

Beli Ram and Another

Vs

Salig Ram

Civil Appeal No. 559 of 1987

(S. C. Sen, Faizanuddin JJ)

24.11.1995

JUDGMENT

FAIZAN UDDIN, J. –

1. This appeal at the instance of the plaintiffs has been directed against the order dated 3-7-1986 passed in RSA No. 211 of 1986 dismissing the appeal summarily preferred against the judgment and decree dated 20-3-1986 passed by the Additional District Judge (II), Kangra at Dharamshala, H.P. in Civil Appeal No. 11 of 1986 setting aside the judgment and decree dated 14-12-1981 passed by the Sub-Judge, 1st Class, Dharamshala in Civil Suit No. 72 of 1980 whereby the plaintiffs' suit for possession of the land in suit by redemption was decreed.

2. This appeal has a chequered history the facts of which may be narrated thus :

Mehtaba, s/o Ghelu Ram, resident of Village Rakkar 1/12th share in the agricultural lands in question. Mehtaba mortgaged the same with possession with Salig Ram, the defendant-respondent herein, on 4-8-1937 for a sum of Rs 190. Plaintiff-Appellant 1 is the cousin of said Mehtaba and plaintiff-Appellant 2 Smt Ramo Devi is the sister of Mehtaba. The appellants shall hereinafter be referred to as plaintiffs and the respondent as defendant. The plaintiffs brought the suit for possession of land in question by redemption contending that mortgagor of land Mehtaba was not heard of for the last more than 7 years and, therefore, he is deemed to be dead under the law and the plaintiffs being the only heirs of Mehtaba are entitled to redeem the land. The plaintiffs alleged that they offered the mortgage amount of Rs 190 to the defendant requesting him to redeem the land by delivery of possession to them but the defendant declined to do so and hence they were forced to institute the suit for possession by redemption. The defendant contested the suit by filing the written statement traversing the aforementioned pleadings of the plaintiffs. The defendant took preliminary objections to the effect that Mehtaba was not dead but alive and that neither Plaintiff 1 was cousin nor Plaintiff 2, the sister of Mehtaba and, therefore, they had no locus standi to institute the suit for redemption during the lifetime of Mehtaba. The defendant also pleaded that the suit was not filed within time. The defendant pleaded that Plaintiff 2 Smt Ramo Devi had not appended her thumb impression on the plaint or Mukhtarnama and that her name has been fictitiously entered by Plaintiff 1 in the plaint. The defendant also pleaded that by their acts and conduct the plaintiffs are estopped from filing the suit.

3. Initially the plaintiffs adduced evidence in support of their claim for redemption but the defendant did not adduce any evidence nor examined himself as a witness on his behalf. Learned Civil Judge accepting the un rebutted evidence of the plaintiffs decreed the suit for possession by redemption by holding that Mehtaba has not been heard of for the last about 20 years and, therefore, he would be

presumed to be dead and the plaintiffs being his legal heirs had a right to file the suit for redemption. The defendant went up in appeal before the District Judge against the aforesaid judgment and decree passed by the Senior Sub-Judge, Kangra but the learned District Judge by his judgment dated 11-8-1975 affirmed the said decree passed by the trial court. The defendant then further appealed to the High Court. In the High Court the defendant made an application for amendment in his written statement as by then he along with one Khushi Ram had obtained a compromise decree on 9-1-1973 against Mehtaba from the Court of the Sub-Judge, Kangra. The High Court by order dated 28-6-1978 allowed the application of the defendant for amendment of a written statement and as a consequence of amendment in the pleadings remanded the case back to the trial court for a fresh trial after framing the additional issues which are as follows :

1. Whether the original defendants prove that the right, title and interest of Mehtaba in the disputed property have come to an end on 9-1-1973 on the basis of the decree obtained by the defendants in Civil Suit No. 223 of 1972 titled 'Khushi Ram v. Mehtaba' of the Court of the Sub-Judge, Kangra ?
2. Whether this decree has become final and has been executed as alleged by the defendants ?
3. Whether the above decree is legally binding on the plaintiffs in view of the fact that they were not parties to the above-referred Suit No. 223 of 1972 ?
4. Whether Mehtaba never appeared in Suit No. 223 of 1972, and whether the decree in the said suit is shown to have been obtained by the defendants through fraud and impersonation as alleged in paragraph 4 of the replication of the plaintiff ?
5. What ultimate order should be passed in the suit in light of the findings recorded by the court on the above issues ?

