

(2000) 08 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1797 of 1999 (O&M)

Parminder Kaur

APPELLANT

Vs

Ajit Kaur

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2001) 1 LJR 485 : (2000) 4 RCR(Civil) 349

Hon'ble Judges : M.L.Singhal, J

Advocate : Mr. Munishwar Puri, Advocate, Mr. Jasmer Singh Verka, Advocate.,
Advocates for appearing Parties

Judgement

M.L. Singhal, J.—Balwant Singh filed suit for possession through redemption of house situated at Kairon Road, Patti as detailed in the heading of the plaint against Gurmukh Singh and Prem Singh on payment of Rs. 5500/ as mortgage amount or any other amount which the Court might find payable on redemption.

2. That suit was preliminarily decreed for possession through redemption subject to deposit of Rs. 7000/ vide order dated 10.9.1994 by Sub Judge Ist Class, Patti. The amount of Rs. 7000/ was deposited in the State Bank of Patiala Branch, Patti on 14.10.1994. Thereafter, Balwant Singh filed application for the passing of final decree and for possession. Prem Singh contested the application saying that the appeal against the preliminary decree is already pending to the Court of Additional District Judge, Amritsar and he is in possession as prospective vendee on the basis of agreement to sell dated 24.9.1992. He prayed for the dismissal of the application for the passing of final decree.

3. On the pleadings of the parties, the following issues were framed :

1. Whether the applicant is entitled to final decree as prayed for ? OPA
2. What is the effect of pendency of civil suit No. 12 of 1994 titled as Prem Singh v. Balwant Singh pending in the Court of Sh. J.P. Mehmi, Addl. Senior Sub Judge, Patti ? OPR

3. Relief.

4. Civil Judge (Jr. Division), Patti allowed this application and passed final decree for possession in favour of the plaintiff against the defendants. It was found that the mere fact that appeal of the plaintiff against the preliminary decree was pending is no bar to the passing of the final decree. It was found that Prem Singh cannot hold on to possession of the property merely because there is an agreement to sell in his favour. He must surrender possession when there is a decree for possession through redemption in favour of the plaintiff. It was also found that in the agreement to sell, it is specifically mentioned that the possession will be delivered to Prem Singh at the time of execution of the sale deed.

5. Appeal filed by Prem Singh against the order of Civil Judge (Jr. Division), Patti dated 9.9.1996 was dismissed by the Additional District Judge, Amritsar vide order dated 2.6.1997.

6. Smt. Parminder Kaur and others, who are heirs of Prem Singh, have come up in appeal to this Court against the order of Additional District Judge, Amritsar dated 2.6.1997.

7. There is 632 days delay in the filing of this appeal to this Court. For getting the delay condoned, Mrs. Parminder Kaur and others have filed application under Section 5 of the Limitation Act.

8. It is stated in this application that Prem Singh died on 13.5.1998 in a road accident. They came to know on 14.11.1998 that the heirs of Balwant Singh are taking out execution of the decree. Sub Judge, Patti had disposed of two civil suits against which both the parties had filed appeals before the District Judge, Amritsar. Appeal filed by Mrs. Parminder Kaur was dismissed by the Additional District Judge, Amritsar on 2.6.1997. Appeal filed by Balwant Singh was also dismissed on 2.6.1997.

9. Balwant Singh has already filed appeal in the High Court. Prem Singh was confined to bed. He was suffering from mental depression. Smt. Parminder Kaur and others came to know that Prem Singh could hardly contest the appeal of Balwant Singh. He failed to file his own appeal. They were not aware if he had applied for certified copy of the judgment. It is further stated that Smt. Parminder Kaur is a hapless widow. She is mother of three minor children. She has no other property except the house in dispute. On 18.11.1998, they came to know that they had not filed appeal. After investigation, they applied for certified copy of the judgment passed by the Additional District Judge on 24.2.1999. They received certified copy of the judgment on 4.3.1999. Thereafter, they filed this appeal.

