
(1991) 03 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 212 of 1979

Sohan Lal

APPELLANT

Vs

Shiv Darshan Lal

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Citation : (1991) PLJ 466 : (1991) 2 RRR 322

Hon'ble Judges : A.S.Nehra, J

Advocate : Rajinder Pal Singh, Advocate, Gopal Mahajan, Advocate., Advocates for appearing Parties

Judgement

A.S. Nehra, J.—This appeal has been filed by the plaintiffappellant the judgment and decree dated 16.9.1978 passed by the Additional District Judge, Ambala, by which the appeal filed by the plaintiffappellant was dismissed and the judgment and decree dated 22.5.1975 passed by the trial Court was upheld.

2. It was alleged by the plaintiffappellant that he and his two brothers, namely, Mangat Rama and Manohar Lal, defendantsrespondents Nos. 6 and 7, were allotted land in lieu of their land in Pakistan on quasi permanent basis and, subsequently, proprietary rights were conferred on them, vide sand dated 21.12.1955, that the plaintiffappellant and his two brothers took possession of the land allotted to them in the year 194950 and continued to be in possession of the same till December, 1955, when the proprietary rights were conferred on them; and that, at that time the land was free from encumbrances. In the alternative, it was alleged by the plaintiff that if there was any encumbrance of mortgage, that stood extinguished on account of the adverse possession of he plaintiff for more 12 years over the suit land. It was further alleged by the plaintiff that defendantsrespondents Nos. 1 to 5 conspired with the revenue staff and factiously got a report made and, on that basis, obtained symbolical possession of the land in suit as mortgagees, thus casting cloud on the free title of the plaintiff and his brothers. The allegation of the plaintiff was that the revenue authorities were not competent to create any mortgage on the land of

the plaintiff and the act of the revenue authority was without jurisdiction. It was further alleged by the plaintiff that, taking undue advantage of the entries in the revenue record, defendantsrespondents Nos. 1 to 5 filed an application under Section 14A of the Punjab Security of Land Tenures Act against the plaintiff, alleging that the plaintiff was in possession of the land in suit as a tenant, which was not a fact. On the above facts, the plaintiffappellant brought a suit for declaration to the effect that he and his brothers (defendantsrespondents Nos. 6 and 7) were the owners of the land, in dispute, and that defendantsrespondents Nos. 1 to 5 had nothing to do with the land as mortgagees, with the consequential relief of permanent injunction restraining defendantsrespondents Nos. 1 to 5 from interfering in the possession of the plaintiff and his two brothers.

3. Defendantsrespondents Nos. 1 to 5 contested the suit and filed written statement alleging that the allotment of the land of the plaintiff and his two brothers was subject to their mortgagee rights and the land allotted was not free from encumbrance. They asserted their possession over the land, in dispute, as mortgagees, as the land was mortgaged by the father of the plaintiff and defendantsrespondents Nos. 6 and 7, to their ancestors more than 60 years back and the right of the plaintiff to redeem that land had extinguished. The plaintiff was stated by them to be tenant at will on the land in suit.

4. On the pleading of the parties, the following issues were framed :

(1) Whether plaintiff and defendants Nos. 6 and 7 are owners in possession of the land, in dispute ?

(2) Whether the land, in dispute, is free from all encumbrances ?

(3) Whether the suit land was allotted to the plaintiff and defendants Nos. 6 and 7 subject to mortgagee rights of the predecessorininterest of defendants Nos. 1 to 5 ?

(4) Whether the defendants Nos. 1 to 5 have become fullfledged owners of the land, in dispute ?

(5) Whether the plaintiff is a tenantatwill under defendants Nos. 1 to 5 ?

(6) Relief.

5. Issues Nos. 1, 2 and 3, which were taken up together by the trial Court, were decided against the plaintiff and it was held by the trial Court that the plaintiff and his brothers were not owners of the land, in dispute, that the land was not free from encumbrances : and the land was allotted to the plaintiff and his brother subject to the mortgagees' rights. Issue No. 4 was also decided against the plaintiff and it was held by the trial Court that defendantsrespondents Nos. 1 to 5 had become full fledged owners of the land in suit. Issue No. 5 was decided by the trial Court in favour of defendantsrespondents Nos. 1 to 5 and it was held that the plaintiff was their tenant. In the result, the suit of the plaintiff was dismissed by the trial Court on 22.5.1975.

6. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed an appeal in the Court of Additional District Judge, Ambala, and the same was dismissed on 16.9.1979.

