
(1984) 01 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 826 of 1976

Jagan Nath

APPELLANT

Vs

Smt. Bhulian and Others

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Citation : (1984) 1 RCR(Rent) 696

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : N.C. Jain, with Mr. S.S. Jain, for the Appellant; H.L. Sarin with Mr. M.L. Sarin, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This is Defendant's second appeal against whom the suit for possession by way of redemption has been decreed by both the Courts below.

2. Shrimati Nihali was the owner, in possession, of the shop, in dispute, who mortgaged the same with possession in favour of Badhan Lal, Defendant No. 1, for a sum of Rs. 2,000/- vide mortgage deed dated January 25, 1926, Exhibit P.W. 4/1. The said Nihali died in the year 1934 leaving behind two daughters, namely, Bhulia and Anguri as her sole heirs who succeeded to her estate. The said Anguri also expired on April 2, 1962 leaving behind Ramesh Kumar alias Ramesh Chand, Plaintiff No. 2, as her sole legal heir and, thus, the Plaintiff being the heir of Nihali stepped into her shoes as a mortgagor of the property, in dispute As the Defendants did not accede to the request for redeeming the property; hence the present suit for redemption. The mortgagee Defendant No. 1, admitted the factum of the mortgage, the date and the conditions of the mortgage contained in the mortgage deed, Exhibit P.W. 4/1. He also averred that he remained in possession of the shop, in dispute, till 1957 and that in the, month of January, 1958, the said shop was let out by him to Defendant No. 2 at the rate of Rs. 10/- per month. In this manner, Defendant No. 1, claimed a sum of Rs. 6,400/- from the Plaintiffs in case of redemption. However, Defendant No.

1, denied the factum of the Plaintiffs being the mortgagors of the shop, in dispute. Defendant No. 2, Jagan Nath, contested the suit inter alia on the ground that the Plaintiffs had no locus standi to file the suit. His claim was that he was the owner of the same and in the alternative, it was contended by him that he had become its owner by adverse possession. It was also contended that he had rented out the same on January 29, 1950, to Daulat Ram, Defendant No. 3. The trial Court found that Nihali mortgaged with possession the shop, in dispute, with Badhan Lal, Defendant No. 1. vide mortgage deed, Exhibit P.W. 4/1, and that the Plaintiffs were the only heirs of Nihali and were, thus, entitled to get the shop, in dispute, redeemed. The claim of Jagan Nath, defendant, was negatived. Ultimately, the Plaintiffs' suit was decreed on payment of no mortgage amount. Dissatisfied with the same two separate appeals were filed; one on behalf of Jagan Nath, Defendant, and the other on behalf of the Badhan Lal, Defendant-mortgagee.

The lower appellate Court, ultimately, accepted the appeal filed en behalf of Badhan Lal, Defendant, and modified the judgment and decree of the trial Court and, thus, passed a preliminary decree in favour of the Plaintiffs and against the Defendants with a direction that the Plaintiffs shall deposit in Court a sum of Rs. 4,940/-. The appeal filed on behalf of Jagan Nath, Defendant, was dismissed. Dissatisfied with the same, Jagan Nath, Defendant, has come up in second appeal to this Court.

3. The Learned Counsel for the Appellant contended that the Plaintiffs failed to prove by any cogent evidence that they were the legal heirs of Nihali, the original mortgagor. According to the Learned Counsel, the findings of the Courts below in this behalf are wrong and based on inadmissible evidence. It was also contended that in any case, Jagan Nath, Appellant, had become the owner of the suit property by adverse possession and that the findings of the Courts below in this behalf are wrong.

4. I have heard the Learned Counsel for the parties and have also gone through the relevant evidence on the record. I do not find any illegality or infirmity in the concurrent findings of the two Courts below as to be interfered with the second appeal.

5. From the documentary evidence produced on the record, it has been concluded by both the Courts below that the Plaintiffs were the heirs of Nihali and, therefore, no meaningful argument could be raised to challenge the said finding. As regards the adverse possession of the Defendant-appellant on the property, in dispute, it has been found by the Courts below that the question thereof as such did not arise because the shop, in dispute, was mortgaged with possession with Badhan Lal, Defendant, in the year 1926. If during that period, the mortgagee who was delivered the possession allowed Jagan Nath, Defendant, to deal with the property, it could not effect the rights of the mortgagor. The mortgagor's right to sue for possession accrues for the first time when after redemption he is unable to take possession of part of the mortgaged property

which he finds to be in possession of a trespasser who denies his title to it. It is held in Narsingh Singh Vs. Raghuendra Singh, that the possession cannot be adverse to a person (mortgagor) who has no immediate right to possession because of the existence of the usufructuary mortgage. To the same effect was the law laid down in AIR 1928 250 (Lahore) and Salig Ram and Others Vs. (Babu) Gauri Shankar Tandan,

6. In this view of the matter, this appeal fails and is dismissed with costs.