

(2010) 08 P&H CK 0021
In the Punjab And Haryana At Chandigarh

Punjab and Sind Bank	Vs	APPELLANT
Smt. Kiran Bala and Others		RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Citation : (2010) 08 P&H CK 0021

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 10369.C of 2009

1. For reasons mentioned in the application which is accompanied by affidavit, delay of 68 days in filing the appeal is condoned. The application stands allowed accordingly.

RSA No. 3361 of 2009 and CM No. 10371.C of 2009

2. Defendant No. 4 (Punjab and Sind Bank) has filed the instant second appeal having remained unsuccessful in both the courts.

3. Suit was filed by Kiran Bala respondent No. 1 against respondents No. 2 to 4 (defendants No. 1 to 3) and appellant (defendant No. 4) The plaintiff's case is that she is owner in possession of the suit property having purchased it vide sale deed dated 8.2.1989. After getting necessary building plan sanctioned, plaintiff raised construction. The plaintiff who is employee of Punjab State also raised loan from Punjab State by mortgaging suit property vide mortgage deed dated 10.6.1993. The plaintiff is, thus, owner in possession of the suit house and is residing there with her family after completing the construction of the house in the year 1994. About a month before the filing of the suit, official of defendant No. 4 appellant bank came to enquire about the ownership of the house and told that the property had been mortgaged with the appellant-bank. On enquiry,

plaintiff learnt that defendant No. 1 Ram Chand (respondent No. 2) had forged sale deed dated 25.1.1995 in connivance with defendants No. 2 and 3 (respondents No. 3 and 4) who are witnesses of the sale deed, purporting to have been executed by plaintiff in favour of defendant No. 1 who then equitably mortgaged the suit house with appellant-bank by depositing title deed i.e. forged sale deed dated 25.1.1995. The plaintiff alleged that she never executed the sale deed which is forged and fabricated and the plaintiff continues to be owner in possession of the suit property. Only defendant No. 4 (appellant) contested the suit whereas defendants No. 1 to 3 were proceeded ex parte in the trial court.

4. Defendant No. 4, inter alia, pleaded that defendant No. 1 mortgaged the suit property with defendant No. 4 by deposit of title deed and defendant No. 4 advanced loan to defendant No. 1, after confirmation of title of defendant No. 1. Averments of the plaintiff were controverted.

5. Learned Civil Judge (Junior Division), Ludhiana vide judgment and decree dated 26.4.2006 decreed the plaintiff's suit. First appeal preferred by defendant No. 4 has been dismissed by learned Additional District Judge, Fast Track Court, Ludhiana vide judgment and decree dated 16.3.2009. Feeling aggrieved, defendant No. 4 has filed the instant second appeal.

6. I have heard Learned Counsel for the parties and perused the case file.

7. Plaintiff has led plethora of evidence to establish her case. She has proved sale deed dated 8.2.1989 whereby she purchased suit property from Uma Kalan. The plaintiff has also produced sale deed dated 25.10.1985 vide which Uma Kalan had purchased the suit property from Beant Singh. The plaintiff has also produced evidence regarding sanction of building plan by the Municipal Corporation at the instance of the plaintiff. She has also produced evidence of mortgage of the suit property by her in favour of Government of Punjab vide registered mortgage deed dated 10.6.1993 whereby plaintiff raised loan from her employer State of Punjab for raising construction. Plaintiff also led other evidence to depict that she continued to be in possession of the suit property and she was never dispossessed. The plaintiff has also examined handwriting expert to depict that alleged signatures of the plaintiff on impugned sale deed dated 25.1.1995 are not her signatures. On the contrary, contesting defendant No. 4 felt satisfied by merely examining its Manager. However, appellant's Manager admitted that he could not even tell boundaries of the suit property. He had not seen revenue record and he did not know who is presently in possession of the suit property. He also did not know if the plaintiff had mortgaged suit property with Government of Punjab on 10.6.1993. The witness also did not know Corporation number of the suit property. Thus, the evidence of the appellant was not sufficient to rebut the cogent evidence of the plaintiff-respondent No. 1.

