

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

**Regular Second Appeal No.1547 of 2013 (O&M)  
Date of decision: 07.07.2015**

**Haroon and others**

**.....Appellants**

**Versus**

**Nasir Ahmed and others**

**.....Respondents**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Ashwani Bakshi, Advocate,  
for the appellants.

**Ritu Bahri, J.**

Defendants-appellants have come up in regular second appeal against the judgment dated 31.10.2012 passed by the Additional District Judge, Nuh, dismissing their appeal against the judgment and decree dated 16.03.2011 passed by the Civil Judge (Junior Division), Ferozepur Jhirka, whereby suit filed by the plaintiffs-respondents has been decreed.

Nasir Ahmad etc.-plaintiffs (respondents herein) filed a suit alleging therein that they were owners/mortgagors of the land in dispute. Before consolidation proceedings, the predecessors-in-interest of plaintiffs and Barru son of Manu (predecessors in interest of the defendants) were co-owners/co-sharers in the land bearing old Khasra No.638 (1-9), 4342/648 (0-5), 4343/648 (0-5), total measuring 1 Bigha 19 Biswa. This land was mortgaged with possession by predecessors in interest of the plaintiffs to

one Munir son of Meer Khan for an amount of Rs.40/-. In this regard, mutation No.1711 dated 19.03.1931 was entered in the record. Later on, the above said Munir died and was succeeded by Smt. Sahooori to the extent of  $\frac{1}{2}$  share and Munfat, Chahat sons of Dalmir (predecessors-in-interest of plaintiff Nos. 1 to 4), Safeda, Dhoop Khan sons of Hasnu (predecessors-in-interest of plaintiff Nos. 5 to 11) and Barru (predecessor-in-interest of the defendants) to the extent of  $\frac{1}{2}$  share. Hence, they became mortgagees in their place. Munfat died issueless and his rights were inherited by Safeda. Dhoop Khan also died issueless and his rights were inherited by Safeda. Similarly, after the death of Smt. Sahooori, her rights were inherited by Chahat son of Dalmir, Safeda and Burru. As such, Chahat, Safeda and Burru had become mortgagees of the aabove said land in equal shares. However, according to the column of cultivation, the said land was mortgaged by Munfat, Chahat sons of Dalmir to the extent of  $\frac{1}{2}$  share and Safeda, Dhoop Khan sons of Hasnu to the extent of  $\frac{1}{2}$  share. After the death of Munfat and Dhoop Khan, Chahat and Safeda remained mortgagors of the land. After inheriting the rights of mortgagee, Chahat and Safeda also became mortgagees to the extent of  $\frac{2}{3}$ <sup>rd</sup> share. As such, their mortgagee rights merged into the superior rights of ownership/mortgagor and their share redeemed automatically. Accordingly, only Burru (predecessors-in-interest of the defendants) remained mortgagor to the extent of his share. The land remained mortgaged with Burru to the extent of his share and on behalf of aforesaid Chahat and Safeda to the extent of  $\frac{1}{3}$ <sup>rd</sup> share. Chahat and Safeda became owners/mortgagors and Burru became mortgagee of the suit land. As per plaintiffs-respondents, now they have become mortgagors in place of Chahat & Safeda and the defendants-appellants have become mortgagees in place of Burru. The mortgage in dispute was usufructuary mortgage and no

limit was fixed to seek redemption thereof. The mortgagor had legal right to get the land redeemed at any time after payment of mortgage amount. Accordingly, the plaintiffs-respondents wanted to take possession of the suit land by way of redemption.

Upon notice, the defendants-appellants filed written statement and took preliminary objections with regard to maintainability of the suit, locus standi and concealment of material facts from the Court. It was submitted that the plaintiffs-respondents had no right title or interest in the suit land. Since the time for redemption had expired, therefore, they have become owners in possession of the suit land.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to the relief of possession by way of redemption, as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have no cause of action to file the present suit? OPD
4. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
5. Relief.

The trial Court, while referring to Section 58 (d) of the Transfer of Property Act, held that the land in dispute was mortgaged as an *usufructuary* mortgage and there was no fixed time to get it redeemed. From the Jamabandi for the year 1934-35, it was clear that after the death of Munir-mortgagee, the land was divided between the collaterals and the ancestrals of

the plaintiffs were also the collaterals of deceased mortgagee. Therefore,

the alleged land which was mortgaged to the mortgagee, was inherited by the ancestors of the plaintiffs as collaterals of deceased-Munir. This fact was clear from the entries in column No.5 of Ex.P2. The mortgaged land, upon inheritance, came into the possession of the ancestors of plaintiffs (mortgagor). Therefore, the said land to the extent of share of ancestors of the plaintiffs, was redeemed, which was clear from mutation, Ex.P17, wherein in column No.10, the names of mortgagor and mortgagee had been shown after the land was divided among the collaterals. As per Jamabandi for the year 2001-2002, the plaintiffs (mortgagors) were in possession of the suit land to the extent of 2/3<sup>rd</sup> share and Burru (predecessor-in-interest of the defendants) remained mortgagee to the extent of his share i.e. 1/3<sup>rd</sup> share. As per mutation, Ex.P2, the land was mortgaged for an amount of Rs.40/- and the only share which was left to be redeemed was 1/3<sup>rd</sup> which came out to be Rs.14/-. Further, the trial Court, while making reference to the judgment passed by this Court in **Ram Kishan and others Vs. Sheo Ram and others**, 2008 (1) Civil Court Cases 414 (P&H), held that the plaintiffs had a right to seek redemption and their right to seek redemption would not arise on the date of mortgage, but would arise on the date when the mortgagor passed or tendered to the mortgagee or deposited in Court, the mortgage money or the balance thereof. Ultimately, the suit was decreed. The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal.

Learned counsel for the appellants has not been able to show any judgment contrary to the law settled by this Court in **Ram Kishan's** case (supra).

After going through the impugned judgments, this Court is of the

much less perversity, has been found therein, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

07.07.2015  
ajp

**(RITU BAHRI)**  
**JUDGE**