IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1587 of 1988 (O&M)
Date of decision: 27.05.2016

Dyal Sarup

..... Appellant

Versus

Om Parkash (since dead) through LRs & others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Keshav Pratap Singh, Advocate
for the appellant.

Ms. Alka Sarin, Advocate,
for the respondents .

JITENDRA CHAUHAN, J.

This regular second appeal has been filed by the defendant against the judgment and decree dated 08.06.1984, passed by Sub Judge Second Class, Jagadhari vide which the suit was decreed and; judgment and decree dated 20.01.1988, passed by Additional District Judge, Ambala whereby the appeal preferred by the defendant/appellant, was partly allowed.

In brief, the plantiffs, Om Parkash and Chameli Devi, son and widow of Rama Nand, respectively, filed suit for possession by redemption of double storyed building shown by letter ‘Y’ fully detailed in the head note of the plaint. Rama Nand, father of the plaintiff No.1 and husband of plaintiff No. 2 and his brother Hari Chand, who was the husband of defendant no. 1, purchased a double storeyed building comprising of two shops marked in the site plan by letters ‘X’ and ‘Y’. The said purchase was made in public auction held against Baldev Dass and others, the previous owner of the property. Earlier, the property had been mortgaged with possession by said Baldev Dass and others in favour of Kanshi Ram and others for a sum of Rs.16,000/-. Rama Nand died on 28.05.1943. Hari Chand redeemed the said property and obtained physical possession thereof. Consequently, Hari Chand remained in possession of one half share of the property owned by Rama Nand as mortgagee.

The right of redemption in respect of the said one half share came to vest in the plaintiffs as heirs of Rama Nand. Hari Chand began to repudiate the claim of the plaintiffs by asserting himself to be exclussive owner of the property with no right of subsistence of mortgage of the plaintiffs. The plaintiffs had filed a civil suit No.21 on 8.6.1955 in the Court of Ld. Subordinate Judge, Jagadhri, for declaration to the effect that the planitffs had a subsistence right of redemption in one half share of the property in dispute. The claim was firstly resisted by Hari Chand and ultimatley a compromise was brought about in the Court on 30.5.1956. In terms of the said compromise, the shop in question was held to be belonging to the plaintiffs and it was to remain as mortgaged with posession with Hari Chand for a sum of Rs.8000/-. The rate of interest was fixed as 10 Annas per cent per mensem. The expenses incurred by Hari Chand in effecting improvements in the property was agreed to be got estimated through the Arbitration of Sh. Sumer Chand Jain, retired SDO. The plaintiffs were required to pay interest at the rate of 6% per annum on the amount incurred on improvements. Hari Chand was to account for the income being released by him and the same was to be deducted from the mortgaged amount. It was agreed that the plaintiffs would be entiteld to redeem the property after paying the amount as stated above.

In terms of the said compromise, a declaratory decree was passed by the Court on 30.05.1956. It was pleaded that in accordance with the said terms, a reference was made to Sh. Sumer Chand Jain, aforesaid to adjudicate on the amount of expenses incurred by Hari Chand towards improvement of the property in dispute. Sumer Chand Jain gave the award and the plaintiffs filed an application No. 207 of 1956 under Section 20 of the Indian Arbitration Act, for getting the award made a rule of the Court. The Court ultimately decided the matter on 20.3.1957. The amount of expenditure incurred by Hari Chand was estimated at Rs.3221/-. He was also held entitled to Rs.200/- as litigation expenses besides Rs.34/- paid by him as property tax and in all, to a total amount of Rs.3455/-. The interest tax on the mortgage amount was worked out to be Rs.4550/- for the period ending 31.12.1950 and interest on the amount of improvement was calculated at Rs.80/- at the rate of 6% per annum for the period upto 31.12.1950. In this way, the total amount payable by the plaintiffs on 31.12.1950 was held as Rs.16,085/- inclusive of mortgage amount of Rs.8000/- representing the one half share of the total mortgage amount of Rs.16,000/-. It was pleaded that since the plaintiffs wanted to redeem the mortgaged property, a notice was served on 4.4.1978 on the legal heirs of Hari Chand, who had since then died, to render the accounts of income received and redeem the property on receipt of the balance amount due to them. They sent a reply dated 19.4.1978 repudiating the claim of the plaintiffs and stating that the interest of the plaintiffs had been extinguished. It was also disclosed in the reply that under a Will executed by Hari Chand, his widow Sarbati Devi was his sole heir. It was pleaded that Sarbati

Devi defendant No.1 continues to be in possession of the disputed property as a mortgagee.

