

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

**RSA No.1489 of 2008 (O & M)
Date of Decision:18.02.2015**

Smt.Janawri and another **....appellants**

Versus

Smt.Nathi and others **.....respondents**

RSA No.1206 of 2008 (O & M)

Smt.Nathi and others **....appellants**

Versus

Bijender and others **.....respondents**

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Harkesh Manuja, Advocate
for the appellants in RSA No.1489 of 2008
for respondents No.3 & 4 in RSA No.1206 of 2008

Mr.B.R.Vohra, Advocate
for the appellants in RSA No.1206 of 2008
for respondents No.1 to 6 in RSA No.1489 of 2008

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was decreed by the trial Court vide judgement and decree dated 09.02.2007. Appeal preferred against the said decree by defendants No.3 and 4, was partly accepted. Both the parties, being aggrieved against the decree dated 18.02.2008, rendered by the first appellate Court, are before

this Court in these two Regular Second Appeals. RSA No.1489 of 2008 is preferred by defendants No.3 and 4 and RSA No.1206 of 2008 is filed by the plaintiffs. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a declaration that they had become the absolute and exclusive owners in equal shares of the suit land comprised in khewat No.93, khata No.129, rect.and killa No.1/18 (8-0) measuring 08K-0M, situated in the revenue estate of village Saidpur, Tehsil and District Sonapat. It was maintained that the plaintiffs happened to be the mortgagees in possession and, since, defendants failed to redeem the suit property, within the stipulated period, their right to seek redemption stood extinguished and, thus, plaintiffs had become owners of the suit land with efflux of time. Further, mutation No.2294 dated 26.10.1992, vide which the suit land was purported to have been redeemed, was forged and fictitious document, and, consequently, subsequently, executed registered patta nama, sale deeds dated 29.12.1992 and 21.07.1994, were null and void. By way of consequential relief, the plaintiffs prayed for a decree for injunction restraining the defendants from causing their forcible dispossession from the suit property.

In defence, it was pleaded, inter alia, by defendants No.3 and 4 that the suit land was, redeemed by Ram Singh and a mutation in this regard was also sanctioned in his favour. In fact, heirs of Ram Singh i.e.Balbir Singh and Smt.Sarti had executed a patta nama in favour of Balwan Singh for a period of 10 years, which was valid.

And, they also executed a sale deed in favour of defendant No.1 i.e

Bijender son of Om Parkash, qua the suit property along with some other land. Subsequently, defendant No.1 sold the suit land vide registered sale deed dated 21.07.1994, in favour of defendants No.3 and 4 and the possession was accordingly delivered to the defendants at the time of execution of the sale deed. Thus, defendants No.3 and 4 were in actual, physical and cultivating possession of the suit land.

On a consideration of the matter in issue and the evidence on record, the trial Court arrived at a conclusion that defendants No.3 and 4 failed to prove that the suit property was ever got redeemed by Ram Singh, the original mortgagor or his successors-in-interest. Nothing was brought on record to show that the mortgage amount was paid and received by the plaintiffs. Mutation No.2294 dated 26.10.1992, that was purported to have been sanctioned pursuant to redemption, was held to be wrong and illegal, as no notice was served upon the mortgagors. And the same was sanctioned by revenue authorities on the oral request of the legal representatives or the mortgagor. As a result, mutation No.2294 and all subsequent alienations qua the suit property were held to be illegal, null and void. Consequently, it was recorded that the plaintiffs continued to be in actual, physical possession of the suit property since 1948, the date of mortgage. Since, defendants had failed to redeem the suit land within a period of 30 years from the date of mortgage, itself, as the right of redemption accrued the very first day, unless restricted under the mortgage deed. Thus, the plaintiffs had become owners of the suit land with efflux of time.

Accordingly, a decree for declaration was granted that the plaintiffs had become the absolute and exclusive owners in equal shares of the land comprised in rect.and killa No.1/18 (8-0). A decree for injunction was also granted restraining the defendants from causing any interference in possession of the plaintiffs.

