IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1712 of 2010(O&M)
Date of decision : December 7, 2015

Hanuman

.... Appellant

Versus

Mahender Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the appellant.

Mr. Rakesh Mehta, Advocate
for respondent Nos. 1 to 4,6,7,9 to 17,30 to 41,52 to 56.

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).
CM No.1442-C of 2011

This is an application under Order 22 Rules 3 Chapter 1-C of High Court Rules and Orders Vol.V read with Order 22 Rule 4 and Section 151 CPC for bringing on record the legal representatives of respondent No.5 who is stated to have died on 5.9.2008, duly supported by an affidavit. The legal representatives of respondent No.5 are permitted to be brought on record as mentioned in the application subject to all just exceptions.

Registry is directed to make necessary correction in the Memo of Parties.

The application is disposed of.

CM No.2655-C of 2012

This is an application for transposing the respondent No.29 as appellant.

The application is allowed.

Respondent No.29 is transposed as appellant No.2 in the appeal.

RSA No. 1712 of 2010(O&M)

The appellant-defendant-counter claimant is aggrieved of the judgment and decree rendered by the lower appellate court whereby the suit of the respondents-plaintiffs seeking foreclosure of the mortgage executed in the year 1890 has been decreed and the counter claim seeking redemption of the mortgage had been dismissed.

Learned counsel appearing on behalf of the appellant submits that the trial court on the basis of oral and documentary evidence, much less on the basis of case law dismissed the suit on the ground that it was barred by limitation as limitation to seek foreclosure is 60 years which, if taken after expiry of the stipulated period of 25 years of redemption would start w.e.f.1954 and the suit has been filed on 27.11.1996 beyond 60 years.

He further submits that the stipulated period for seeking redemption after 25 years would not put a clog on seeking redemption as there is no limitation to seek redemption, in view of the judgment rendered by the Full Bench of this Court in **Ram Kishan and others Vs. Sheo Ram and others 2008 (1) RCR** and judgment rendered by Hon'ble Supreme Court in **Singh Ram Vs. Sheo Ram 2014 (4) RCR (Civil) 179**. Thus, prays that substantial question of law arise for determination by this Court.

Mr. Rakesh Mehta, learned counsel appearing on behalf of the contesting respondents submits that the appellants had earlier approached the collector for redemption of the property but the said application was dismissed and then approached the civil court and against the finding rendered by both the courts below approached this Court in RSA No. 424 of 1960 which was abated on 4.2.1970, thereafter as per the Indian Limitation Act, 1963 the limitation has been reduced from 60 years to 30 years, therefore, the suit dated 27.11.1996 was well within the period of limitation.

I have heard learned counsel for the parties and appraised the paper book.

The Hon'ble Supreme Court in **Singh Ram's case (supra)** while upholding the finding of Full Bench in **Ram Kishan and others' case (supra)** held in paragraph 14 and 15 as under:-

> *"We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicing views. In cases where*

> *distinction in usufructuary mortgagor's right under Section 62 of the T.P.Act. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.*
>
> *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. We answer the question accordingly."*

Since admittedly the mortgage could be redeemed after expiry of 25 years, thus, there was time limit to seek redemption, which the plaintiff failed to do so. Even the aforementioned Regular Second Appeal abated in the year 1970. Since the right to redemption extinguished even in the year 1970 i.e. on 4.2.1970, it is only at that stage, the cause of action to seek foreclosure accrued in favour of the mortgagee, accordingly the suit was filed on 27.11.1996 for foreclosure which is well within the period of 30 years.

Accordingly, in my view as per the reasoning given by the lower appellate court in dismissing the counter claim and decreeing the suit does not suffer from any illegality and perversity for the reason that the appellants have failed to seek redemption within the specified period as mentioned in the mortgage.

I do not intend to differ with the finding rendered by the appellate court which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 7 , 2015
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