

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-499-1991
Date of decision: 02.02.2024

RUPI ..Appellant

Versus

BALLI AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.R. Rana, Advocate
for the appellant.

Mr. Keshav Pratap Singh, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the limited dispute with respect to 4 kanal and 13 marlas land has come up for adjudication. In fact, the First Appellate Court has granted substantive relief to the plaintiff except for the land measuring 4 kanal and 13 marlas.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The suit land measures 32 kanal. It was owned by the predecessors of the defendants. They mortgaged the aforesaid land with possession in favour of the predecessors in interest of the plaintiff (appellant) in the year 1888. While filing the suit, the plaintiff claimed that the aforesaid land has never been redeemed and the defendants have wrongly taken the possession of 18 kanal and 8 marlas land vide *Rapat Roznamcha* No.29 dated 27.09.1979. The defendants while contesting the suit claimed that the parties to this litigation are co-sharers and the plaintiffs

are owner of 21/50th share, whereas, the defendants are owner of 29/50th share. The suit was also contested on the ground that the suit filed by the plaintiff is barred by doctrine of *res judicata* as the previous suit filed by Sh. Lachhi Ram against the plaintiff i.e. Civil Suit No.1001 of 1960, was decreed. The defendants also claimed that the plaintiff was not mortgagee in possession and he is in possession of 13 kanal and 12 marlas only.

4. The trial Court after appreciation of evidence came to a conclusion that the predecessor of the defendants did mortgage the land in favour of the predecessors of the plaintiff and the time period prescribed for redemption of the mortgage is over. Ultimately, the trial Court decreed the suit in entirety.

5. In first appeal, the learned Additional District Judge reappreciated the evidence and also allowed the application for permission to lead additional evidence while permitting the defendants to produce copy of the receipt of deposit of mortgage amount with respect to the $\frac{3}{4}$ th share of the land comprised in khasra No.452 and 159 measuring 4 kanal and 13 marlas. Apart from this, the Appellate Court also permitted the defendants to produce certified copy of the final decree passed by the Court on 09.01.1962.

6. Thereafter, the Court accepted the appeal filed by the defendants while returning finding that the land measuring 8 kanal was successfully redeemed out of which 4 kanal and 13 marlas is from khasra No.452 and 159.

7. It may be noted here that Sh. Rup (appellant) filed a previous suit for grant of decree of declaration that he is the owner in possession of

the land by prescription of time. The aforesaid suit was decreed on 24.01.1981. Some of the defendants filed appeal, which was dismissed on 12.09.1981. Thus, it is evident that the plaintiff was already declared owner of the land by prescription of time.

8. It may be noted here that there is lack of clarity with regard to the extent of land involved in the previous suit, which resulted in final decree dated 09.01.1962 because the aforesaid decree qua 8 kanal land, however, it is not clear how much of that land is part of 32 kanal suit land.

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

10. The learned counsel representing the appellant (plaintiff) submits that the First Appellate Court has erred in allowing the application for permission to lead additional evidence. He submits that the defendants failed to produce these documents before the trial Court and therefore, the Appellate Court should not have granted the permission.

11. On the other hand, the learned counsel representing the respondents submits that in fact the preliminary decree for allowing redemption of mortgage was already part of the record, however, inadvertently, the receipt evidencing payment of the mortgage amount and copy of the final decree was not produced. He submits that the aforesaid inadvertently mistake was corrected by filing application for permission to lead additional evidence.

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

13. Under Order XLI Rule 27 of the Code of Civil Procedure, 1908, the Appellate Court has the enabling power to permit the parties to lead additional evidence in order to advance the cause of justice. In this case, the documents produced in additional evidence are certified copies of the receipt evidencing deposit of mortgage amount as directed by the Court resulting in passing the final decree. Their authenticity can hardly be doubted. Hence, the First Appellate Court has not erred in allowing the application for additional evidence. The learned counsel representing the appellant did not press any other issue.

14. Keeping in view the aforesaid discussion, no ground to interfere is made out.

15. Dismissed accordingly.

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

February 02nd, 2024
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(ANIL KSHETARPAL)
JUDGE

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