Being aggrieved against the said the decree, defendants No.3 and 4 preferred an appeal. First appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof concluded that suit property was never redeemed either by Ram Singh or his heirs. In reference to a Full Bench decision of this Court in **Ram Kishan vs. Sheo Ram, RSA No.1029 of 1988, decided on 12.12.2007**, it was observed that in case of a usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. It was further held that once a mortgage always a mortgage and is always redeemable. As concededly, no time limit was fixed for redemption, in the present case, plaintiff had not accrued any title in the suit property. As a result, defendants No.3 and 4, having stepped into the shoes of original mortgagor, had become the owners of the suit property, pursuant to the sale deed dated 12.07.1994. And since, mutation No.2294, vide which, suit property was claimed to have been redeemed, was held to be null and void, as neither the suit property was redeemed nor the possession also was ever obtained, plaintiffs i.e. mortgagors continued to be in possession. Accordingly,

the appeal filed by defendants No.3 and 4 was partly accepted as indicated above.

It would be apposite to point out at this juncture, plaintiffs are in appeal against the decree dated 18.02.2008, as they have been denied a declaration that they had become the owners of the suit land with efflux of time. Whereas, defendants No.3 and 4 have preferred an appeal, since a decree for injunction was granted and maintained by the first appellate Court against them.

I have heard learned counsel for the parties in both the appeals and perused the RSA paper books.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that both these appeals are devoid of merit and are, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

As regards RSA No.1206 of 2008, filed by the plaintiffs, suffice it to say, concededly, the plaintiffs failed to plead that in terms of the mortgage, any time was prescribed by which, mortgagor was required to redeem the property. Concededly, no evidence was led in this regard. Indisputably, the nature of mortgage was usufructuary. Learned counsel for the appellants Mr.B.R.Vohra, Advocate, very fairly, concedes this position. Learned counsel for the appellants could not point out as to how the conclusions that have been arrived at by the first appellate Court were either contrary to the position on record or suffered from any material illegality. And as the position of law was settled that in the absence of any date or time, stipulated by which the mortgagor was required to redeem the property, mortgagor

could seek redemption, at any time, as once a mortgage is always a mortgage. And thus, in view of the Full Bench judgement of this Court in “**Ram Kishan and others vs. Sheo Ram and others, AIR 2008 (P & H) 77**”, it was held that, in case of usufructuary mortgage, where no time limit is fixed to seek redemption, right to seek redemption would not arise on the date of mortgage but will arise on the date when mortgagor pays or tenders to mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it was held that once a mortgage always a mortgage and is always redeemable. And the said decision has since been upheld by Hon'ble Supreme Court in “**Singh Ram (Dead) through LRs.vs. Sheo Ram and others AIR 2014 SC 3447**”.

Insofar as appeal preferred by defendants No.3 and 4 in RSA No.1489 of 2008, appellants (defendants No.3 and 4) claimed to be in possession of the suit property, pursuant to the redemption of the suit property, vide mutation No.2294 dated 26.10.1992. Both the Courts below concurrently recorded that the defendants failed to prove that the suit land was ever redeemed by the original mortgagor or even by his successors-in-interest. In fact, the mutation No.2294 dated 26.10.1992, was declared to be null and void as the same was sanctioned even without notice to the mortgagee. Once that was so, the plaintiffs continued to be in possession of the suit land since 1948 as mortgagees. And, as plaintiffs were in possession of the suit property as usufructuary mortgagees, claim of defendants No.3 and 4 to be in possession of the suit land, in any case, pales into insignificance.

Learned counsel for the appellants (defendants No.3 and 4) could not point out as to how the conclusions that have been arrived at by the first appellate Court in this regard, were either contrary to the position on record or suffered from any material illegality. That being so, even this appeal is devoid of merit and, is, thus, liable to be dismissed.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in both these appeals. No question of law, much less any substantial question of law, arises for consideration in the present appeals. The same being devoid of merit are accordingly, dismissed.

18.02.2015
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(ARUN PALLI)
JUDGE