

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4244 of 2019

Date of Decision: 12.09.2022

Kanshi Ram (Dead) through his LRs and Others

... Petitioner(s)

Versus

Nitin Chawla and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sandeep Bansal, Advocate
for the petitioner(s).

Mr. C.L.Sharma, Advocate
for the respondent No.1 and 2.

Anil Kshetarpal, J.

1. The suit for possession by way of redemption of the mortgage filed by the respondent No.1 and 2 is pending before the trial Court
2. An application filed by defendant No.2 to 4 for permission to lead additional evidence, in order to produce the documents to prove that the property belonging to the partnership firm i.e. M/s Balak Ram Mehar Chand, which, after being declared insolvent, is being managed by the Receiver and the erstwhile partner have no right, title or interest in the suit property, has been dismissed by the trial Court on the ground that such evidence, sought to be produced, is not only beyond pleadings, but also not legible.
3. The correctness of the aforesaid order has been challenged before this Court.
4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

5. It is evident from the reading of the written statement filed by defendant No.1 that it has come on record that Sh.Mukhi Ram, Sh.Thakar Dass and Sh.Amrit Lal were the partners of M/s Balak Ram Mehar Chand. The defendant No.2 to 4, while contesting the suit, claim that they are owners in possession of the suit property for quite some time. While filing an application, the defendant No. 2 to 4 have alleged that the suit property was mortgaged by the aforesaid firm in favour of Smt.Harbans Kaur wife of Sh.Dhanna Singh on 25.01.1955 against a sum of ₹ 4,300/-. Subsequently, the firm became insolvent and the Court of Insolvency Judge, adjudged the firm to be insolvent on 03.10.1973. Subsequently, the court record was burnt in accidental fire which took place in the month of June 1996 and thus, the original file was not traceable. The defendant claimed that he is in possession of the photocopy of the certified copy of the judgment passed by the Court.

6. In such a situation, the trial Court has erred in declining to permit the defendant No.2 to 4 to lead additional evidence on the ground that such evidence, sought to be led, is beyond their pleadings. As per the Order VI Rule 2 CPC, the pleadings are required to confine to the material facts and that also in a concise and precise form. It is specifically provided that the evidence is not required to be made a part of the pleadings. The defendants have already contested the suit claiming that the plaintiffs have no right to seek redemption of mortgage. They have claimed to be owner of the property. In such circumstances, the view taken by the trial Court is myopic. The Court should have permitted the parties to lead evidence in order to prove their case.

7. Keeping in view the aforesaid facts, the present revision petition is allowed and the order dated 09.05.2019 is set aside. Let the defendants produce additional evidence. The plaintiff shall have an opportunity to lead counter evidence, if prayed for.

(Anil Kshetarpal)
Judge

September 12, 2022
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No