4. After remand, the learned Sub-Judge recorded the evidence as adduced by the parties on the aforementioned issues and again decreed the plaintiffs' suit for possession by redemption on the findings that Mehtaba had died a legal death for not being heard of for more than 7 years and that the compromise decree dated 9-1-1973 obtained by the defendant along with one Khushi Ram against Mehtaba in Civil Suit No. 223 of 1972 was obtained by fraud and impersonation. The defendant challenged these findings of the trial court in appeal before the District Court which was decided by the Additional District Judge (II), Kangra, being Civil Appeal No. 11 of 1986 who by his judgment dated 30-3-1986 reversed the findings of the trial court, set aside the judgment and decree and dismissed the suit of the plaintiffs by holding that it was not proved by the plaintiffs that Mehtaba was not heard of for the last more than 7 years and, therefore, he cannot be deemed to be dead at the time of filing of the suit by the plaintiffs on 30-12-1970 mainly on the basis of the statements Ext. D-3 and Ext. D-4 recorded by the Tehsildar in an enquiry in revenue proceedings initiated on an application alleged to have been made by Smt Ramo Devi, Plaintiff 2 in respect of the mutation of the land in her favour. Learned Additional District Judge, therefore, took the view that the plaintiffs had no locus standi to file the suit for redemption. Learned Additional District Judge relying on the evidence of Chaudhury Ram, DW 3 and Hari Singh, DW 4 further held that the compromise decree dated 9-1-1973 was not obtained by the defendant by practising any fraud or misrepresentation. The plaintiffs preferred an appeal before the High Court of Himachal Pradesh against the aforementioned judgment and decree of the Additional District Judge, but the High Court dismissed the appeal, as said earlier, summarily on 11-9-1975 against which this appeal under

Article 136 of the Constitution of India has been directed.

5. Learned counsel for the plaintiff-appellants made a vociferous attack on the findings recorded by the learned Additional District Judge with regard to Mehtaba as well as with regard to the alleged compromise decree dated 9-1-1975 for specific performance of an agreement which is said to have been executed by Mehtaba in favour of the defendant-respondent and one Khushi Ram sometime in the year 1966 which did not see the light of day till after the decision of the plaintiffs' suit twice for redemption by the learned Civil Judge. He submitted that the learned Additional District Judge took the perverse view by misappreciation of the evidence on record to the effect that it was not proved that Mehtaba was not heard of for more than 7 years prior to the institution of the suit for redemption. He also contended that the learned Additional District Judge fell in serious error in ignoring to take note of the material facts showing that the alleged agreement of sale of land to the defendant by Mehtaba was a rank forgery and the compromise decree obtained by the defendant on the basis of the alleged agreement was based on fraud and misrepresentation. He also submitted that the learned Additional District Judge was not justified in disturbing a well-reasoned judgment rendered by the learned trial Judge by substituting his own view based on misappreciation of the evidence on record which could not be sustained in law and that being the High Court was also not justified in dismissing the appeal summarily. After going through the entire evidence on record as well as the judgment of the trial court and the First Appellate Court, we find sufficient force and merit in the submissions made by the learned counsel for the appellants-plaintiffs. According to us, having regard to the facts on record, the trial court had taken a realistic and reasonable view in the matter but the learned Additional District Judge committed a serious error in taking a superficial view of the evidence on record resulting in miscarriage of justice. In our considered opinion, there was no justification for the Additional District Judge to upset the findings and the High Court to dismiss the plaintiffs' appeal summarily.

6. It may be noticed that the alleged agreement for sale of the suit land by Mehtaba in favour of the defendant and Khushi Ram is said to have been executed on 13-4-1966 at Dehra but the defendant did not disclose the said fact nor pleaded the same in his written statement filed on 17-6-1971 in the plaintiffs' suit for redemption till it was decreed on 27-12-1972. Not only this but the defendant did not come out with the alleged agreement for sale or passing of compromise decree against Mehtaba till he filed the appeal on 22-2-1973 against the judgment and decree against him dated 27-12-1972. From these facts it is clear that though the defendant had obtained the agreement from Mehtaba on 13-4-1966 and on that basis had already pocketed the compromise decree on 9-1-1973 yet he did not disclose the same in the appeal which was filed on 22-7-1973. Further, the alleged agreement is said to have been executed by Mehtaba at Dehra in favour of the defendant in the presence of Chaudhury Ram, DW 3 and Hari Singh, DW 4, Chowkidar resident of Tikka Chauli. The story set up by the defendant for execution of the alleged agreement on 13-4-1966 by Mehtaba at Dehra is surrounded by suspicious and mysterious circumstances which could not be explained by the defendant and yet he makes us believe the story to be true. It is surprising to note that without any pre-settlement or any intimation or knowledge about the whereabouts of Mehtaba - the defendant happens to meet Mehtaba suddenly at Dehra and, according to Chaudhury Ram, DW 3 near a "Peepal Ka Tala" (chabutra) and according to Chowkidar Hari Singh, DW 4 at the shop of the scribe Jagdish where the agreement was written and consideration was passed on to Mehtaba which was readily available with the defendant. The evidence of Chaudhury Ram, DW 3 and Hari Singh, DW 4 does not inspire any confidence at all and the witnesses do not seem to be trustworthy but got-up witnesses. As pointed out earlier, Chaudhury Ram, DW 3 deposed that the compromise deed was prepared near "Peepal Ka Tala" at Dehra while Chowkidar Hari Singh deposed that it was prepared by the scribe Jagdish at his shop at Dehra. Though both these witnesses do not belong to Dehra yet both of them

