

decree which has been impugned in the present appeals. Additionally, before the High Court a concession was made on behalf of the plaintiffs by his learned counsel that the subject matter of the Second Appeal may be understood to be confined to the land excluding the shop house. Accordingly, the decree of redemption was confined to the land. Aggrieved by the decree of redemption the defendants have filed Civil Appeal No.8807 of 2012 before this Court whereas aggrieved by the exclusion of the shop house from the ambit of the decree the plaintiffs have filed Civil Appeal No.8808 of 2012.

3. We have heard the learned counsels for the parties.

4. The exclusion of the shop house from the ambit of the decree is based on a concession. Though in Civil Appeal No.8808 of 2012 filed by the plaintiffs the application for review of the final decree has not been enclosed, the order of the High Court dated 18th December, 2006 passed in Review Application (i.e. Misc. Application No.111 of 2006) would go to show that the contention before the High Court in the Review Application was that no concession was made. This was answered by the High Court in the following terms:

"Heard learned counsel for the applicant and perused the application. I vividly remember that the observations have been made correctly, and on the basis of the concession made by the learned counsel. The averments made in the application are replete with falsehood, and absolutely wrong. The application is, therefore, dismissed with Rs.5000/- costs."

5. In view of the consistent judicial opinion that the record of proceedings of a Court is the best evidence of what had transpired in the Court we will have no occasion to find any fault in the aforesaid order dated 18th December, 2006 of the High Court which has been assailed in Civil Appeal No.8808 of 2012 by the plaintiffs. Accordingly, the aforesaid Civil Appeal (No.8808 of 2012) is dismissed.

6. This will bring us to a consideration of the Civil Appeal filed by the defendants i.e. Civil Appeal No.8807 of 2012. The cardinal point in this appeal (i.e. Civil Appeal No.8807 of 2012) is with regard to the existence of a valid mortgage deed(s). While the plaintiffs' endeavour to prove the mortgage deed(s) on the basis of secondary evidence i.e. certified copy/ies of the mortgage deed(s) as the original mortgage deed(s) was with the

defendants who did not produce it before the Court, the case of the defendants - appellants (in Civil Appeal No.8807 of 2012) is one of ownership of the land by purchase. The High Court took the view that having regard to the fact that the defendants did not produce the original mortgage deed(s), under the relevant provisions of the Evidence Act there would be no bar for the plaintiffs to rely on the certified copy/copies of the mortgage deed(s). Insofar as the case of the defendants with regard to ownership of the land by purchase is concerned, the High Court considered the sale/purchase deed introduced by the defendants in evidence i.e. Exhibit A-1. The High Court took note of the recitals contained therein which had in-built admission of the ownership of the plaintiffs over the land in question. In such circumstances, the mortgage was held

to be proved by the plaintiffs.

7. In view of the above, the decree of redemption passed by the High Court insofar as the land in question is concerned does not suffer from any infirmity which would require our interference.

8. Consequently and in the light of the above, Civil Appeal No.8807 of 2012 filed by the defendants is also dismissed.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

NEW DELHI
JANUARY 24, 2018

ITEM NO.103

COURT NO.3

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 8807/2012

MADAN LAL & ORS.

APPELLANT(S)

VERSUS

SUKH RAJ @ SUKH RAM & ORS.

RESPONDENT(S)

WITH

C.A. NO. 8808/2012 (XV)

Date : 24-01-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For parties:

Mr. Gurudatta Ankolekar, Adv.
Mr. Tomy Chacko, Adv.
Mr. T. R. B. Sivakumar, AOR

Mr. Dushyant Parashar, Adv.
Mr. Surya Kant, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed
order.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]