

State of Punjab and Others

Vs

Ram Rakha and Others

Civil Appeal No. 350 of 1981

(S. Saghir Ahmed, K. Ramaswamy JJ)

06.02.1997

ORDER

1. Application for substitution and appointment of legal guardian is ordered.
2. This appeal by special leave arises from the judgment of the High Court of Punjab and Haryana at Chandigarh, made on 7-5-1980 in RSA No. 802 of 1980 confirming the judgment of the District Court dated 7-11-1979.
3. The admitted position is that one Gobind Mal, father of the respondents, had possessory mortgage from the holders of the suit land in the year 1887-88. When the land was declared as an evacuee property under the Evacuee Interest (Separation) Act, 1951, the Union of India claimed the land belonged to them. The respondents filed a civil suit for a declaration that after the expiry of the period of 60 years from the date of the mortgage, they have become absolute owners as the mortgage became irredeemable and as a consequence they are the owner of the property. Though the trial court has dismissed the suit, on appeal, it was reversed and decree was granted. The High Court in the second appeal confirmed it by dismissing it in limine. Thus, this appeal by special leave.
4. From the evidence on record, it is seen that mutation entries have been effected to show that the respondents were in possession of the property as mortgagees through the tenants. That evidence was corroborated by DW 2, Kanungo and the mutation order DW 2/1. The District Court also relied upon Jamabandi for the year 1887-88. Under those circumstances, the mutation in regard to year 1896-97 is only referable to the earlier mortgage of 1886-87. As a consequence, by the time the Act has come into force, the land became irredeemable by the original mortgagor. Resultantly, they had lost title to the hypotheca. The title to the land was rightly declared to belong to the respondents and it cannot be declared to be evacuee property nor the Government can claim interest in the land as evacuee property. The decree granted by the District Judge, therefore, is according to law and needs no interference.
5. The appeal is accordingly dismissed. No costs.