
(1986) 07 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 1715 of 1977

Madan Lal and others

APPELLANT

Vs

Kundan Lal and others

RESPONDENT

Date of Decision : 28-07-1986

Acts Referred:

Citation : (1986) 07 P&H CK 0022

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

Bench : Single Bench

Advocate : Ajmer Singh and Mr. S.S.Teji, for the Appellant; H.L. Sarin and Mr. A.S. Grewal, for the Respondent

Final Decision : Allowed

Judgement

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

2. Hargopal, Sardari Lal, Hazari Lal and Lilo Ram were owners to the extent of 1/3rd share each in the suit land. Out of that, Hargopal, Sardari Lal and Hazari Lal mortgaged their share of the land for Rs. 2,150/- with Malu Mal and Gulzari Mal through registered deed 24th October, 1942, whereas Lilo Ram mortgaged his share for Rs. 800/- with the same mortgagees vide registered deed dated 2nd March, 1943. Later on, the mortgagees Malu Mal and Gulzari Mal sold their mortgagee rights for a sum of Rs. 2,950/- to Messrs. Mulkh Raj Des Raj vide sale deed dated 8th June, 1943. On the other hand, the mortgagor-owners sold away their equity of redemption in the land, through sale deed dated 15th March, 1944, to Dina Nath, Barkat Ram and Shankar Dass, for a consideration of Rs. 5,500/-, leaving a sum of Rs. 2,290/- with the vendees for payment to the mortgagees. The present suit land has been allotted during the consolidation proceedings in lieu of the original land which forms the subject-matter of the two mortgagee and the subsequent sales. The present Plaintiffs are successors-in-interest of Dina Nath and others, and, thus, they filed the present suit for possession by way of redemption on 23rd October, 1972, on payment of the

mortgage amount of Rs. 2,960/-

3. The suit was contested on the ground that the Defendants had become full-fledged owners of the suit land. The right of the Plaintiffs to get the suit land redeemed was also challenged. The bar of limitation was also pleaded. They also contested the identity of the mortgaged land. The trial Court found that the Plaintiffs had the right to get the land redeemed on payment of Rs. 2,950/-, that the suit was within limitation; that the suit land had been allotted during consolidation proceedings in lieu of the land which was originally mortgaged; that the Defendant had not acquired any right of ownership in the suit land through efflux of time and that there was no bar of estoppel in the way of the Plaintiffs in filing the present suit. Consequently, the suit was decreed on payment of Rs. 2,950/- as mortgage money. In appeal, the learned Additional District Judge affirmed the said findings of the trial court, and, thus, maintained the decree passed in favour of the Plaintiffs. Aggrieved with the same, the Defendants have filed this Second Appeal in this Court.

4. After hearing the learned Counsel for the parties and going through the record I do not find any merit in this appeal. Admittedly, the suit was filed on 23rd October, 1972, i.e., within 30 years from the original mortgage deed dated 24th October, 1942. and, therefore, the suit had been rightly held to be within time. As regards the sale in favour of the Plaintiffs by the owners, they produced a certified copy of the sale deed dated 15th March, 1944. The document being 30 years old, the Courts rightly presumed that the signature and every other part of such document which purported to be in the hand-writing of any particular person was in that person's handwriting and that in the case of a document executed or attested, it had been duly executed and attested the same. Moreover, the Defendants themselves admitted the ownership of the vendors Hargopal, etc., and their names as owners were recorded in the column of Jamabandis. Under the circumstances, I do not find any illegality or infirmity with the findings of the courts below as to be interfered with in Second Appeal. Consequently, the appeal fails and is dismissed with costs.

5. Vide this Court order dated 9th December, 1977, the Plaintiffs-Respondents were allowed to withdraw the amount of Rs. 2,950/- deposited by them on 16th October, 1975, with a liberty to deposit the same in accordance with the order which may be passed by this Court. In view of that order, the Plaintiffs are allowed three months time to deposit the said amount. On the deposit of said amount, they will be entitled to take possession of the suit land.