

# SUPREME COURT OF INDIA

State of H.P. and another

Versus

Akshara Nand (D) by Lrs. and others

(S. Saghir Ahmad and Doraiswamy Raju, JJ.)

Civil Appeal No. 8034 of 1995.

15.03.2000

## JUDGMENT

**D. Raju, J.** - The defendants in the suit, the State of H.P. and the Collector, Solan District are the appellants before this Court and the appeal has been filed against the judgment and decree passed by the learned Single Judge of the Himachal Pradesh High Court in R.S.A. No. 184\84, allowing the appeal and consequently decreeing the suit as prayed for, on setting aside the judgments and decrees concurrently passed by both the Courts below dismissing the suit filed by the plaintiffs, in respect of 29 bighas and 4 biswas.

2. The plaintiffs claimed the relief of declaration of the title to the suit properties and also for permanent injunction restraining the defendants from interfering with the rights and possession of the plaintiffs. The basis of the claim was that Smt. Gangi, widow of Chanchlu and Shri Chanchlu mortgaged the suit properties in all measuring about 35 bighas and 7 biswas situated in village Basha, Pargna Bagri Kalan, Tehsil Kandaghat, District Simla with the predecessors-in-interest of the plaintiffs more than 60 years before and inasmuch as the said mortgage has not been redeemed by the mortgagee or their successor-in-their interest, within a period of 30 years, the plaintiffs became the owners of the property. The mortgagee Shri Chanchlu was said to have died and thereafter his wife Smt. Gangi also died issueless. The case of the defendants was that the mortgage stood redeemed as early as on 9.8.1954, which fact also stood admitted by some of the plaintiffs in their statements given before the Tehsildar Kandaghat on 19.7.1976 and that therefore the property vested with the State by escheat since Smt. Gangi died issueless and there was no heir to succeed to the properties through the original owners.

3. The learned Trial Judge on consideration of the materials on record held that an extent of 6 bighas and 3 biswas could not be said to have been redeemed and that the redemption claimed could only related to the remaining extent of 29 bighas and 4 biswas. Accepting the stand of the defendants the suit claim was dismissed in respect of 29 bighas and 4 biswas. Aggrieved the plaintiffs pursued the matter on appeal before the first Appellate Court which also concurred with the findings of the learned Trial Judge and dismissed the appeal. Thereupon the matter was pursued before the High Court in a second appeal. The learned Single Judge of the High Court accepted the claim of the plaintiffs mainly on the grounds that the document marked as Ex.

PDA was inadmissible in evidence and could not have been relied upon by the Courts below for coming to the conclusion that the mortgage stood redeemed. Hence this appeal. We have heard the learned counsel appearing on either side.

4. We find the grievance of the appellants in this Court to be well-founded. The High Court appears to have done what is not permissible for it in a second appeal, be it one even filed under the unamended Section 100, CPC, by re-appreciating the evidence, adopting a process of elimination by being merely critical of the materials produced on behalf of the State without taking into account the cumulative effect of those materials and completely ignoring the fact that none of the plaintiffs have chosen to go into the box to substantiate their claims. The overwhelming materials of which due notice has been taken and consideration made by the Court below seem to have escaped the attention of the High Court in upsetting the concurrent findings of fact, recorded by the Courts below.

5. The High Court took objection to the admissibility of Ex. PDA on the ground that the application moved by the counsel for the State did not strictly conform to the requirement of Section 65 of the Indian Evidence Act, 1872. Apart from the correctness or otherwise of this view of the High Court, it should have at any rate remitted the matter to any one of the Courts below for proper consideration of this aspect of the matter, without completely foreclosing the rights of the State to properly prove the same, by giving an opportunity to do so. All the more so, when there was no challenge or dispute with reference to the admissibility of the said document by the plaintiffs at the appropriate stage before the trial Court or the first appellate Court. Even the grievance before the High Court seems to be not that the document is *per se* an inadmissible one but about the mode or method of proof only.

6. Consequently, we accept the appeal and set aside the judgment and decree passed by the High Court and direct the matter to be remitted to the file of the first appellate Court to restore the appeal to its original number and consider the same afresh, after giving an opportunity to the defendant-State to properly prove the said document Ex. PDA. Parties on either side are permitted to lead evidence only in respect of this aspect and thereupon the first appellate Court shall dispose of the appeal in the light of all the materials on record, expeditiously since the matter is a very old one. The parties shall bear their costs.

Appeal allowed.