

Impugned in the present regular second appeal is the judgment and decree dated 27.5.2009, passed by the learned Additional District Judge (Adhoc), Patiala, affirming the judgment and decree dated 23.12.2004, passed by the learned Civil Judge (Junior Division), Rajpura, vide which the suit of the plaintiffs/appellants herein was dismissed and the counter-claim of the defendants was decreed and decree for possession of the property, mentioned in the headnote of the plaint, was passed in favour of the defendants.

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Brief facts of the case are that as per the amended plaint of the plaintiffs/appellants before the lower Court, the plaintiffs/appellants had filed a suit for declaration to the effect that they have become the owner of the suit land measuring 20 kanals 2 marlas as the property has not been redeemed within the prescribed period of limitation. The plaintiffs/appellants claim that the disputed property was mortgaged by Ramji Dass and Radha Kishan sons of Nandoo with one Prabhu son of Kirpa Ram, which is reflected in Jamabandi for the year 1967. Later on, Radha Kishan died and vide mutation No. 296, Ramji Dass became the sole mortgagor and Prabhu continued to be the mortgagee. As per the mutation No. 340, Prabhu sold his mortgagee rights to Sant Ram son of Kanhiya, resident of village Chamar Heri in the year 1974 BK. In this way, Sant Ram became the mortgagee of the land. Ramji Dass (mortgagor) died and has been succeeded by the defendants. Sant Ram also died about 50 years ago, leaving behind three sons, namely, Shadi Ram, Chagli Ram and Amar Nath. Shadi Ram also died about 45 years ago and has been succeeded by Dhan Raj, Kesho Ram, Dev Raj and Norata Ram. Amar Nath died about 20 years ago and has been succeeded by his son Achhar Dass. Chagli Ram died about 17/18 years ago and has been succeeded by his only son Bachna (Bachna Ram). The limitation for redemption of the suit land has expired. Therefore, the plaintiffs/appellants have

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become the owner of the mortgaged property.

In the amended written statement filed on behalf of defendant No. 1 through his legal representatives, it was denied that Ramji Dass and Radha Kishan had mortgaged the disputed property with Prabhu. It was also denied that Prabhu sold his mortgagee rights to Sant Ram. It was stated that the mutation of mortgage was sanctioned at the back of Ramji Dass and is not binding on him and after his death, his legal heirs. It was stated that the contesting defendant and earlier his father had been cultivating the land at village Chamaheri, Tehsil and District Patiala. The plaintiffs/appellants and their predecessors-in-interest had been cultivating the land at village Bathonian Kalan, Tehsil Rajpura, with their mutual consent. The manipulation of the revenue record was done at the back of the contesting defendant and is incorrect. Therefore, prayer was made for grant of decree for recovery of possession in favour of defendant No. 1.

In replication, the plaintiffs/appellants reiterated the facts stated in the plaint. It was stated that the counter-claim was not within limitation.

From the pleadings, following issues were framed :-

1. Whether Ramji Dass and Radha Kishan had mortgaged the suit land in favour of Prabhu son of Kirpa as alleged in the plaint ? OPP

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2. Whether Prabhu sold his mortgagee rights to Sant Ram as alleged ? OPP
3. Whether counter-claim is maintainable ? OPP
4. Whether the plaintiffs are successors in interest of Sant Ram mortgagee ? OPP
5. Whether plaintiffs have become owners of the mortgaged land by efflux of time ? OPP
6. Whether plaintiffs are entitled to declaration as prayed for? OPP
7. Whether defendants are entitled to possession as prayed for in the counter-claim and consequential correction of the entries in the revenue record ? OPD
8. Whether the counter claim for possession is within time ? OPD
9. Relief.

An additional issue No. 1A was also framed :-

- 1A. Whether suit is not maintainable ? OPD

Issue No. 1 was decided against the plaintiffs/appellants and consequently, issues No. 2, 4, 5 and 6 were also decided against the plaintiffs/appellants. Issues No. 7 and 8 were taken up together and decided in favour of defendants. Issue No. 1A was framed and the same was also decided in favour of defendants. Consequently, issue No. 3 was also decided in favour of defendants.

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Consequently, the counter-claim of the defendants was decreed and decree for possession was passed in favour of the defendants. The findings were affirmed in appeal.