7. The learned Counsel for the appellant has drawn my attention to the copy of order Exhibit PW 5/B by which the parchaclaim, was amended, and copy of the jamabandi for the year 196768 (Exhibit P2) showing in the "remarks" column that the entry of mortgage was being made in view of copy of sanad allotment dated 30.12.1967 and argued that the Rehabilitation Authorities could not amend the parcha claim and the sanad without notice to the plaintiffappellant and, therefore, the avoidmentioned order is violative of Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. The learned Counsel also argued that the sanction of mutation will not confer any right on the respondents.

8. The learned Counsel for the respondents argued that he land of the appellant was already mortgaged with the respondents from Pakistan and its allotment to the appellant and his brothers as also made subject to the mortgagee rights to the respondents and, therefore, there was no change either in the sanad or in the parchaclaim.

9. After considering the arguments advanced by the learned Counsel for the parties, I am of the opinion that there is no force in the contention of the learned Counsel for the appellant. A perusal of copy of provisional allotment chit Exhibit D1 would show that the land was allotted to the appellant and his brothers subject to mortgagee rights of the respondents, and sanad Exhibit P1 was granted with reference to the provision allotment order, the number of which was mentioned in the sanad. Therefore, it cannot be said that sanad Exhibit P1 was granted to the land claim form Exhibit D2 submitted by mangat Ram, brother of the appellant, on 27.3.1948 would go to show that his land in Pakistan was joint with his brothers and 32 Kanals of land was mortgaged with Krishan Lal and others for Rs. 4750/. This document has not been refuted by the plaintiffappellant in any manner. A perusal of copy of jamabandi (Exhibit D5) prepared in Pakistan in the year 194647 would go to show that the land of Sohan Lal appellant and others was under mortgage. In copy of fard taksim arazi (Exhibit D6) the land of Mangat Ram brother of the appellant, has been shown under mortgage with Jhagan Nath etc. Then there is copy of mutation No. 1599 (Exhibit D8) sanctioned on 17.7.1944 in Pakistan wherein Jagan Nath and Krishan Lal have been mentioned a mortgagees. The abovementioned documents would unmistakably show that the land of the appellant was under mortgage from Pakistan and the allotment in his and his brother's favour was made subject to the mortgagee rights. In view of the above, it would be clear that no change was made in sanad Exhibit P1. Moreover, the alleged amended sanad was neither produced by the appellant nor got produced from the respondents and, unless that sanad is produced, it cannot be said that any terms of the sanad have been varied. The onus was on the appellant and it was his duty to prove the

same but he has failed to do so.

10. A perusal of copy of judgment Exhibit D11 shows that the appeal filed by Sohan Lal plaintiffappellant against the order directing him to pay batai on the application of Shiv Darshan Lal and others (defendantsrespondents Nos. 1 to 5) under Section 14A of the Punjab Security of Land Tenures Act, was rejected by the Collector on 28.1.1971. Copy of judgment Exhibit D13 dated 8.1.1974 is also referred to. No appeal was filed by the plaintiffappellant against the aforesaid judgment. Sohan Lal plaintiffappellant who appeared as PW4, on crossexamination, himself admitted that the application of the defendantsrespondents was decided against him by the revenue authorities and that he deposited the amount within one week. He also stated that he file and appeal but the same was also dismissed and that he did not file any revision against the order.

11. As per parchaclaim (Exhibit D2) which was filed by Mangat Ram, defendantrespondent No. 6, on 27.3.1948, the land was mortgaged with Krishan Lal etc. for Rs. 4750/-. The correctness of the entire made in this parchaclaim (Exhibit D2) has not been disputed by the plaintiffappellant. Therefore, from the perusal of this document alone, it can be safely held that this property was mortgaged with the ancestors of defendantsrespondents Nos. 1 to 5 in the year 1910. It is an admitted fact that is not the case of the plaintiffappellant that any suit was filed by him for redeeming or recovering the possession of this land from the mortgagees. Under Article 61(a) of the Schedule attached to the Indian Limitation Act, the limitation for filing any suit for redemption is 30 years, and, therefore, even after giving the allowance of 7 years more, as provided under Section 30 of the Indian Limitation Act, 1963, the period of limitation for filing this suit for redemption has expired and, therefore, as provided under Section 27 of the Indian Limitation Act, the right of the plaintiffappellant to redeem this mortgaged property stands extinguished. In this view of the matter, it is held that defendantsrespondents Nos. 1 to 5 have become fullfledged owners of the land, in dispute. Finding given by both the Courts below on issue No. 5 is also correct and, therefore, in view of my above discussion, there is no merit in this appeal and the same is dismissed with costs.