Sarbati Devi inducted Dr. Jugal Kishore, Sukhbir Parsad and Devinder Kumar Jain, defendants No.2 to 4 as tenants under her and was realising rent from them. Sarbati Devi is liable to render accounts of the amount that she has realised during the said period. She is also liable to surrender vacant possession of the property in dispute to the plaintiffs and as such defendants No. 2 to 4 are liable to hand over possession to the plaintiffs on redemption. The plaintiffs further pleaded that though, they were confident that after going through the accounts and adjusting the income towards the mortgage money nothing remained due from the plaintiffs for getting the redemption effected, still they were ready to pay any amount that may be found due towards them in redeeming the mortgage. It was further pleaded that even if the cause of action be held to have accrued on the original date of mortgage i.e. 28.5.1943, the compromise dated 30.5.1952 which was duly signed by Hari Chand and notice dated 15.1.1958 sent by Hari Chand through his Advocate amounts to acknowledgement as contemplated under Section 18 of the Limitation Act and extends the period of limitation. The plaintiffs, therefore, sought a decree for possession by redemption of the mortgaged property as detailed in the head note of the plaint without payment of any amount or on payment of such amount as may be found due by the Court after going through the accounts that may be rendered by Sarbati Devi, defendant No.1. Sarbati Devi died during the pendency of the suit. Her legal heirs i.e. Dyal Sarup and others were impleaded in the suit.

The legal heirs of Sarbati Devi filed written statement and pleaded that the estate of Sarbati Devi had exclusively fallen to the share of Dayal Sarup, defendant No. 1(a). The date of mortgage was admitted as 28.05.1943 but it was pleaded that the mortgage amount was Rs.16,085/- and not Rs.8,000/-. It was further pleaded that Sarbati Devi had become full fledged owner of the property in dispute by lapse of time, as the property was not got redeemed within the prescribed period of limitation. Lease of the property in favour of defendant nos. 2 and 3 was admitted. If the Court finds the plaintiffs entitled to the relief of redumption, the plaintiffs are bound to pay a sum of Rs.16,085/- along with interest due thereof calculated at the rae of 7.5% per annum to the defendants. As regards, the compromise dated 30.05.1956, entered in civil suit 102 of 1957, the defendant pleaded that the same did not tantamount to creation of new mortgage and since no stamp duty was paid and the document has not been registered as per law, the same is of no consequence.

The defendant No. 2, Dr. Jugal Kishore filed separate written statement pleading that even if the land is redeemed, the right of tenant to remain in possession would not come to an end. He was protected by provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973.

Defendant no. 3 and 4 filed joint written statement pleading that they being tenants, cannot be evicted except in due course of law.

The trial Court framed as many as 20 issues. Both the parties led their respective evidence before the trial Court. After appraisal of the evidence, the trial Court came to the conclusion that Rama Nand and Hari Chand had purchased property in dispute in a public auction. The property was mortgaged by Baldev Dass, the previous owner, with Kanshi Ram. The compromise decree dated 30.05.1956 effected in the earlier suit did not require registration as it did not create any new right. It was, infact, an acknowledgment of the already subsisting right of the parties. The plaintiffs were held to be mortgagors of the property while Hari Chand was held to be mortgagee with possession in the share of Rama Nand. So, the plaintiffs were held entitled to redeem the property on payment of Rs.8,000/- as mortgage money. Consequently, the suit was decreed vide judgment and decree dated 8.06.1984, passed by Sub Judge IInd Class, Jagadhari.

Feeling aggrieved, the defendant No.1(a), Dayal Sarup, filed an appeal before Additional District Judge, Amabala. The lower appellate Court, vide judgment and decree dated 20.01.1988, partly allowed appeal of the defendant. It was held by the lower Appellate Court that a preliminary decree was required to be passed as the assessment qua cost of improvement and the interest had to be made. Therefore, the preliminary decree of redemption was passed in favour of plaintiffs entitling the plaintiffs to possession of the suit property on payment of Rs.16,085/- and interest on the same @7.5% w.e.f. 1.1.1951. It was further directed by the lower appellate Court that in case, the plaintiffs deposit a sum of Rs.16,085/- with interest @7.5% in the Court, any of the parties may apply to the Court for passing of the final decree and on the basis of final decree, the plaintiffs be put in the possession of the suit property.

