

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 2838 of 1988

Date of decision : August 12, 2015

Bhajan Singh and others

... Appellants

vs.

Surjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. H.R. Bhardwaj, Advocate
for the appellants.

Ms. Madhu Dayal, Advocate for
Mr. B.M. Lal, Advocate
for the respondent.

Surinder Gupta, J

This regular second appeal is directed against the judgment dated 24.8.1988 passed by Additional District Judge, Ropar, whereby the judgment and decree dated 7.2.1987 passed by the Sub Judge, Kharar allowing relief of possession of suit land after redemption subject to deposit of ₹1500/- was set aside and the suit of plaintiff was ordered to be dismissed.

The case of plaintiff, in brief, is that Narata Singh was owner of land bearing Khasra No.4676/1532 (1-12) and 4677/1532 (1-18), total measuring 3 Bighas 10 Biswas. He had created usufructuary mortgage of this land with Jata Singh son of Sunder Singh for a sum of ₹1,500/- and mutation No. 7237 dated 4.11.1950 was sanctioned in this regard. Defendant/respondent Surjit Singh being son of Jata Singh had inherited his property after death of his father.

Narata Singh entered into an agreement to sell this land along with some other land with plaintiff but sold the same to one Mehar Singh. This led to the filing of suit for specific performance which continued for 27 years and ended in favour of plaintiff. The plaintiff became owner of suit property and also got possession of the land which was not under mortgage.

During consolidation khasra No.1464 was allotted in lieu of the mortgaged land. Plaintiff/appellant called upon the defendant/respondent to

accept the mortgage money and redeem the land but in vain, hence, resulting in filing this suit.

The defendant/respondent admitted the factual position regarding mortgage but contested the right of plaintiff-appellant to seek redemption of suit land with the plea that possession of defendant/respondent over the suit land was for the last more than 30 years and after expiry of period of limitation, the plaintiff/appellants were not entitled to seek redemption of suit land.

The trial court decreed the suit of plaintiffs, however, in appeal that decree was set aside.

Learned counsel for appellant has argued that mortgage in favour of Jata Singh was usufructuary mortgage. In the case of ***Ram Kishan and others vs. Sheo Ram and others***, 2008 (1) RCR (Civil) 334, Full Bench of this court has held that there is no time limit fixed to seek redemption of usufructuary mortgaged. This view has since been affirmed by the Apex Court in appeal in case ***Singh Ram (D) through L.Rs vs. Sheo Ram and others***, 2014 (4) RCR (Civil) 179.

Learned counsel for respondents has also relied upon the above citation and while referring to observations in para no.34 and 40 of the judgment passed by the Full Bench of this court in the case of ***Ram Kishan and others*** (*supra*) has argued that when the mortgage deed gives time for redemption, the limitation for redemption would run from the date fixed in the mortgage deed. She has argued that in this case, as per mortgage deed dated 18.5.1950 (Ex.D-1), the mortgagor was given right to get possession after one year of the mortgage, as such, the right to seek redemption got extinguished in the year 1981.

Substantial question of law:

The substantial question of law that arises for consideration in this appeal is as to whether as per recital in the mortgage deed dated 18.5.1950, the right to seek redemption of usufructuary mortgage of the suit land has become time barred?

Both the learned counsel for parties have not disputed the legal proposition as settled in the case of ***Singh Ram (D) through L.Rs.*** (*supra*) that there is no limitation period for seeking redemption of the usufructuary mortgage. In the above referred case Hon'ble Supreme Court observed in

para no.15 as follows :-

“15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage.....”

The mortgage deed Ex.D1 was also read over during the course of arguments by learned counsel for both the parties but no term could be pointed out that prescribes any time for seeking redemption of the suit land. As no time was fixed for seeking redemption of the suit land, this argument of learned counsel for appellant that period for seeking redemption of suit land would start from the date mentioned in the mortgage deed is also without any merits.

Both the courts below have proceeded to decide the case in view of other pleadings and evidence produced before it. The fact as to whether the mortgage in this case was usufructuary mortgage and redemption of usufructuary mortgage is not barred by limitation, was not looked into.

In view of settled proposition of law in the case of ***Singh Ram (D) through L.Rs.*** (*supra*), the above substantial question of law is answered in favour of appellant.

This appeal succeeds. The judgment and decree passed by first appellate court is set aside and that of the Sub Judge, Kharar is restored, though for reasons other than those which weighed before then Sub Judge, Kharar.

(Surinder Gupta)
Judge

August 12, 2015
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