2024:PHHC:168087

1IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA-2365-2003 (O&M)
Reserved on: 04.12.2024
Date of decision: 17.12.2024

JAGDISH KUMAR & OTHERS

..Appellants

Versus

MUKESH MITTAL (DECEASED) THROUGH LRS. & OTHERS

..Respondents

2. RSA-2366-2003 (O&M)

JAGDISH KUMAR & OTHERS

..Appellants

Versus

SITA KUMARI AND OTHERS

..Respondents

3. RSA-2367-2003 (O&M)

JAGDISH KUMAR & OTHERS

..Appellants

Versus

BRIJ BALA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.S. Bedi, Advocate
for the appellants.

Mr. Arav Gupta, Advocate
for respondent No.4.

ANIL KSHETARPAL, J.

1. Factual Background:

1.1 With the consent of learned counsel representing the parties, the above-mentioned three connected regular second appeals shall stand

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disposed of by this common order.

1.2 These three appeals have been filed against the concurrent findings of fact arrived at by the Courts below while decreeing the suit filed by the respondents and dismissing two suits filed by the appellant.

1.3 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.4 Sh. Mehar Chand was owner of the suit property. He had taken loan from Punjab Government for purchase and construction of the house (the suit property). He defaulted in repayment of loan. He mortgaged the suit property in favour of Sh. Jagdish Kumar and his two brothers (appellants before this Court) vide mortgage deed dated 07.12.1963 registered with the Registrar. It was a usufructuary mortgage with stipulation that it shall not be redeemed for a period of 10 years. He is alleged to have executed an undertaking to the effect that he has agreed to sell the property in favour of Sh. Jagdish Kumar and his two brothers. He also executed a special power of attorney in favour of Sh. Raja Ram Kaushal father of Sh. Jagdish Kumar to file documents and complete the formalities for execution of the conveyance deed in favour of Sh. Mehar Chand.

1.5 Though the property was allotted to Sh. Mehar Chand by the Government, but the sale deed/conveyance deed was yet to be executed in his favour. Sh. Raja Ram Kaushal was authorized to execute the formalities for execution of sale deed in favour of Sh. Mehar Chand.

1.6 It is the case of Sh. Jagdish Kumar and his brothers that Sh. Mehar Chand on 09.12.1963 executed an agreement deed agreeing to sell equity of redemption of the aforementioned house in their favour while agreeing to receive Rs.500/-. The possession of the property was also handed over to Sh. Jagdish Kumar and others. It is the case of Sh. Jagdish

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Kumar and others that they repaid the loan in installments and completed all the formalities, however, when they tried to contact Sh. Mehar Chand, he was not traceable.

1.7 Sh. Mehar Chand died on 06.01.1974. He bequeathed the property in favour of Smt. Brij Bala, his daughter. The property was mutated in favour of Smt. Brij Bala on no objection affidavit filed by other natural class I heirs of late Sh. Mehar Chand. She sold the property in favour of late Sh. Mukesh Mittal vide registered sale deed dated 16.07.1990. Thereafter, the following three suits were filed:-

i. On 17.07.1990, Sh. Jagdish Kumar and his two brothers (appellants) filed a suit for specific performance of contract of sale of 2 and ½ storey House No.4, Street G, Sector 18 C, Chandigarh, directing the defendants to execute documents to transfer the ownership in favour of the plaintiffs including the right of equity of redemption.

ii. On 25.08.1990, late Sh. Mukesh Mittal filed suit for possession and redemption of the mortgage and for rendition of account.

iii. Similarly, on 21.12.1990, Sh. Jagdish Kumar and his two brothers filed suit for declaration to the effect that the sale deed dated 16.07.1990 executed by Smt. Brij Bala, daughter of late Sh. Mehar Chand in favour of Sh. Mukesh Mittal is illegal, null and void with a consequential relief of permanent injunction.

1.8 The trials in all the three suits were held separately, however, all the three suits were decided by separate judgments by the same presiding officer on 15.09.1995. The two suits filed by late Sh. Jagdish Kumar and

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others were dismissed, whereas, the suit filed by Sh. Mukesh Mittal was allowed. Three different appeals were also dismissed by the First Appellate Court.