At the time of arguments before this Court, the learned counsel for the plaintiffs/appellants has conceded that in view of the latest law laid down by the Apex Court, a mortgagee cannot claim title on the basis of efflux of time. Therefore, he has not pressed the prayer for declaring the plaintiffs/appellants to be the owner of the suit land on the basis that the time to redeem the mortgage has expired. However, the learned counsel for the plaintiffs/appellants has pressed that the decree for possession could not be passed in favour of the defendants as the mortgage has not been redeemed.

To decide the said issue, following substantial question of law is framed :-

“Whether the findings recorded by both the Courts below are perverse and against the record ?”

I am of the view that there is overwhelming evidence on file to show that the land was mortgaged by Ramji Dass and Radha Kishan in favour of Prabhu and later on Prabhu had sold his mortgagee rights to Sant Ram. The plaintiffs are the legal heirs of Sant Ram. A perusal of copy of the mutation (Ex.P2) shows that in the year 1972, in the presence of Prabhu (mortgagee) and the Lambardar of the village, mortgage was sanctioned in the public

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hearing. Accordingly, the entries were made in the revenue record and the same are being carry forward till date. Even when the mutations regarding inheritance of the mortgagor and mortgagee were sanctioned, the same entries were carried forward. The same are borne out from the copy of the Jamabandi for the year 1986-87 onwards.

The plea of the learned counsel for respondents is that the mutation was sanctioned at the back of the mortgagor and, therefore, the same is not binding on them. It was further argued that as per the mutation, the land was mortgaged for Rs. 142/-. Since the value was more than Rs. 100/-, therefore, the oral mortgage was not permissible.

The matter has been settled by the authoritative pronouncement of the Hon'ble Supreme Court in Sampuran Singh and others Versus Smt. Niranjan Kaur and others, 1999 (2) Civil Court Cases 519 (S.C.), wherein the Apex Court held that the oral mortgage is valid as the possession was also delivered to the mortgagor. The matter was also considered by this Court in Amar Nath (Dead) through LRs Versus Sarwan Singh and others, 2005 (4) RCR (Civil) 654, where in a case pertaining to State of Patiala and PEPSU, it was held that the State of Patiala and PEPSU became the part of State of Punjab with effect from 1.11.1956 and that during that time and earlier, the oral mortgage was permissible. The similar

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views were expressed by a Full Bench of this Court in Siri Chand and others Versus Nathi, AIR 1983 Punjab and Haryana 171 (FB). The mortgage was made compulsorily registrable only when the provisions of Transfer of Property Act were made applicable to the State of Punjab. Admittedly, in 1972, the provisions of Transfer of Property Act were not made applicable to the State of Punjab. Therefore, the oral mortgage coupled with delivery of possession was good mortgage. It is to be noted that during their lifetime, Ramji Dass and Radha Kishan did not challenge the entries in the Jamabandi, which are existing since long and now, after so many years, the successors of said mortgagors cannot say that the entries are wrong and made at the back of the mortgagor. It being so, it is held that both the Courts below erred in holding that the plaintiffs/appellants are/were not the mortgagee in possession of the suit land. It is held that the plaintiffs/appellants are in possession of the suit land as the mortgagee for Rs. 142/-. The findings recorded by both the Courts below in this regard are reversed.

Now, coming to the next question as to whether the lower Court was justified in granting the decree for possession in favour of the defendants ?

I am of the view that such orders are illegal. Once it is held that the plaintiffs/appellants were in possession of the suit property as mortgagee, no possession can be delivered unless the

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mortgage is redeemed. In the written statement, the defendants had denied the mortgage and had claimed decree for possession on the basis of title and made the counter-claim, which was allowed. However, since it is held that the plaintiffs/appellants are the mortgagee in possession of the suit land, the possession cannot be delivered to the defendants unless the mortgage is redeemed. It being so, the findings of both the Courts below granting decree for possession to the defendants are set aside.

As a result of the foregoing discussion, it is held that both the Courts acted illegally and in perverse manner in recordings the findings that the oral mortgage was not permissible and that the plaintiffs/respondents have failed to prove that they are the mortgagee in possession of the suit land.

In view of the matter, the prayer made by the learned counsel for the plaintiffs/appellants is allowed and the decree for possession granted by way of counter-claim is set aside and the counter-claim of the defendants also stands dismissed.

The appeal is accordingly allowed to the abovenoted extent. However, it shall always be open to the defendants to redeem the mortgage and seek the possession of the land.

(KULDIP SINGH)
JUDGE

23.9.2015
sjks