

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

204

RSA-2740-2017 (O&M)
Date of decision: 13.12.2021

BALDEV RAJ @ BALRAM KUMAR & ANR ..Appellants

Versus

ASHOK KUMAR & ORS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sarju Puri, Advocate for the appellants.

Mr. CB Goel, Advocate for respondent No.1.

Mr. Atul Goyal, Advocate for respondent No.6.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The appellants (defendant No.1 and 2) have filed this regular second appeal assailing the correctness of the concurrent findings of fact arrived at by the Courts below.

Some facts are required to be noticed.

Late Sh. Nohria Mal (son of Pala Mal) was the owner in possession of the property in question. He left behind a widow (Assa Devi) and daughter (Raj Kumari). Since late Sh. Nohria Mal did not have any male

defendant No.4 to 7 used to serve late Sh. Nohria Mal during his lifetime. Sh. Nohria Mal executed a Will dated 28.03.1953 in favour of Sh. Ram Dev and it was attested by Assa Devi and Raj Kumari (widow and daughter of late Sh. Nohria Mal). In the probate proceedings, the aforesaid Will was upheld and Sh. Ram Dev was granted the letter of probate. However, due to inadvertence, while drawing inventory of the property so mentioned in the Will executed by late Sh. Nohria Mal, the property in question could not be included in the said inventory. Sh. Ram Dev filed a suit for declaration that he is the owner in possession of the property in question which was decreed by the trial Court on 28.08.1973. Smt. Raj Kumari (daughter of late Sh. Nohria Mal) filed an appeal against the same which was dismissed by the First Appellate Court, as well, on 28.11.1974. The second appeal was disposed of on 03.05.1983 in terms of the settlement arrived at, under which Smt. Raj Kumari (daughter of late Sh. Nohria Mal) was agreed to be paid Rs.10,000/- by the legal heirs of Sh. Ram Dev. The aforesaid amount has already been paid to Smt. Raj Kumari.

The defendants contested the suit and pleaded that they are in possession of the property since 1978 and the plaintiff has no right in the suit property.

Both the Courts below, as already noticed, have decreed the suit.

Learned counsel for the appellants contends that the mortgagee

has not been impleaded as a party and therefore, the suit is not maintainable.

He further contends that since the suit for redemption of the mortgage was ordered to be dismissed on 17.10.1985, therefore, the findings of the Courts below are perverse. He further submits that once the suit for specific performance of the agreement to sell filed by the legal representatives of the mortgagee was dismissed, the previous mortgage gets revived.

Per contra, learned counsel representing the respondents have contended that since, Smt. Raj Kumari (daughter of late Sh. Nohria Mal), admittedly, had no right, title or interest in the property, therefore, the sale deed registered in favour of defendant No.2 by Smt. Raj Kumari on 05.02.1996 does not enure to his benefit. They further contend that in the previous round before the High Court, a compromise was arrived at, on 15.09.2008 and the plaintiff and other legal representatives of Sh. Ram Dev were acknowledged to be the owners of the suit property. They further state that the appellants cannot be permitted to address the arguments on non joinder of parties as it was not pressed before the Courts below.

It is evident that before the Courts below, the appellants never defended the suit on the ground of non-joinder of parties. Although, while filing the written statement, the defendants had taken this plea, however, they never pressed the Court for framing an issue on this ground nor addressed

this plea for the first time in the regular second appeal.

As regards the second argument of the learned counsel for the appellants, it may be noted here that the suit for redemption of mortgage was dismissed on 17.10.1985 particularly when the litigation was pending amongst Ram Dev, Raj Kumari, Narayan Das and Fakir Chand. Ultimately, before the High Court, in a different suit, a compromise was arrived at, on 15.09.2008 and the mortgagee was given a right to deposit the sale consideration within a period of one month, failing which the revision petition shall be deemed to have been dismissed. The alleged mortgagee i.e. Nasib Chand represented by his LRs (Narayan Das and Nirmala Devi and others) failed to deposit the agreed amount.

Thus, the alleged mortgagee was left with no right, title or interest in the property.

Furthermore, the High Court, in the aforesaid case, has declared the LRs of Ram Dev to be the owners of the property and the appellants have failed to prove any right, title or interest in the said property, therefore, the suit filed by the plaintiffs has correctly been decreed by both the Courts.

As regards the last argument of the learned counsel for the appellants, it is evident that after the alleged mortgage of the property by late Sh. Nohria Mal, there were subsequent developments in the facts including

multiple litigations on that score, all of which have been decided in favour of Sh. Ram Dev or his LR's. Hence, the appellants, at this stage, do not have any right to claim that the mortgage stood revived.

Hence, no ground to interfere in the impugned judgments is made out.

Dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

13.12.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE