(2013) 09 P&H CK 0192

In the Punjab And Haryana At Chandigarh

Case No : RSA No. 2868 of 1984

Dalip and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 173 PLR 440

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The following substantial questions of law arise for consideration in the second appeal:- 1. Whether a mortgagee''s interest of an alleged evacuee property does not cease to be amenable for being declared as such after expiry of the period stipulated u/s 7A of the Administration of Evacuee Property Act, 1950?

2. Whether an assignee of the mortgagee of such evacuee property could prescribe title to the property by prescription to sustain the relief of declaration and injunction against the State?

The suit was filed by the plaintiffs seeking for the declaration that they had become owners in possession of property by prescription and for injunction restraining the defendants including the Union of India from interfering with the peaceful possession of the plaintiffs. The plaintiffs contended that the properties described in the suit measuring 21 kanals 15 marals in various khasra numbers situate in the village Indri, Tehsil Noon, District Gurgaon had been allotted to the plaintiffs in consolidation proceedings in lieu of agricultural lands in khasra No. 453 measuring 3 bighas 12 biswas in Khewat No. 734 Khata No. 936. The said property was claimed by the plaintiffs as held under a mortgage by one Nathan under a document dated 07.06.1897 and it was assigned in favour of the plaintiffs on 29.09.1907. It is also stated in the plaint that the properties had belonged to some Muslims who had fled to Pakistan and the properties not having been redeemed within the time prescribed by law, it had become the absolute property of the plaintiffs by prescription. Although the suit was filed against 15 defendants including defendants No. 1 to 3, who represented the Union, Custodian Evacuee Property and Haryana State respectively the contest was only by the State contending that the property was vested with the Custodian under the Administration of Evacuee Property Act and the plaintiffs had no right to the same. The trial Court decreed the suit rejecting the defence but the Appellate Court in the appeal filed by the State namely defendants No. 1 to 3 accepted the contention of the State with reference to 2467432 shares in properties which vested in the State and allowed for a decree to be passed for the remaining share. The second appeal has been filed against the partial decree granted in favour of the plaintiffs and seeking for decree in toto in respect of the whole property.

2. Learned counsel appearing on behalf of the appellant would point out to me that the Evacuee Interest (Separation) Act, 1951 contained a provision with reference to the provisions relating to separation of mortgagee''s interest which was an evacuee property and provided through Section 9 of the said Act, the manner of extinguishment of right if the separation of interest was not brought within time. Section 9 deals with reliefs in respect of mortgaged property of evacuees and Clause (2) is relevant and hence reproduced here:--

(2) Where a mortgagee has taken possession of any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the Competent Officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of the period.

3. The Section makes it clear that in a case where the mortgage stipulated a period for redemption, it would stand extinguished on the expiry of the said period or 20 years whichever was less. If the property had been mortgaged to Nathan on 07.06.1897 and the property was assigned in favour of the plaintiffs-predecessors in the year 1907 then in terms of the said Section, the mortgage would be deemed to be extinguished in the year 1917 itself. It would have been possible for a competent officer to take such action as it was possible in terms of the said Act. The counsel would argue that however, in terms of Section 7A of the Administration of Evacuee Property Act, there is an outer limit of time prescribed beyond which a property cannot be treated to be evacuee property. Section 7A clauses (a) and (b) are relevant and therefore, they are reproduced:--

7A. Property not be declared evacuee property on or after 7th May, 1954. Notwithstanding anything contained in this Act, no property shall be declared to be evacuee property on or after the 7th day of May, 1954 : Provided that nothing contained in this section shall apply to-

(a) any property in respect of which proceedings are pending on the 7th day of May, 1954, for declaring such property to be evacuee property; and (b) the property of any person who on account of the setting up of Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances had left on or after the 1st day of March, 1947, any place now forming part of India, and who on the 7th day of May, 1954, was resident of Pakistan;

4. The Section reveals that no property shall be declared to be evacuee property on or after 7th May, 1954 and the exceptions are provided through the proviso referred to above. If the plaintiffs would contend that the mortgagee has fled to Pakistan, the proviso operates which means that the prohibition against declaring the property as evacuee property does not apply. Consequently if the property is an evacuee property then it shall be possible for the State to make such claims to the property and take it for such proposals for distribution in the manner contemplated by law. The plaintiffs'' claim for prescriptive right to the property as owner does not arise, for once a mortgagee is always a mortgagee. The extinguishment of the mortgage cannot make him the owner of the property but the plaintiffs are in settled possession and to that extent the plaintiffs are entitled to be protected. The remedy of the State, if any, shall be in accordance with law after serving notice and applying such provision as it is possible for securing possession in accordance with law.

5. The relief of declaration that he is the owner in possession of the property shall be available for the property except for the extent mentioned in the Appellate Court decree and the share of 246/432 which is claimed by the State as belonging to the State as an evacuee property and to that extent the lower court decree shall stand confirmed. The plaintiffs, however, shall have the benefit of injunction as persons in settled possession for more than a century from 1907 by their predecessor purchased in the year 1897 and the mortgagee''s interest which was created in favour of Nathan on 07.06.1897. The answer to the first question is that property does not cease to be evacuee property. The assignee of a mortgagee cannot prescribe title as owner of the property and that shall be the answer to the second question. The appeal is allowed in part to the extent of providing for relief of injunction for whole of the property including the interest of the State which I uphold to the extent of 246/432 shares.

There shall be, however, no direction as to costs.

