

MOHINDER SINGH
v.
STATE OF PUNJAB AND ORS.

JANUARY 23, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Mortgage:

Order of District Collector directing redemption of mortgaged property attained finality pursuant to dismissal of SLP—Objections filed by Appellant in execution of the order of redemption—His contention that said property was earlier mortgaged in favour of him and his brother, which had not been redeemed—Held: Purported receipt by mortgagor from Appellant and his brother not proved, hence, cannot be relied upon—Appellant raised unnecessary objections in execution of order of redemption—Even otherwise, his contention barred by principle of constructive res judicata—Code of Civil Procedure, 1908—Res judicata—Constructive res judicata.

The District Collector passed order directing redemption of mortgaged property. That order attained finality pursuant to dismissal of SLP by this Court. In proceedings for execution of the order of redemption, Appellant filed objections. He contended that the said property was earlier mortgaged in favour of him and his brother, which had not been redeemed. The property was allegedly mortgaged in favour of Appellant and his brother on purported receipt of a sum of Rs.425. Objections filed by the appellant in the said proceedings were rejected. However, appeal preferred by appellant was allowed. But the order was set aside in second appeal by the Financial Commissioner, Revenue. High Court upheld the order of the Financial Commissioner. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. The contention of the appellant, that keeping in view the fact that the first mortgage was not redeemed, the second mortgage could not have been directed to be redeemed, in the facts and circumstances of the case, is misconceived. [Para 12] [1189-A]

A 1.2. From the conduct of the parties, it is evident that while creating the purported second mortgage, the first mortgage was redeemed. The second mortgage deed was registered. There was no reason why it was not acted upon. [Para 13] [1189-B]

B 2.1. In the civil suit, a finding of fact had been arrived at that the order for redemption was valid in law. The said decree passed by the Civil Court attained finality. [Para 15] [1189-E]

C 2.2. Contention of the appellant that the factum in regard to the issuance of the said receipt of Rs. 425 having not been brought on records in the earlier proceedings, the impugned order cannot be sustained is wholly fallacious. If the receipt in question was to be brought on record, it was for the appellant to do so. He having failed to do so, now cannot be permitted to turn round and contend that the said receipt should be taken into consideration by this Court. [Para 16] [1189-F]

D 2.3. The Financial Commissioner in his order has taken into consideration all aspects of the matter. It has been found that miscarriage of justice had taken place. Keeping in view the factual background obtaining in this case, it is held that the appellant had raised unnecessary objections in execution of the order of redemption passed by the Collector. Even otherwise, the contention of the appellant is evidently barred by the principles of constructive *res judicata*. In any event, the said purported receipt having not been proved in accordance with law, no reliance can be placed thereupon. [Paras 17 & 18] [1189-G-H, 1190-A]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 325 of 2007.

From the Judgment/Final Order dated 10.4.2003 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 5717/2003.

G Rajesh Srivastava for the Appellant.

Chandra Prakash Pandey, Sanjay Jain, Mukesh Kumar, Vinay Arora and Sudarshan S. Rawat for the Respondents.

H The Judgment of the Court was delivered by

S.B. SINHA, J. : 1. Leave granted. A

2. Assailing an order dated 28.08.2002 passed by the Financial Commissioner (Revenue), Punjab, the appellant herein filed a writ petition before the Punjab and Haryana High Court which by reason of the impugned judgment dated 10.04.2003 has been dismissed. B

3. The fact of the matter is as under:

One Telu Ram s/o Hira, resident of Kotla Power House, Tehsil Anandpur Sahib District Ropar, Punjab mortgaged 38 K 14 M of land with the appellant and his brother Lachman Singh in equal shares on receipt of a sum of Rs. 425. On consolidation of the land, new Khasra Numbers 159, 160, 536, 538, 541, 545, 546, 547 and 549 were carved out in lieu of the old Khasra Numbers. C

4. Appellant herein claimed that he and his brother had been put in possession of the said mortgaged land. Without, however, redeeming the mortgage, Telu Ram again mortgaged the said land in favour of Harjap Singh, Sohan Singh, Surjit Singh and Manjit Singh. In the said deed of mortgage dated 21.11.1978, it was stipulated: D