Still feeling aggrieved, the defendant, Dayal Sarup, has filed the present regular second appeal assailing both the aforesaid judgment and decrees.

It is contended by the learned counsel for the appellant/defendant that the mortgage was created in the year 1943 whereas, the suit was filed on 31.05.1978 which was beyond the period of limitation. It is further contended that the suit does not mention of any particulars of the mortgage deed. The compromise effected between parties cannot create any new right as the same was unregistered. It cannot extend the period of limitation which stood extinguished on the expiry of 30 years from the date of execution of the mortgage. It is further submitted that the Courts below commited grave error in decreeing the suit only on the basis of compromise.

On the other hand, the learned counsel for respondent/plaintiffs submits that the suit was filed within limitation. The compromise between the parties entered into in the earlier suit was an acknowledgment of the right of mortgage. Once the acknowledgement is made before the expiration of the prescribed period of limitation, a fresh period of limitation shall be computed from the date when the acknowledgment was so signed. It is however, contended that the previous mortgage in favour of Kanshi Ram by Baldev Dass is admitted by the defendant/appellant. The factum of redemption of mortgage by Hari Chand from Kanshi Ram is also admitted. However, it was pleaded by the defendant that by lapse of time, the plaintiffs lost their right to redeem the property.

I have heard the counsel for the parties and gone through the record of the case.

Certain undisputed facts of the case are that Baldev Dass, the previous owner of the property mortgaged suit property in favour of Kanshi Ram for Rs.16,000/-. Rama Nand, the predecessor in interest of the plaintiffs, and Hari Chand, the husband of defendant no. 1, purchased the suit property from Baldev Dass. After the death of Rama Nand, Hari Chand got redeemed the entire land from Kanshi Ram. Hari Chand became mortgagee in the land to the extent of share of Rama Nand. The dispute between the parties relates to the fact that since the property was not got redeemed by the heirs of Rama Nand within the period of limitation so, the right of the legal heirs of Rama Nand to redeem the property stood extinguished. In this backdrop, it is apt to mention that prior to the present litigation, civil suit no. 21 of 1957 was filed by the plaintiffs for declaration to the effect that the plaintiffs have subsisting right of redemption of half share of the property in dispute and ultimately, the compromise was brought about in the Court on 30.05.1956. In the compromise, the shop shown by letter 'Y' alongwith its upper storey was held to be mortgaged with possession with Hari Chand for a sum of Rs.8,000/-. The rate of interest was fixed as 10 annas per cent per month. The expenses incurred by Hari Chand in effecting improvements in the property were agreed to be got estimated through the arbitration. A declaratory decree in terms of the compromise was passed by the Court on 30.05.1956. Hari Chand died in the year 1975-76 leaving behind his two sons, namely, Dyal Sarup and Roshan Lal and his widow, Sarbati Devi. After the death of Hari Chand, his legal heirs showed disrespect to the decree dated 30.05.1956. The acknowledgement of claim of the legal heirs of Rama Nand by Hari Chand in the compromise dated 30.05.1956 enlarges the period of limitation. The time starts re-running from the date of acknowledgment of receipt. Therefore, this Court holds that suit the was filed within the period of limitation. Further, there is a concurrent finding of the fact recorded by both the Courts below that the suit property remained in possession with Hari Chand and after the death of Hari Chand, his legal heirs stepped into his shoes.

The particulars of mortgage finds mentioned in the compromise-deed dated 30.05.1956 and the same is also pleaded in the suit. Further, the defendants have admitted the factum of mortgage in their written statement. The compromise decree dated 30.05.1956 binds the legal heirs of Hari Chand also. The lower Appellate Court was right in passing the preliminary decree as the assessment qua cost of improvement and interest had to be made. This Court does not find any reason to interfere in the well reasoned judgments and decrees passed by the Courts below.

Consequently, the appeal is dismissed.

The appellant/defendant shall be at liberty to withdraw the amount deposited by the respondent/plaintiffs in FDR under the order dated 20.1.1988 passed by Additional District Judge, Ambala.

MAY 27, 2016 **(JITENDRA CHAUHAN)**
SN **JUDGE**