the plaintiff in possession and execution was consigned as satisfied. It is pleaded that defendant no.3-Amarbir Singh pledged a part of the suit property which was the subject matter of execution with SBI Bank, Tibri Road, Gurdaspur for a consideration of ₹2,50,000/- It is pleaded that the land was fraudulently pledged without permission and notice to the plaintiff. Defendants no.2 and 3, filed objections in the execution which were dismissed on 29.01.2011 and all the defendants were liable to repay the amount jointly and severally. The amount of loan taken from the bank was intentionally not repaid by the defendants and the plaintiff, it is pleaded was compelled to deposit the loan amount with the bank on 05.06.2012, which was credited in the account of Amarbir Singh, defendant no.3, vide account no. 30148436897. Plaintiff asked the defendants to return the loan amount, but they refused. Hence the suit was filed.

Defendants contested the suit. Written statement was filed. Various preliminary objections were raised therein. It is admitted that Lachman Singh, was the owner in possession of the suit property. Relationship between the parties, is admitted. It is further admitted that the defendants had mortgaged the land in question with SBI. A loan of ₹2,50,000/- was taken by Amarbir Singh during the pendency of the suit. It is however stated that Amarbir Singh had repaid many of the installments to SBI on account of the mortgage. Dismissal of the suit was prayed.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to recovery of ₹2,35,058/- from the defendants?OPP
2. Whether plaintiff is entitled to interest? if so, at what rate

and for which period?OPP

3. Whether the present suit is legally not maintainable?OPD
4. Whether suit is bad for mis-joinder and non-joinder of necessary party?OPD
5. Whether suit is liable to be dismissed under Order 21 Rule 2 CPC?OPD
6. Relief.

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

Learned trial Court on considering the evidence on record, facts and circumstances of the case, held that the property in question had indeed been pledged by Amarbir Singh and that the amount of ₹2,35,058/- was in-fact deposited by the plaintiff and no due certificate, Ex.P-2, was issued. However, it is held that the plaintiff was not bound to pay the mortgage amount as she had not taken the loan from the bank. Plaintiff, it is held deposited the amount out of her own sweet will with the bank and this act on her part was gratuitous. Therefore, in such a situation, the plaintiff, it was held was not entitled to recovery of the said amount. Suit filed by the plaintiff was accordingly dismissed.

Appeal preferred by the plaintiff-respondent, was allowed by the learned Additional District Judge, Gurdaspur, vide impugned judgement and decree dated 22.10.2018. Suit filed by the plaintiff was accordingly decreed in her favour.

Aggrieved therefrom, present appeal has been filed by the appellants-defendants.

Learned counsel for the appellants vehemently argues that the plaintiff failed to prove that she deposited the amount in question. It is further submitted that appellant-defendant Amarbir Singh has paid many of the installments to SBI on account of the mortgage. Furthermore, it is asserted that no claim lies qua appellants-defendants no.2 and 3, in any case. It is thus prayed that the present appeal be allowed and the judgement and decree passed by the learned Additional District Judge, Gurdaspur, be set aside and the judgement and decree dated 15.02.2017, passed by the learned Civil Judge(Sr. Division), Gurdaspur, be upheld.

I have heard learned counsel for the appellants and with his assistance have gone through the photocopy of the record produced by him in Court today.

It is a matter of record that Lachman Singh had filed a suit for declaration, which was decreed in his favour on 10.01.1996. The relationship between the parties, is not in dispute. Lachman Singh, was the father of the plaintiff and the appellant-Sardool Singh. Gurmit Kaur, is the wife of Sardool Singh and Amarbir Singh, is the son of Sardool Singh. Vide judgement and decree dated 10.01.1996, Lachman Singh was declared to be the owner of the suit property. The plaintiff pursued the said matter after the death of Sardool Singh and she was duly impleaded as his legal representative. Possession of the property was given to the plaintiff and execution was withdrawn being satisfied. A part of the suit property was admittedly mortgaged by Amarbir Singh without any permission or notice to the deceased-Lachman Singh/plaintiff. Objections filed by Amarbir Singh on 20.10.2010, were dismissed on 29.01.2011. Learned First Appellate Court, has made a copious reference to order dated 29.01.2011, Ex.P-4, and has rightly held that all the defendants were jointly and severally held liable while deciding the objections in execution. It is accepted by the learned trial Court as well as the First Appellate Court, that the plaintiff successfully proved the deposit of the amount in question with the SBI, Gurdaspur, qua the loan taken by Amarbir Singh. PW-1-Amandeep Gupta, Assistant Manager, SBI, Gurdaspur, has duly proved the receipt, Ex.P-1 as well as the 'No Due Certificate', Ex.P-2.

Learned trial Court, non-suited the plaintiff only on the ground that the act of deposit of the amount in question by the plaintiff was a gratuitous one. In my considered opinion, the learned Additional District Judge, Gurdaspur, has rightly set aside this finding and held that the amount in question was not a gratuitous act. The plaintiff had in-fact been fighting tooth and nail with the respondents. In order to save the land in question, it is obvious that the plaintiff was constrained to deposit the said amount. It is not denied by learned counsel for the appellants that the respondent-Bank had initiated legal action under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. Taking of the loan by pledging the suit property as a collateral, is admitted by Amarbir Singh. In-fact, the stand taken by the defendants, is that some of the installments had been repaid by them. Learned counsel for the appellants is unable to deny that there is no such evidence on record to indicate the deposit of even one installment by the defendants.

It is to be noted at this stage that DW-1-Sardool Singh, in his cross-examination has gone to the extent of even denying the taking of any loan by his son. There is also no merit in the argument raised by learned counsel for the appellants that the concerned bank was a necessary party in the present proceedings. Taking of the loan, is admitted in the written statement filed on behalf of the defendants. In reply to para no.4, of the plaint, it is specifically admitted that the defendants had mortgaged the land in question with SBI. It is mentioned in reply to para no.7 of the plaint that Amarbir Singh had paid many of the installments to SBI on account of the mortgage. In the factual matrix of the case, it is rightly held by the learned Additional District Judge, Gurdaspur, that impleadment of the bank in this case is not essential.

Learned counsel for the appellants, 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. Learned Additional District Judge, Gurdaspur, after proper appreciation and consideration of the evidence on record has rightly set aside the judgement and decree dated 15.02.2017, passed by the learned Civil Judge (Sr. Division), Gurdaspur, vide impugned judgement and decree dated 22.10.2018, which calls for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgment and decree dated 22.10.2018 passed by the learned Additional District Judge, Gurdaspur, is upheld.

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

[LISA GILL]
Judge

06.01.2020
s.khan

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