“I now mortgage 1/4th of the said land to Harjap Singh son of Shri Jagat Singh, ¼ of the said land to Sohan Singh son of Shri Lachman Singh @ Bakhtawar Singh adopted son of Chanan Singh and ½ of the said land in equal shares to Surjit Singh and Manjit Singh sons of Mohinder Singh son of Shri Jagat Singh, residents of Badhal, Tehsil: Anandpur Sahib for Rs. 5000 the half of which is Rs. 2500 and received Rs. 4075 and Rs. 500 towards expenditure of registration and Rs. 425 is kept as Amanat with the mortgagees for being paid to Lachman Singh and Mohinder mortgagees which is to be paid to them and a receipt is to be obtained for the said payment. The possession of the land is given today. The income of the land will be adjusted against the interest of the mortgage money.” E
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G

5. However, the mortgagors allegedly received the said sum of Rs. 425 from the mortgagees wherefor a receipt was allegedly granted on 20.02.1979. Indisputably, an application for redemption of mortgage was filed by the H

A heirs and legal representatives of said Telu Ram before the Collector of the District on 17.06.1991.

B 6. By a judgment and order dated 28.04.1992, the Collector directed redemption of the said mortgaged property. It is not in dispute that the purported receipt dated 20.02.1979 had not been brought on records in the said proceedings.

C 7. The contention of the appellant that the same could not be done as he or his brother were not parties in the said proceedings, however, appears to be misplaced as it is stated at the bar that the endorsement was made in the deed of second mortgage itself.

D 8. A civil suit was filed by Harjap Singh and others questioning the said order of the Collector dated 28.04.1992. A decree was passed but an appeal thereagainst was filed by the heirs and legal representatives of Telu Ram before the District Judge, Ropar which was allowed by an order dated 03.03.1997. A second appeal preferred by the said Harjap Singh and others has been dismissed by the High Court.

E 9. Some of the lands in the mean time were sold by the heirs and legal representatives of Telu Ram in favour of Bhagat Singh and others who filed an application before the Assistant Collector, 1st Grade, Anandpur Sahib, District Ropar for possession of the lands in terms of the order of the Collector dated 28.04.1992. Objections filed by the appellant in the said proceedings were rejected. However, an appeal was preferred thereagainst by the appellant which by reason of a judgment and order dated 11.06.2002 was allowed. A second appeal preferred by the respondents herein before the Financial Commissioner Revenue, as indicated hereinbefore, was accepted.

F 10. It is not in dispute that the second mortgagees were the family members of the appellant and his brother.

G 11. It has also not been disputed that the matter had come up for consideration before this Court on an earlier occasion from a judgment and order passed by the High Court in the second appeal and the said special leave petition was dismissed. The direction for redemption of mortgage issued by the Collector, therefore, attained finality.

H

12. The contention of the appellant, that keeping in view of the fact that the first mortgage was not redeemed, the second mortgage could not have been directed to be redeemed, in the facts and circumstances of the case, is misconceived.

13. From the conduct of the parties, it is evident that while creating the purported second mortgage, the first mortgage was redeemed. Harjap Singh is the brother of Mohinder Singh, Sohan Singh is the son of Lachman Singh, Surjit Singh and Manjit Singh are the sons of Mohinder Singh. The second mortgage deed was registered. There was no reason why it was not acted upon.

14. The story that the aforementioned sum of Rs. 425 was taken back from the mortgagees by said Telu Ram admittedly had not been proved. It has been accepted before us that the said contention had not been raised in the earlier proceedings. On our query as to whether the said receipt had been exhibited before the concerned authorities, it has been accepted that the said receipt was not duly proved and marked as an exhibit in the proceeding before the Collector.

15. In the civil suit, a finding of fact had been arrived at that the order for redemption in favour of Telu Ram and Radha Krishan was valid in law. As indicated hereinbefore, the said decree passed by the Civil Court attained finality.

16. Contention of the learned counsel for the appellant that the factum in regard to the issuance of the said receipt having not been brought on records in the earlier proceedings, the impugned order cannot be sustained, in our opinion, is wholly fallacious. If the receipt in question dated 20.02.1979 was to be brought on record, it was for the appellant to do so. He having failed to do so, in our opinion, now cannot be permitted to turn round and contend that the said receipt should be taken into consideration by this Court.

17. The Financial Commissioner in his order dated 28.08.2002 has taken into consideration all aspects of the matter. It has been found that miscarriage of justice had taken place.

18. Keeping in view the factual background obtaining in this case, we have no hesitation to hold that the appellant herein had raised unnecessary

A objections in execution of the order of redemption passed by the Collector. Even otherwise, the contention of the appellant is evidently barred by the principles of constructive *res judicata*. In any event, the said purported receipt having not been proved in accordance with law, no reliance can be placed thereupon.

B For the reasons aforementioned, there is no merit in his appeal which is dismissed accordingly with costs. Counsel's fee assessed at Rs. 25,000.

B.B.B.

Appeal dismissed.