

CASE NO.:

Appeal (civil) 5845 of 1994

Appeal (civil) 3647 of 2002

PETITIONER:

NARINDER SINGH AND ORS.

Vs.

RESPONDENT:

KISHANSINGH (DEAD) BY LRS. & ORS.

DATE OF JUDGMENT: 08/07/2002

BENCH:

D.P.MOHAPATRA, BRIJESHKUMAR.

JUDGMENT:

Thakar Dwara Bhagwan NarainjiPindori Dham through Mahant Govind Dass

Vs.

Sarabjit Singh & Ors.

J U D G M E N T

D.P.MOHAPATRA, J.

Leave granted in SLP (Civil) No.3444 of 2000. These appeals are inter-linked with each other. The result in the appeal arising from SLP (Civil) No.3444 of 2000 depends on the decision in Civil Appeal No.5845 of 1994. For the sake of convenience we will first deal with Civil Appeal No.5845 of 1994.

This appeal filed by some of the judgment-debtors is directed against the judgment dated 20.7.1993 passed by the High Court of Punjab and Haryana dismissing the Revision Petition, C.R.No.2092 of 1988 filed by the appellants and confirming the order of the Senior Subordinate Judge, Gurdaspur dated 6.8.1988. In the said order the objections filed by the appellants under section 47 of the Code of Civil Procedure were dismissed and warrant of possession was ordered to be issued.

The predecessors in interest of respondent No. 1 filed suit No.493/62 against Karam Singh and six others, in the Court of the learned Senior Subordinate Judge, Gurdaspur for redemption of land measuring 1906 kanals 19 marlas which were originally mortgaged for Rs.10000/- by Sarbans Singh and his father Ishar Singh (deceased) by a registered mortgage deed dated 23.4.1925. The details of the mortgaged land were given in Appendix I to the plaint. The following reliefs were sought in the plaint:

"The plaintiffs pray that a decree for redemption of land measuring 1906 kls. 19 mls. Originally mortgaged by Sarbans Singh and Ishar Singh for Rs.10,000/- by mortgage deed dated 23.4.1925 regarding the land situated

in village Talabpur Tehsil and Distt. Gurdaspur and as detailed in appendix I attached to the plaint already without payment of any further charge be passed in plaintiff's favour and the plaintiffs be also given possession by redemption of 100/217 share from out of land in appendix II(h) measuring 293 kls. 19 mls. Attached to the plaint already as detailed in the heading of the plaint para (b) from out of land in Appendix II(h) and also decree for possession of 67 kls. 12 mls. of land killas No. 6/24 & 25, 15/1 & 10 and 16/3/2,4,5,6,7, 8/1 be passed without payment of any further charge as the decree is dated 25.1.1960 and 4.6.1962 on the basis of which the possession was obtained by defendants 1,2 and 3 was passed on the basis of mortgage deed dated 23.4.1925 which stands redeemed and a decree have become ineffective as against the rights of the plaintiffs. The plaintiffs be also given a decree for permanent injunction as a consequential relief restraining defendants : 1 to 3 from interfering in anyway in the land covered by the above decrees or mortgage deed. The plaintiffs be given costs of the suit as well. They may also be given such further or other release to which they may be for legally as well equitably entitled to."

The suit was contested by defendants 1 and 2 Gonda Singh and Gurdayal Singh the predecessors in interest of respondents 3 to 9. Karam Singh defendant no.4 who is the predecessor in interest of the appellants filed a written statement but did not contest the suit. The learned Senior Subordinate Judge, Gurdaspur by judgment dated 30.11.1963 decreed the suit preliminarily. The operative portion of the judgment reads as follows:

"In view of the above discussion and finding on issues 1 and 2, the plaintiffs must pay the sum of Rs.29676/- to the defendants 1 and 2 before they can get the land in suit redeemed. They are not entitled to the decree for a declaration prayed for nor they can recover possession of 100/217th share of the land detailed in clause B of the heading of the plaint, without getting it redeemed along with the other area. Hence, I grant the plaintiffs a preliminary decree for possession by redemption of the land in suit on payment of Rs.29676/- to the mortgagee defendants 1 and 2 and the rest of the suit is dismissed.

The plaintiffs are allowed three months time to deposit the aforesaid amount

for payment to defendants 1 and 2, failing which the defendants will be entitled to apply for final decree. Under the circumstances of the case parties are left to bear their own costs."

The appeal filed by the contesting defendants against the judgment was dismissed by the High Court on 20.11.1973.

On the application (Misc. Application No.3/74) filed by the plaintiffs under Order 34 Rule 8 read with Section 151 of the Code of Civil Procedure, for a final decree the learned Senior Subordinate Judge, Gurdaspur by the Order dated 7.2.1975 allowed the application on the following terms :

"As a result of what has been discussed above, this application succeeds and is hereby accepted with costs and the final decree, as claimed for, is passed in favour of the appellants. The respondents are ordered that they should deliver the documents, referred to in the preliminary decree, to the applicant and also re-transfer, at the costs of the applicants, the mortgaged property, as directed in the preliminary decree. They are further ordered to put the applicants, in possession of the property in dispute."

