
(2014) 09 P&H CK 0175

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1513 of 1986 (O&M)

Padma Malhotra and Others

APPELLANT

Vs

Ramesh Chander and Others

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Evidence Act, 1872 — Section 116

Punjab Package Deal Properties (Disposal) Act, 1976 — Section 16

Citation : (2015) 177 PLR 775

Hon'ble Judges : R.P. Nagrath, J

Bench : Single Bench

Advocate : Akshay Bhan, Senior Advocate and Pallvi Singh, Advocates for the Appellant

Judgement

R.P. Nagrath, J.—The facts arising in the instant appeal are not in dispute. Dr. Vidya Sagar, predecessor-in-interest of the plaintiffs-respondent No. 1 to 12 mortgaged two shops in favor of Dr. Vishwa Nath, predecessor of the appellants-defendants for mortgage sum of Rs. 4,000/- vide registered mortgage deed dated 09.09.1964. The mortgage deed proved on record of the trial Court is Ex. P-1. This was usufructuary mortgage for a period of 10 years. The suit was filed for redemption of the shops on 30.05.1980, which was contested only by Dr. Vishwa Nath, the mortgagee whom appellants are representing in the instant appeal. Plea was also raised by Dr. Vishwa Nath that disputed shops were Muslim evacuee property and the mortgage deed is the result of fraud. Learned trial Court framed the following issues from the above pleadings of the parties:-

"1. Whether defendant No. 1 can deny the right of Dr. Vidya Sagar to mortgage the property as owner? OPP

2. Whether Dr. Vidya Sagar concealed and practiced fraud that the property was Muslim evacuee property, if so, its effect? OPP

4. Whether defendant No. 1 cannot take up the plea as covered in para No. 2?

OPP

5. Whether the suit is not maintainable in the present form? OPD

6. Whether suit is bad for mis-joinder of cause of action and parties? OPD

7. Whether plaintiffs are entitled to redeem the property even on the basis of mortgage deed dated 02.03.1943 produced by defendant No. 1? OPP

7-A. Whether defendants are entitled to compensatory costs of Rs. 5,000/-.

7-B. Whether Rehabilitation Authorities, Jullundur are necessary party? OPD

8. Relief."

2. The suit was decreed. First Appeal against the judgment and decree of the trial Court was filed by appellants and the same was dismissed. The appellants are here in the Regular Second Appeal (RSA) to challenge the concurrent findings of the Courts below.

3. I have heard learned counsel for the appellants, perused the judgments passed by the Courts below and records of the trial Court.

4. Learned counsel for the appellants has proposed the following substantial questions of law:-

"1) Whether the Civil Court has jurisdiction to entertain the suit as regards the evacuee property in the light of Section 16 of the Punjab Package Deal Properties (Disposal) Act, 1976.

2) Whether the right of redemption could be invoked by the plaintiff when the defendants had already purchased the property."

5. During pendency of the instant appeal, the appellants moved an application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. According to the appellants, the property was an evacuee property mortgaged with Dr. Vidya Sagar predecessor-in-interest of plaintiffs-respondents, who further mortgaged to Dr. Vishwa Nath. It was further stated that Padma Malhotra-appellant No. 1 purchased the property in dispute for a consideration of Rs. 27,400/- from the Punjab Government vide conveyance deed dated 07.05.1986 from the Tehsildar Sales-cum-Managing Officer, Patiala. The application was allowed by this Court on 08.02.1991 permitting the appellants to lead additional evidence with direction to the trial Court to submit report to this Court.

6. The trial Court has submitted report dated 09.12.1991 after recording statements of witnesses in proof of the conveyance deed. The concluding part of the report is as under:-

"9. Parkash Chand Malhotra PW 3 has deposed that property Nos. 4748-4749 situated at Nambar Khan Road, Patiala are in their possession since March, 1943 as the same were in possession of their father Vidya Sagar. After his death these

are in their possession. Vishwa Nath defendant was mortgagee of the property. Prior to mortgage with Vishwa Nath, Vishwa Nath was their licensee. Padma Malhotra was never in possession of the suit land. The property in suit is composite property. The decision regarding the property in dispute can be given by the competent officer and not by the Assistant Custodian-cum-Managing Officer. The property in dispute never vested in the Custodian General of India, Punjab, Pepsu Govt. or Patiala Govt. and has not been taken possession by any of the above authorities from the plaintiffs. Possession of Vishwa Nath was after 1964 of the property in dispute. The Assistant Collector-cum-Managing Officer did not issue the summons on the application of Vishwa Nath to all the legal representatives of deceased Vidya Sagar. Only Mr. Ramesh Chander was summoned. The competent officer did not give him any opportunity for leading evidence on the application of Vishwa Nath. The decision of Managing Officer-cum-Assistant Custodian was ex-parte. There is no provision or any rule for making any inquiry as was done by the Assistant Custodian-cum-Managing Officer. The property in dispute is still in their possession and the appeal filed by Vishwa Nath is still sub-judice in the Hon'ble High Court. No publication or other prescribed procedure as is provided in the statute for selling the property by the Managing Officer-cum-Assistant Custodian was affected. Nor any notice for selling the property was served upon the plaintiff. The property in question is valued more than Rs. 2 lacs. Even no market price was fixed by the Managing Officer.

10. The execution of the conveyance deed/sale deed Ex. D1 dated 07.05.1986 registered on 19.5.1986 has been proved on record by the defendants."

7. I am of the clear view that defendants, who are appellants before this Court, would be estopped from challenging the title of mortgagor once the mortgage deed Ex. P-1 on the basis of which the suit was filed, is not assailed by virtue of principle enshrined in Section 116 of the Indian Evidence Act, 1872. The above view is based on the settled principle that the mortgagee cannot dispute the title of mortgagor.

8. Since the suit was for redemption based on mortgage, the question whether the property was an evacuee property or not was not at all relevant to the issue, especially when appellant No. 1 purchased the property during pendency of the suit. Therefore, substantial question No. 1 is answered accordingly because for that matter, the appellants can set up such a claim based on title only after they surrender possession of the disputed property to the plaintiffs in execution of the decree for possession. Since the validity of the conveyance deed obtained by the appellants in the year 1986 is not a relevant fact in issue, substantial question No. 2 pales into insignificance.

No merit in the instant appeal.

Dismissed.