

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 3072 of 2000 (O&M)
Date of decision: 30.7.2015

Sowaran Kaur and others

.. Appellants

v.

Bahadur Singh (deceased) through LRs and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amit Jain, Advocate for the appellants.

Mr. Sudeep Mahajan, Advocate for legal heirs of
respondent No. 1.

...

Rajesh Bindal J.

The defendants are before this court against concurrent findings of fact recorded by both the courts below, whereby the suit filed by respondent No. 1-plaintiff for declaration claiming ownership by efflux of time as the mortgage was not got redeemed, was decreed by the trial court and the lower appellate court upheld the judgment and decree of the trial court.

Brief facts, as are available on record, are that Bahadur Singh (deceased) filed a suit for declaration claiming that he had become owner of the property in dispute by efflux of time as his mortgagee rights had matured into ownership. It was claimed that Ujjagar Singh son of Jiwan Singh was the owner of the land measuring 12 kanals 15 marlas bearing Khasra Nos. 414, 1316 and 1325 comprised in Khewat Nos. 97 and 117, khatoni Nos. 393 and 498, as entered in the jamabandi for the year 1945-46. Ujjagar Singh mortgaged the aforesaid land in favour of Bahadur Singh for a consideration of ₹ 1,500/- vide mortgage deed dated 26.7.1954. A period

of 10 years was stipulated for redemption, which expired on 25.7.1964. As the mortgage was not got redeemed, the suit was filed on 2.9.1994 claiming ownership.

The trial court framed the following issues:

- “1. Whether plaintiff has become owner of the suit land by efflux of time for non-redeeming the mortgage property as described in the head note? OPP
2. Whether the plaintiff is entitled to declaration as prayed for? OPD
3. Whether the plaintiff has got no locus standi to file present suit? OPD
4. Whether the plaintiff has got no cause of action? OPD
5. Relief.”

All the issues were decided in favour of the plaintiff and the suit was decreed by the trial court. In appeal, the judgment and decree of the trial court was upheld.

While assailing the judgments and decrees of the courts below, learned counsel for the appellants submitted that following substantial question of law arises in the present appeal:

“Whether a suit filed by the mortgagee for declaration that he has become owner on the expiry of 30 years from the last date for redemption of the mortgage was maintainable?”

The issue has been gone into by Hon'ble the Supreme Court in Singh Ram (D) through L.Rs. v. Sheo Ram and others, 2014(4) RCR (Civil) 179 and it has been opined that usufructuary mortgagee is not entitled to file a suit for declaration that he had become owner merely on the expiry of 30 years from the date of mortgage. It was held that usufructuary mortgage right to recover possession continues till the money is paid out of rents and profits or whether it is partly paid out of rents and profits and the balance is paid by the mortgagor or deposited in court, as provided under Section 62 of the Transfer of Property Act.

In view of the aforesaid enunciation of law laid down by Hon'ble the Supreme Court, the suit filed by respondent No. 1-plaintiff for

declaration that he had become owner of the property by efflux of time, the mortgage having not been redeemed, was not maintainable.

Accordingly, the appeal is allowed. The judgments and decrees passed by the learned courts below are set aside. The suit filed by respondent No. 1-plaintiff is dismissed.

(Rajesh Bindal)
Judge

30.7.2015
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