The plaintiffs filed an application (the first Execution Petition) under Order 21 Rule 11 of the Code of Civil Procedure on 7.4.1975 seeking execution of the decree through which they recovered possession of a part of the suit lands to the extent of 887 kanals 14-1/3rd marlas. About 10 years thereafter the decree holders filed another application (the second Execution Petition No.148/85) under Order 21 Rule 11 Code of Civil Procedure on 7.10.1985 seeking recovery of possession of 699 kanals of the suit land, the details of which were attached to the application. In the said execution petition the judgment-debtors, who are appellants herein, filed objection under Section 47 of the Code of Civil Procedure (Objection Petition No.15 of 1986) objecting to the execution of the decree so far as the share of Karam Singh in the suit properties was concerned, alleging that the second execution petition was barred by the principles of res-judicata; that Letters Patent Appeal No.1009 of 1983 filed by them against the final decree was pending in the High Court; that Karam Singh was not liable to pay any amount towards the mortgaged debt, and therefore, his property could not be affected by the decree under execution.

The learned Senior Subordinate Judge by his order dated 6.8.1988 rejected the objection raised by the appellants in the petition under Section 47 of the Code of Civil Procedure. Considering the case of the appellants he formulated following points for consideration:

"1) Whether the land mentioned in

Annexure 'B' pertaining details of the land under execution was allotted in lieu of the decretal land mentioned in Annexure 'A' during consolidation proceedings ?

2) whether the land of Karam Singh as mentioned in Annexure A was not subject matter of the suit-land ?

3) Whether Karam Singh got his land redeemed from the original mortgagee Mallo Ram in the year 1956 ? If so, its effect ?

4) Whether the execution application is barred by principles of resjudicata ?

5) Relief"

The learned Senior Subordinate Judge took note of the factual position that the decree holder had filed a suit for possession by redemption in respect of 1906 kanals and 19 marlas of land as detailed in Appendix I of the plaint; that the suit was in respect of the entire land; that Karam Singh was impleaded in that suit as defendant no.4; that he filed the written statement in the suit that the final decree pertain to 1906 kanals and as mentioned in the preliminary decree; and that all the defendants including Karam Singh and his successors in interest were bound by the decree. The learned Senior Subordinate Judge referred to the evidence of Harbinder Singh, one of the objectors (OW 6) and noted that he had not stated anything on the basis of which it could be held that the decree was not passed against Karam Singh but only against defendant nos. 1 & 2. Accordingly, the learned Senior Subordinate Judge answered point No.1 in favour of the decree holders. Regarding issue no.3 the learned Senior Subordinate Judge considered the contention raised on behalf of the objectors that Karam Singh was neither the mortgagor nor a mortgagee and he had no connection with the land which was the subject matter of the suit; that the entire suit land was allotted to Sarbans Singh and therefore no warrant of possession in respect of land of Karam Singh could be issued; the further contention of the objectors that Karam Singh got the land redeemed in 1956 and thereafter got it mutated in his name. Taking note of the accepted principle of law that the executing Court cannot go beyond the decree and judging the case in the light of the said principle and the specific directions in the decree, the learned Senior Subordinate Judge rejected the contention under point no.3 and answered the question in favour of the decree holders. On the plea of the execution petition being barred by res-judicata the learned Senior Subordinate Judge took note of the fact that the decree holders were entitled to recover possession of the entire suit property i.e. 1906 kanals 19 marlas but had got possession of only 887 kanals 14-1/3rd marlas in the first execution case; that they were entitled to seek recovery of possession of the remaining suit lands and as such the second execution petition was maintainable. This point was also answered by the learned Senior Subordinate Judge in favour of the decree holders. On the above findings the objection petition filed by the appellants was dismissed.

In the Civil Revision filed by the appellants challenging the order of the learned Senior Subordinate Judge, the High Court on consideration of the facts and circumstances of the case and on perusal of the records reiterated the finding recorded by the learned Senior Subordinate Judge and also referred to the settled position of law that Executing Court cannot go beyond the decree. The High Court observed that if Karam Singh had no connection with the land which was the subject matter of the suit then the successors in interest of Karam Singh should not have any grievance against execution of the decree. Regarding the plea taken by the objectors that Karam Singh had got his land redeemed and mutation had also been sanctioned in his favour in the year 1956, the High Court observed that no such plea was taken in the written statement filed by Karam Singh in the suit and that no title can be conferred merely by mutation. On the above considerations the High Court dismissed the revision petition and maintained the order passed by the learned Senior Subordinate Judge. The said order of the High Court is under challenge in these appeals.

