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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-97-1997 (O&M)**Reserved on : 30.08.2024****Date of Decision : 03.09.2024**

Chuhru Ram (deceased) through LRs

... Appellant(s)

Versus

Swarana and Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Yagsimant Attri, Advocate for the appellant.
Mr. G.S. Jaswal, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 29.04.1994 passed by the Trial Court and the judgment and decree dated 05.10.1996 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration averring therein that originally the land was owned by one Santu to the extent of 1/6th share, Rulia to the extent of 1/6th share, Ram Ditta (plaintiff's father) to the extent of 1/6th share and Bishna to the extent of 1/2 share. All the co-sharers mortgaged the land with Daulat and Batna son of Pala more than 45 years ago. It was alleged that Ram Ditta and Bishna got their respective shares redeemed from the said mortgagees vide mutation No.1027 and 1029. The plaintiff's father - Ram Ditta - purchased mortgagee rights in respect of the shares of Santu to the extent of 1/6th share and Rulia and Chanda to the extent of 1/6th share from the said mortgagees Daulat and Batna vide mutation No.1928 decided on

05.04.1948 for a sum of Rs.125/-. It was further averred that the transaction was oral and the transaction was done on 13.08.1946. It was further alleged that later on Santu got his 1/6th share redeemed on 11.06.1950 and so shares of all other mortgagors except 1/6th share of Rulia and Chanda were redeemed and the plaintiff's father - Ram Ditta - continued in possession as mortgagee of this 1/6th share of Rulia and Chanda in Khasra No.223 (11-0). It was also alleged that Ram Ditta had died and his entire properties including mortgagee rights of the share of Rulia and Chanda were inherited by the plaintiff-appellant and he was in continuous possession of the suit land. During consolidation proceedings the suit land was allotted in lieu of the 1/6th share. Rulia, the mortgagor, also died and his property and other rights were inherited by defendant-respondent Nos.1 and 2 i.e. Swarna and Soma Devi and his other daughters i.e. Ram Piari, Swarni, Reshma and Karmo (widow of Rulia). It was further alleged that all other heirs except Karmo transferred their rights in favour of Swarna (defendant-respondent No.1) and defendant Nos.1 to 4 and others could not pay the mortgaged money to Ram Ditta and the land was not redeemed, thus, the plaintiff-appellant had become the owner of the property by efflux of time. On notice, defendant-respondent No.4 did not appear on 15.01.1990 and on 30.01.1990 and was proceeded against *ex parte*. Defendant-respondent Nos.1 to 3 and 5 filed their joint written statement pleading that they were owners in possession of the suit land and that the suit was not maintainable and that the land was redeemed on 07.06.1968 vide receipt and the possession was also surrendered. It was further alleged that 1/2 share of Santu was redeemed by Santu during his life-time and that Santu died and his estate through Will devolved upon Swarna and Gurdial (defendant-

respondent Nos.1 and 4) to the extent of 1/2 share in equal shares and the other 1/2 was inherited by Ramesh (defendant-respondent No.5). It was further averred that Santu executed a valid Will in his sound-disposing mind that mutation No.2110 in respect of the estate of Santu was sanctioned on the basis of the Will dated 20.05.1987. It was further averred that the plaintiff-appellant had no locus standi to file the suit qua land owned by Santu out of the suit land and defendant-respondent Nos.1 to 4 were owners in possession of the same.

3. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff has become owner of the suit land by afflux of time and is in possession of the suit land ? OPP
2. Whether the plaintiff is entitled to the relief of declaration and injunction prayed for ? OPP
3. Whether the mortgage has already been redeemed vide receipt dated 7.6.68 as alleged by the defendant ? OPD
4. Whether the suit is bad for non-joinder of necessary parties as alleged ? OPD
5. Whether the suit is not maintainable and competent ? OPD
6. Whether the plaintiff has no locus standi to sue ? OPD
7. Relief.

4. The Trial Court dismissed the suit vide judgement and decree dated 29.04.1998. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 05.10.1996. Hence, the present

regular second appeal.

5. Learned counsel for the plaintiff-appellant has argued that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the redemption was not proved and that the plaintiff-appellant had become owner in possession by efflux of time.

6. Per contra, the learned counsel for the defendant-respondents would contend that both the Courts have concurrently found that the suit land stood redeemed vide Ex.D1 and that the amount was paid and the possession was surrendered. It is submitted that the suit of the plaintiff-appellant has rightly been rejected.

7. I have heard the learned counsel for the parties.

8. In the present case the only argument raised by the learned counsel for the plaintiff-appellant is that the plaintiff-appellant had become owner by efflux of time. Both the Courts have concurrently found that Ex.D1 clearly proved that the mortgage had been redeemed and the possession had been surrendered. The learned counsel for the plaintiff-appellant has not been able to convince this Court that Ex.D1 could not be relied upon or that it did not prove that the mortgage had been redeemed. Once the defendant-respondents had proved by way of cogent evidence that the mortgage stood redeemed, it was for the plaintiff-appellant to prove that the said document (Ex.D1) could not have been relied upon or was liable to be ignored. Neither before the Trial Court and the First Appellate Court nor before this Court the learned counsel has been able to show any evidence on the record to counter Ex.D1 which clearly reveals that the suit land had been mortgaged and subsequently redeemed. No other point was argued.

9. In view of the above, no fault can be found with the judgments

and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

03.09.2024
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO