

DEV RAJ (DEAD) THROUGH L.R.S.
v.
HARBANS SINGH (DEAD) THROUGH L.R.S.

FEBRUARY 19, 1996

[K. RAMASWAMY AND G.B. PATTANIAK, JJ.]

Transfer of Property Act, 1882 :

Land—Sale of on condition that the mortgage thereon is to be discharged by the buyer—Instalment amounts towards mortgage discharged by the Seller—Since condition not fulfilled the seller claimed that he was not bound by the sale—Held, evidence clearly shows that mortgage was discharged only by the seller—Buyer has not proved that he has advanced the money for discharge of mortgage—In that case he would have got his name mutated in Revènue records—Since condition not fulfilled by buyer, seller not bound by the sale.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4286 of 1996.

From the Judgment and Order dated 15.3.95 of the Punjab and Haryana High Court in R.S.A. No. 600 of 1995.

B.D. Sharma for the Appellants.

Neeraj Jain and Ms. Abha R. Sharma for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard counsel on both sides.

The appellant admittedly is the original owner of an extent of 18 canals and marlas of land. In his suit for declaration and injunction, the Trial Court decreed the suit, but on appeal, it was reversed. The High Court of Punjab and Haryana in Second Appeal No. 600/95 on March 15, 1995 confirmed the same.

The admitted facts are that the appellant being the owner, had sold

- A the property to the respondent. By the date of the sale, admittedly, it was subject to hypothecation with a bank for a sum of Rs. 5,000 that the respondent had to discharge. The appellant had paid three installments, as evidenced by the statement of Gurdial Singh, the clerk of the Primary Agricultural Bank, Hoshiarpur. It was also proved through his evidence that Ranjit Singh had paid the amount in three installments; one in the year 1975, other in December 1976 and the third one in December 1977. One payment was also made by Baljit Singh and final payment was made by the appellant himself on December 18, 1979. It is, thus, his case that he has discharged the loan taken by him, though the sale was executed in favour of the respondent. The sale being a conditional sale, as the respondent had not complied with the conditions, he is not bound by the sale. He has also pleaded that he perfected his title by adverse possession. The respondent pleaded in the written statement that the sale was for consideration and he had got the sale transferred in his name: he has legal possession; and, therefore, injunction cannot be granted. The Trial Court relied upon the payments made by Ranjit Singh s/o the appellant and that he had paid that amount. On that basis, the trial Court came to the conclusion that the respondents have not discharged the loan.

- In view of the specific evidence of Gurdial Singh, clerk of the Bank, it is obvious that the entire loan was discharged by the appellant himself.
- E It is not the case of the appellant that he had advanced that money to the respondent for discharge and on his behalf, the appellant had paid the debt to the Bank. In that view of the matter, it is obvious that the sale being a conditional sale, the respondent had not complied with the condition, the sale became voidable which is not in dispute. In all the mutation entries in the Revenue Records, the name of the appellant continued as the owner.
- F If really, the respondent had discharged the loans, one would expect that he would have got his name mutated in the Revenue Records. He never made such an attempt which would clearly show that he had not discharged the loan to the Primary Bank subject to which the sale was made. The appellate Court and the High Court have not approached the problem in the proper perspective in reversing the decree of the trial Court.
- G

The appeal is allowed. Judgment and decree of the High Court in Second Appeal and that of the appellate Court are set aside and that of the trial Court is restored. The suit stands decreed as prayed for. No costs.