Learned senior counsel appearing for the appellants strenuously urged that the decree-holders are not entitled to proceed with the execution case against the properties of Karam Singh or his successors-in-interest and cannot acquire their interest in the suit properties, inasmuch as the decree-holders purchased the property in the auction sale in the proceeding against Sarbans Singh who was declared as insolvent under the Provincial Insolvency Act. The learned senior counsel appearing for the respondents decree-holders on the other hand contended that the appellants are not entitled to raise this question at this belated stage. This question, the learned senior counsel contended, was neither raised as an issue in the suit nor in the final decree proceedings, and therefore, it is not open to the judgment debtors to raise the question at the stage of execution. The further contention was that as the Executing Court has held that it is not open to that Court to go beyond the preliminary decree and the final decree as it stands covers the entire area of 1906 kanals 19 marlas and the decree holders have complied with the conditions in the preliminary decree they are entitled to recover possession of the same. The learned counsel urged that in the facts and circumstances of the case this Court in exercise of its jurisdiction under Article 136 of the Constitution may not interfere with the Revisional order passed by the High Court.

We have perused relevant records. We have also considered the contentions raised by learned senior counsel appearing for both the parties. The Executing Court has given clear and cogent reasons for not accepting the objections taken by the appellants in the petition filed under section 47 of the Code of Civil Procedure. Even so, we have perused the relevant documents on record to satisfy ourselves that there is no erroneous statement of fact in the order passed by the Executing Court. We are satisfied that the order does not suffer from any such error. We are also satisfied that the approach of the Executing Court in the matter is legal and proper. It is clear to us that the judgment-debtors are making a last ditch effort to prevent the decree-holders from getting full benefit of the decree passed in their favour. As noted earlier the plea that Karam Singh had no liability to pay any part of the mortgage debt and his property having

been released from the mortgage in 1956 could not be a part of the suit property in the present case, was neither taken at trial of the suit nor before the Court in the final decree proceeding. Though in the order passed on the petition filed under Order 34 Rule 8 read with Section 151 of the CPC to make the decree final the fact that Sarbans Singh was declared an insolvent person in the proceeding under the Provincial Insolvency Act was noted, no plea that the preliminary decree did not cover the land of Karam Singh or his share in the suit land appears to have been taken. In the facts and circumstances, the Executing Court rightly rejected the objections raised by the appellants against execution of the decree. The High Court was, therefore, justified in declining to interfere with the order of the Executing Court.

In the result the appeal being devoid of merit is dismissed. There will, however, be no order for cost.

CIVIL APPEAL NO. OF 2002
(@ SLP (C) No.3444 of 2000)

The plaintiff Thakar Dwara Bhagwan Narainji Pindori Dham through Mahant Govind Dass having lost in the Trial Court and the First Appellate Court filed the RSA No.2649 of 1998 in the High Court of Punjab & Haryana. The High Court by the judgment rendered on 31st May, 1999 dismissed the Second Appeal. The said judgment is under challenge in this appeal.

The case of the plaintiff is that the suit property originally belonged to one Ishar Singh who had two sons, namely Sarbans Singh and Karam Singh. Sarbans Singh and his father Ishar Singh mortgaged the suit property in a simple mortgage deed dated 24.3.1925 in favour of one Dharam Singh. The said Dharam Singh executed a will on 25.3.1932 in favour of Guru Nanak Vidya Bhandar Trust Raisina, Delhi. The said Trust sold away the mortgage rights in favour of one Mallo Ram under a registered sale deed dated 16.5.1944. In the meanwhile Sarbans Singh executed a sale deed in favour of Mahant Ram Dass on 27.5.1930. The plaintiff claimed the land by virtue of the sale deed said to have been executed by Sarbans Singh transferring the equity of redemption in its favour. Mallo Ram on the basis of the transfer of the mortgage rights in his favour filed a suit on 9.1.1951 on the file of the Sub Judge, Gurdaspur and obtained a decree for possession and also obtained physical possession of the land in execution of the decree. Sarbans Singh was declared as an insolvent even prior to the execution of the sale deed in favour of plaintiff on 27th May, 1930. The dispute raised in the suit is whether the plaintiff who is claiming the property through Mahant Ram Dass acquired any right in the suit property?

It is the case of the defendants that they purchased the suit property in execution of the decree which has been passed on the basis of the mortgage deed. The sale of the property to the defendants was through the insolvency court and after the purchase through court the defendants were trying to execute the same. In the facts and circumstances noted above the plaintiff filed a suit for a declaration that the suit land belongs to Thakar Dwara Bhagwan Narainji Pindori Dham and the defendants

having no right or title threatened to dispossess the plaintiff forcibly. In addition to the above relief of declaration the plaintiff sought a decree of permanent injunction.

The result of the suit depends on determination of the question whether the defendants have purchased the mortgaged land to the extent of 1906 kanals 19 marlas, or any lesser extent of land? If it is held that the defendants have purchased 1906 kanals and 19 marlas of land they are entitled to recover possession of the said area since they had paid the entire amount fixed by the court. This way this appeal was linked with the Civil Appeal No.5845 of 1994 and with consent of learned counsel for the respective parties both the appeals were heard together.

In a separate judgment we have dismissed the Civil Appeal No.5845 of 1994 confirming the finding of the Executing Court and the High Court that the decree-holders, who are respondents herein are entitled to recover possession of the entire suit land i.e. 1906 kanals and 19 marlas. In view of the said finding this appeal has to fail. Accordingly, the appeal is dismissed but in the circumstances of the case without any order for costs.