reached at the appointed date and time at the place where Mehtaba is said to be present so that the defendant may strike the deal.

7. Apart from the above facts there are other circumstances also which cast a serious doubt on the case set up by the defendant and evidence that Mehtaba had executed an agreement for sale of the land and then entered into a compromise by reason of which compromise decree was passed on 9-1-1973 in Civil Suit No. 223 of 1972. The defendant Salig Ram was examined as DW 5. He deposed that notice of the suit was served on Mehtaba and thereafter the compromise was effected but he is unable to state as to on which address of Mehtaba the said notice was served upon him. He then stated that Mehtaba had given his address of Baji Nath but when summons were sent on that address he was not found. He was unable to say as to on which address the summons were sent to him thereafter. He also stated that he did not know whether Mehtaba had appeared personally in the court at the time of compromise. Later, he admitted that Mehtaba did not appear in the court but his counsel Shri Dhani Ram had appeared on his behalf. The defendant Salig Ram also deposed that Shri Hem Raj was his counsel in the said suit but surprisingly enough the defendant neither examined Dhani Ram who is said to have represented Mehtaba in the suit filed by the defendant for specific performance of agreement nor he examined his own counsel Shri Hem Raj to substantiate his stand that in fact Mehtaba had entered into an agreement on the basis of which the compromise decree dated 9-1-1973 was passed. Not only this but the scribe Jagdish Chander who admittedly was alive at the relevant time was not examined by the defendant in support of his stand but he preferred to examine only the interested persons like DW 3 and DW 4 whose evidence suffers from serious infirmities and inspires no confidence. Having regard to these facts and circumstances the learned Additional District Judge was wholly unjustified in reversing the well-reasoned conclusions recorded by the trial court that the defendant had obtained the compromise decree by fraud and misrepresentation. Having regard to the evidence discussed above no other conclusion is possible and the findings recorded by the Additional District Judge could not be upheld at all.

8. Almost similar is the position with regard to the finding about the traceability of Mehtaba. The learned Additional District Judge ignoring the positive evidence adduced in the suit preferred to rely upon Ext. D-3 which is an order dated 30-6-1977 passed by the Sub-Judge, Dehra dismissing in default the C.M. Case No. 47-6 of 1976 titled as Beli Ram v. Khushi Ram and the statement of one Ram Kishan marked 'D', which is said to be recorded by the Tehsildar in a revenue case in the proceeding relating to mutation of land. It may be stated that Ext. D-3 is not helpful at all nor relevant to the facts of the present case. It is not understandable as to how the learned Additional District Judge accepted the said statement marked 'D' to be admissible in the present case. While admitting the said statements the learned Additional District Judge placed his reliance on the decision in Ram Pheran v. Shri Ram [AIR 1947 Oudh 174 : ILR 22 Luck 164] which in fact does not help in any way. There is positive and clinching evidence of Gorkhu Ram, PW 3, Rasil Singh, PW 4, Ramesh Chand, PW 5 and Ramo Devi, PW 6 to show that in fact Mehtaba has not been traceable or heard of for the last more than 7 years before the institution of the suit. He was not even traceable and heard of during the pendency of the suit and if it was for this reason that probably he could not be produced in evidence by the defendant and even service of summons on him personally in the suit instituted by the defendant against Mehtaba appears to be very doubtful. In these facts and circumstances there is absolutely no reason to disbelieve the testimony of the plaintiffs' witnesses and the reasons assigned by the learned Additional District Judge in brushing aside their evidence are wholly unfounded and unjustifiable. Consequently, there was no justification to reverse the findings of the trial court and the appeal, therefore, has to be allowed.

9. In the result the appeal succeeds and is hereby allowed. The judgment dated 20-3-1986 passed by

the learned Additional District Judge, Kangra as well as the order of the High Court dated 3-7-1986 are set aside and the judgment and decree passed by the trial court are restored. The defendant-respondent shall bear his own costs and that of the plaintiffs throughout.