8. Learned Counsel for the appellant vehemently contended that the appellant-bank had got the title of defendant No. 1 verified from Advocates before advancing loan to defendant No. 1 on the basis of impugned sale deed dated

25.1.1995. However the appellant-bank has not even examined the said Advocates who had given report regarding verification of title of defendant No. 1 over the suit property. Consequently, very strong inference arises against the appellant-bank.

9. Learned Counsel for the appellant contended that handwriting expert engaged by the plaintiff naturally gave opinion in favour of the plaintiff. However, appellant has not examined any handwriting expert to rebut the testimony of the handwriting expert examined by the plaintiff. Consequently, for this reason as well adverse presumption arises against the appellant.

10. In addition to the aforesaid, appellant bank has not examined the borrower defendant No. 1 to prove that the sale deed is genuine or that he is owner of the suit property or that he ever came in possession of the suit property. The appellant bank has also not examined attesting witnesses of the sale deed dated 25.1.1995 to prove the genuineness of the said sale deed. Consequently, adverse presumption arises against the appellant on this count as well. On the contrary, the plaintiff has led whatever evidence was possible. The plaintiff herself stepped into witness box and has also examined many witnesses to prove various documents and also to prove that she raised construction and is residing in the suit house with her family. On the contrary, there is no evidence to depict that defendant No. 1 ever came in possession of the suit property. Consequently, it is manifest that defendant No. 4 advanced loan to defendant No. 1 on the basis of impugned sale deed without proper verification because defendant No. 1 never came in possession of the suit property. Moreover, the suit property already stood mortgaged by the plaintiff with State of Punjab vide mortgage deed dated 10.6.1993 i.e. before execution of the impugned sale deed dated 25.1.1995 and the loan as per mortgage deed dated 10.6.1993 had not yet been cleared. Consequently, it cannot be said that the appellant had made proper verification of alleged title of defendant No. 1.

11. Learned Counsel for the appellant contended that the suit is time barred. Sale deed dated 25.1.1995 was challenged in the suit filed on 17.4.2001. Counsel for the appellant contended that the suit property was attached in the execution vide report Roznamacha Patwari dated 29.1.1999 and thereupon the plaintiff must have come to know about the sale deed. Learned Counsel for the appellant has cited judgment of this Court in Gajjan Singh v. Virsa Singh and Ors. 2007 (3) RCR (Civil) 3, in support of the aforesaid contention.

12. I have carefully considered the aforesaid contention but find no merit therein. The plaintiff possibly could not imagine or dream that sale deed dated 25.1.1995 had been forged and fabricated on her behalf regarding the suit property. She has stated that she came to know of the sale deed when appellant's official came to the spot about a month back before filing of the suit. There is no reason to disbelieve her testimony to this effect. On the contrary, even if it is assumed that the plaintiff learnt of the sale deed dated 25.1.1995 when the property was allegedly attached on 29.1.1999 even then, the suit filed

on 17.4.2001 is within limitation period of three years. Judgment in the case of Gajjan Singh (supra) is not applicable to the facts of the instant case because in that case the sale deed had even been acted upon and possession had been transferred to the vendee and therefore, vendor-plaintiff could not be ignorant of the sale deed and was thus, aware of the sale deed since the date of its execution. In that case sale deed dated 28.6.1983 was challenged in suit filed on 5.12.1994 i.e. after eleven and half years and it was so when the plaintiff was not even in possession of the suit property. On the contrary, in the instant case the plaintiff continued to be in possession of the suit property throughout and the alleged vendee defendant No. 1 never came in possession of the suit property. Consequently, the instant suit filed by plaintiff-respondent No. 1 cannot be said to be barred by limitation in any manner.

13. There is concurrent finding against the appellant by both the courts below. The said finding is based on proper appreciation of evidence and cannot be said to be perverse or illegal so as to warrant interference in this second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. Accordingly, the appeal is dismissed. Consequently, CM No. 10371.C of 2009 for stay stands dismissed as infructuous.