2. <u>Arguments put forth by learned counsel representing the parties:</u>

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2 On liberty granted, learned counsel representing the appellants has filed written submissions disclosing that the grounds of appeal be read as his submissions.

2.3 Learned counsel representing the appellants does not dispute that there is no agreement to sell in favour of the appellants as claimed by them in the suit. He also admits that Sh. Jagdish Kumar and his brothers never took any step for specific performance of an agreement regarding sale of equity of redemption before 1990.

2.4 The appellants submit that it was a conditional sale of the property and on cumulative reading of all the documents, it is evident that complete sale had taken place between the parties and the appellants after the completion certificate was issued by U.T. Administration, Chandigarh, made sincere efforts to trace the whereabouts of Sh. Mehar Chand. It is further contended that Smt. Brij Bala has failed to produce and prove Will executed by late Sh. Mehar Chand in her favour.

3. <u>Analysis and Discussion:</u>

3.1 This Court has considered the submissions of learned counsel representing the parties.

3.2 It is no longer in dispute that Sh. Mehar Chand never executed any written agreement to sell in favour of Sh. Jagdish Kumar and his brothers. Thus, for proving existence of agreement to sell, the plaintiffs are

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required to prove the terms of the agreement. At the most, they have proved that there was an understanding between Sh. Mehar Chand and Sh. Jagdish Kumar and others, however, the terms of the aforesaid understanding have not been proved.

3.3 On a careful reading of special power of attorney executed by Sh. Mehar Chand in favour of Sh. Raja Ram Kaushal, the father of Sh. Jagdish Kumar proves that he was authorized to submit a revised building plan, deposit the security amount and receive back the revised plan and the security amount from the office. He was also authorized to obtain the occupation certificate from the Estate Officer, Chandigarh. Thus, the special power of attorney was executed only for limited purpose of completion of construction of the house and for completing formalities in that respect. The completion/occupation certificate was issued somewhere in the year 1980.

3.4 On perusal of the agreement dated 09.12.1963, it becomes evident that Sh. Mehar Chand agreed to sell equity of redemption in favour of Sh. Jagdish Kumar and his two brothers on receipt of Rs.500/-, however, thereafter, the appellants did not take any step in this regard for a period of nearly 27 years. The appellants continued in possession of the property. From cumulative reading of the documents it becomes evident that there was another kind of transaction apart from mortgage of the property but it is not proved that all the documents resulted in complete sale of the same.

3.5 There is no evidence that amount of Rs.500/-, which was required to be paid as per agreement to sell equity of redemption in favour of the mortgagees was ever paid. In fact, the sale of equity of redemption has been adversely commented upon by the Hon'ble Supreme Court in ***Sidha Kamal Nayan Ramanuj Das Vs. Bira Nayak and others, 1954 (SC) 336*** and ***Mritunjoy Pani Vs. Narmanda Bala Sasmal, 1961 (SC) 1353***. In

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both the judgments, the Supreme Court held that there are only three known modes of transfer of the property in favour of mortgagee.

3.6 In para 7 of the judgment passed in ***Mritunjoy Pani's case (supra)***, the Supreme Court held that equity of redemption may be extinguished only by the following three modes known to law, which are extracted as under:-

> *"(1) The governing principle is "once a mortgage always a mortgage" till the mortgage is terminated by the act of the parties themselves, by merger or by order of the court.*
>
> *(2) Where a mortgagee purchases the equity of redemption in execution of his mortgage decree with the leave of court or in execution of a mortgage or money decree obtained by a third party, the equity of redemption may be extinguished; and, in that event, the mortgagor cannot sue for redemption without getting the sale set aside.*
>
> *(3) Where a mortgagee purchases the mortgaged property by reason of a default committed by him the mortgage is not extinguished and the relationship of mortgagor and mortgagee continues to subsist even thereafter, for his purchase of the equity of redemption is only in trust for the mortgagor."*

3.7 Similarly, in ***Sidha Kamal's case (supra)***, the Court held that such agreement amounts to clog on the right of redemption of the mortgagor and hence not valid.

4. Decision:

4.1 Keeping in view the aforesaid discussion, finding no merit, the appeals are dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

17th December, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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