10. This application has been opposed by the respondents urging that this appeal is apparently barred by time. It was denied that the appellants came to know on 14.11.1998 when required to appear in Court in execution. Appeal of Prem Singh

was dismissed by the Additional District Judge, Amritsar on 2.6.1997. Limitation for filing the appeal in the Court expired on 1.9.1997 when Prem Singh was alive. Prem Singh did not apply for obtaining certified copy of the Court's order to file appeal. It was only on 24.2.1999 that the certified copy of the order was applied for and was received on 4.3.1999. Appeal was filed on 31.5.1999. There is no explanation for the delay that elapsed between 1.9.1997 till 13.5.1998. There is no explanation for delay that elapsed after 13.5.1998. There is no explanation for delay after they had come to know of the execution. Counsel for Prem Singh appeared in RSA No. 2948 of 1997 on 5.3.1998 (which has arisen out of suit for specific performance). In that RSA copy of order dated 2.6.1997 of Additional District Judge, Amritsar was attached.

11. In my opinion, there is no reason to condone 632 days delay in filing this appeal. Additional District Judge, Amritsar passed order on 2.6.1997 dismissing the appeal of Prem Singh. Prem Singh was alive till 12.5.1998. He died on 13.5.1998. During his life time, he never applied for certified copy of the order so that he could file appeal. As per Smt. Parminder Kaur, they came to know of the order dated 2.6.1997 when they were called upon to appear in execution on 14.11.1998 and it is after 14.11.1998 that they applied for certified copy of the order. This is not correct. They applied for certified copy of the order on 24.2.1999. They received certified copy of the order on 4.3.1999. Balwant Singh is the owner of the house.

12. Assuming that there is merit in the prayer of Smt. Parminder Kaur and others for condonation of delay in filing the appeal beyond limitation, Smt. Parminder Kaur and others do not have any case on merit. Balwant Singh, who is owner of this house mortgaged this house with possession to Gurmukh Singh, which was preliminarily decreed. Balwant Singh made application for the passing of final decree and for possession. Vide order dated 9.6.1996. Civil Judge (Jr. Division), Patti, allowed his prayer for the passing of final decree and for possession of the house. Prem Singh went in appeal. Appeal was dismissed by Additional District Judge, Amritsar. Prem Singh's case was that on the basis of agreement to sell dated 24.9.1992, Balwant Singh had agreed to sell his house to him and he had received Rs. 10000/ as earnest money and had undertaken to execute sale deed on 13.11.1992. His case was that the house in dispute is under mortgage for a sum of Rs. 7000/ with Gurmukh Singh and there was recital in the mortgage deed that the mortgage shall not be redeemable for a period of 5 years since 16.11.1988. It was recited in the mortgage deed that Prem Singh shall pay Rs. 7000/ to Gurmukh Singh mortgagee and have the mortgage redeemed. Prem Singh filed suit for specific performance which was decreed by Additional Senior Sub Judge, Patti vide order dated 28.8.1995. Suit for specific performance remained decreed by the Additional District Judge, Amritsar in appeal also. Balwant Singh is in regular second appeal before this Court. Why should decree for possession through redemption obtained by late Balwant Singh now represented by Ajit Kaur and others be not executed ? If Prem Singh had paid off the mortgagee and had taken possession in part performance of the agreement

to sell, that may not be of any consequence when it happened behind the back of the mortgagor. At the time when the agreement to sell was executed in favour of Prem Singh by Balwant Singh, the mortgage was subsisting in favour of Gurmukh Singh. At the time when agreement to sell was executed, how could possession be delivered by Balwant Singh to Prem Singh when possession was with Gurmukh Singh. So, this regular second appeal is dismissed.

13. CM No. 3348C of 1999 is allowed. Smt. Parminder Kaur and others are permitted to institute the appeal as legal representatives/heirs of Prem Singh deceased and prosecute it. This appeal cannot be treated to have been filed by Prem Singh a dead person as this appeal was not filed by counsel on the basis of any vakalatnama executed by Prem Singh in the court below in his favour. This appeal was filed by the Advocate as counsel acting for Smt. Parminder Kaur and others legal representatives/heirs of Prem Singh deceased.