

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

1. RSA-478-1994 (O&M)
Date of decision: 15.02.2024

BEANT SINGH (DECEASED) THROUGH LRS AND ORS.

..Appellants

Versus

BISHAMBER DASS (DECEASED) THROUGH LRS AND ORS.

..Respondents

2. COCP-427-2006 (O&M)

BEANT SINGH (DECEASED) THROUGH LRS AND ORS.

..Petitioners

Versus

DAYA NATH @ DAYA RAM AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate
for the appellants.

Mr. Vipin Mahajan, Advocate
for respondent No.6 and 7.

ANIL KSHETARPAL, J(Oral)

1. Two connected cases, one regular second appeal and one civil original contempt petition have come up for final disposal.
2. In the regular second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing the plaintiffs suit for grant of decree of declaration that they have become owners of the suit property measuring 24 kanal and 18 marlas as the defendants have failed to redeem the mortgage within the prescribed period of limitation.

3. The suit property is divided in the following two different portions/parcels:-

“(a) The land measuring 24 kanals 18 marlas bearing Khewat No.51,Khatauni No.75,Killa Nos.15 R $\frac{23R}{18/2,19 \ 17/2,23,24/1}$

(b) The land measuring 4 kanals 17 marlas out of the land $\frac{8R}{16/1, 16/2/1}$ to the extent of 2/3rd share of (7 kanals 6 marlas) in Khewat No.19, Khatauni No.26 vide Jamabandi for the year 1985-86”

4. The predecessor in interest of the defendants (appellants herein) mortgaged the suit property with possession vide a registered mortgage deed on 11.01.1901.

5. The defendants filed Civil Suit No.117 for grant of decree of declaration that property described under ‘Schedule B’ has never been mortgaged and the defendants are owner in possession of the same. The aforesaid suit was disposed of in terms of the settlement arrived at between the parties. It was agreed that 1/3rd of 7 kanal and 6 marlas land shall stand redeemed and the plaintiffs in Civil Suit No.117 (appellants herein) will be owners, whereas, the suit qua 2/3rd share of 7 kanal and 6 marlas i.e. 4 kanal and 17 marlas shall stand dismissed.

6. There was yet another round of litigation. The appellants filed Civil Suit No.249 of 1972, for grant of decree of declaration that the plaintiffs and defendant No.5 are owners in possession of 20 kanal and 11 marlas land, which was part of the land measuring 24 kanal and 8 marlas. They also prayed for grant of decree of possession with respect to 4 kanal and 8 marlas land. Thus, the property involved in the Civil Suit No.249 of 1972 was exactly the same as prescribed in ‘Schedule A’. In the aforesaid

suit, the appellants denied execution of mortgage, whereas, the respondents (the plaintiffs in this suit) (defendants in that suit) claimed that they are mortgagees and have become owner of the suit property by efflux of time. The trial Court vide judgment and decree dated 04.06.1974, dismissed the plaintiffs suit (appellants herein). While dismissing the suit, the trial Court recorded the following findings under issue No.5:-

“ISSUE NO.5

Whether the defendants No.1 to 4 were mortgagees and have now become the owners of the suit land by the efflux of time as alleged? OPD

9. As already mentioned that from the copy of the mortgage deed Ex.PW4/A and the copy of the jamabandi Ex.D/18, it is proved that the land in lieu of which the land in dispute has been allotted was mortgaged with defendants No.1 to 4. Ex.P4/A further shows that the mortgage was effected in 1901. As such the mortgage was effected more than 70 years before the filing of the suit. Therefore, the defendants No.1 to 4 have become the owners of the land in dispute by efflux of time as alleged by them. I, therefore, decide this issue in favour of the defendants and against the plaintiffs.”

8. This judgment and decree was reversed by the First Appellate Court on 27.11.1975, however, in RSA-1798-1975, filed by the predecessor in interest of the respondents here, the judgment and decree passed by the First Appellate Court was set aside and that of the trial Court was restored vide judgment dated 20.10.1983. This judgment became final between the parties.

9. Now, this time, the plaintiffs filed a civil suit claiming the decree of declaration that they have become the absolute owners of the suit property and are in possession thereof with a consequential relief of decree of permanent injunction.

10. The defendants claimed that the plaintiffs were never in possession of the suit land. Both the Courts on appreciation of evidence came to a conclusion that the predecessor of the appellants had mortgaged the property in the year 1901 and the plaintiffs have become owners by efflux of time. The correctness of the aforesaid judgment has been challenged in this appeal.

11. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with requisitioned record.

12. The learned counsel representing the appellants submits that the respondents are in possession of the property pursuant to a usufructuary mortgage and therefore, the decree of declaration to the plaintiffs that they have become owners by efflux of time, cannot be passed. He relied upon the judgment passed by a Larger Bench of the Supreme Court in **Singh Ram (deceased) through LRs Vs. Sheo Ram and others, AIR 2014 SC 344**. He further contends that the finding of the trial Court in the judgment dated 04.06.1974, is erroneous. He submits that the High Court in the judgment passed on 20.10.1983, has not declared that the plaintiffs (respondents herein) have become owners by way of efflux of time and the plaintiffs have to stand on their own legs. He further submits that the defendants are entitled to defeat the rights of the plaintiffs in accordance with law.

13. On the other hand, the learned counsel representing the respondents submits that the plaintiffs have already been declared owners of the property by efflux of time as well as in terms of the settlement. He submits that 2/3rd share of the property under 'Schedule B' i.e. 4 kanal and

17 marlas out of 7 kanal and 6 marlas came to the plaintiffs share pursuant to the compromise decree passed on 06.07.1971 in Civil Suit No.117 (Ex.P-2). He further submits that the appellants previously also filed a Civil Suit No.249 of 1972, wherein under the issue No.5, the Court has already granted declaration in favour of the plaintiffs that they have become the owners by efflux of time. He submits that the findings on the aforesaid issue operates as '*res judicata*' in the subsequent proceedings.

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

15. Admittedly, with regard to the property described under 'Schedule B' there is a decree dated 06.07.1971, in Civil Suit No.117. The appellants suit qua $\frac{2}{3}$ rd share was dismissed while decreeing only $\frac{1}{3}$ rd share. Thus, the appellants right to redeem the remaining 4 kanal and 17 marlas representing $\frac{2}{3}$ rd share out of the land measuring 7 kanal and 6 marlas, was dismissed.

16. Keeping in view the aforesaid facts, the appellants have now no right to claim any right, title or interest in the aforesaid property.

17. With reference to the property under 'Schedule A', measuring 24 kanal and 18 marlas, it is evident that the appellants filed Civil Suit No.249 of 1972, which was decided on 04.06.1974. Issue No.5 was directly and substantially in issue in the previous suit. A categoric declaration was given by the trial Court that the defendants therein but plaintiffs herein have become owners of the property by efflux of time. Hence, the argument of the learned counsel representing the appellants that the plaintiff, who were defendants in the previous suit did not file counter claim lacks substance.

Once, a Court finally decided a suit, then, the appellants cannot now re-agitate the matter. Doctrine of *res judicata* debars the Court from reexamining the aforesaid issue in any subsequent proceedings.

18. The next argument of the learned counsel representing the appellants lacks substance because the High Court in a detailed judgment restored the judgment and decree passed by the trial Court.

19. The concluding part of the judgment passed by the High Court on 20.10.1983, reads as under:-

“For the above reasons this appeal is allowed, the judgment and decree of the lower appellate Court are set aside and those of the trial Court are restored. In peculiar circumstances of this case the parties will bear their own costs.”

20. Hence, the argument of the learned counsel representing the appellants that the High Court did not reaffirm the findings on issue No.5, arrived at by the trial Court has no substance.

21. The last argument of the learned counsel representing the appellants appears attractive in the first blush, however, on a deeper scrutiny is found without substance. The judgment passed by the Supreme Court does not result in setting aside the judgment and decrees, which have become final between the parties.

22. Keeping in view the aforesaid facts and discussion, the appeal lacks merit, hence, the same is dismissed.

23. The appellants have also filed a petition for initiating the contempt proceedings under Contempt of Courts Act, 1971, against the respondents herein. The appellants are alleging the infringement of interlocutory order passed by this Court.

24. Since, the appeal filed by the appellants has been dismissed, therefore, there remains no ground to proceed with the contempt petition as the claim has now become redundant.
25. Consequently, the civil original contempt petition (COCP) is disposed of.
26. All the pending miscellaneous applications, if any, are also disposed of.

February 15th, 2024

(ANIL KSHETARPAL)
JUDGE

Ay

Whether speaking/reasoned

:

Yes/No

Whether reportable

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Yes/No