

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

**RSA No.1898 of 1988  
Date of Decision-25.02.2016**

Deen Mohammed and another

Appellants

Versus

State of Haryana and another

Respondents

**CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. Ashok Muthreja, DAG, Haryana.

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**RAJ MOHAN SINGH, J.**

[1]. Plaintiffs have assailed judgment and decree dated 19.05.1988 passed by Additional District Judge, Gurgaon whereby the appeal against the judgment and decree dated 22.11.1985 passed by Sub Judge, First Class, Gurgaon was set aside and appeal was accepted thereby dismissing the suit of the plaintiffs-appellants with cost throughout.

[2]. Plaintiffs filed suit for declaration and injunction alleging that they are owners in possession of the suit land. Suit land was under mortgage for a consideration of Rs.60/-, but in the year 1963 they deposited the mortgage amount by order of

the Sub Divisional Officer (Civil,) Nuh and the land was redeemed by them. Entries in this regard were not made in the revenue record as they were in actual physical possession of the suit land prior to redemption. They did not get any order of possession from the Court. In the revenue record, plaintiffs were shown to be mortgager and unallotted evacuee property was shown to be mortgagee. These entries were challenged by the plaintiffs being wrong and illegal. Relief of consequential injunction was also sought seeking restraint order against the defendants. Plaintiffs alleged that since the land was redeemed, therefore, the same was not an evacuee property and the defendants have no right title or interest in the suit land. Secondly, the plaintiffs accepted that if the land is not proved to have been redeemed, then keeping in view their possession, they have become owners by adverse possession. Thirdly, they are also entitled to get the land on the reserve price as per press note of the department.

[3]. Suit was contested by the defendants on several grounds including the ground of Civil Courts jurisdiction being barred in respect of the evacuee property in terms of Sections 36 and 46 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Suit was claimed to be bad for notice under Section 9 CPC and was also barred by the principle of res judicata. Defendants admitted that suit land was mortgaged with Muslim mortgagees by the plaintiffs. The mortgagees migrated to

Pakistan and thereafter the property vested in the custodian by operation of law. Suit was also claimed to be barred by limitation. Defendants also alleged that the redemption suit filed by the plaintiffs before the Assistant Collector, First Grade, Nuh on 17.06.1983 was dismissed in default and therefore, suit was barred by principle of res judicata. Defendants (custodian) had acquired right of ownership by operation of law and therefore property was to be disposed of in accordance with rules.

[4]. After completion of pleadings, parties went to trial on the following issues:-

*“1. Whether plaintiffs are owners in possession of the suit land as alleged? OPP*

*2. Whether the suit land stands redeemed as alleged? OPP*

*3. In case issue No.1 and 2 are not proved, whether the plaintiffs are entitled to purchase the suit land on reserve price? OPD*

*4. Whether this Court has no jurisdiction to try this suit? OPD*

*5. Whether the suit is liable to be dismissed for want of notice under Section 80 CPC? OPD*

*6. Whether the suit is barred by principle of res judicata, as alleged? OPD*

*7. Whether the suit is barred by limitation? OPD*

*8. Relief.”*

[5]. Parties led their respective evidence to prove their case. Trial Court decreed the suit vide judgment and decree dated 22.11.1985. Defendants filed appeal against the judgment and decree of the trial Court. Lower Appellate Court accepted the appeal vide judgment and decree dated 19.05.1988. Hence the present appeal came to be filed in this Court.

[6]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[7]. No substantial question of law has been framed by the appellants, however this Court proceeded to consider the following questions of law while considering the case on merits:-

*"1. Whether notice was required to be given to the interested persons before determination whether suit*

*land vested in custodian under Section 11 of Evacuee Interest (Separation) Act?*

*2. Whether land could have been declared as evacuee property without notification in terms of Section 7 of Administration of Evacuee Property Act 1950?*

*3. Whether entries in the revenue record have presumption of truth under Section 44 of Punjab Land Revenue Act in the absence of any rebuttal on the part of the defendants?"*

[8]. I have heard learned counsel for the parties and have gone through the record.

[9]. It is admitted position that the plaintiffs mortgaged this property in favour of Mohammedan mortgagee and thereafter, property was considered to be evacuee property of the custodian by operation of law. As per *jamabandi* for the year 1976-77 (Ex.P2), Dani son of Chahat was shown to be mortgager and *Arazi Matruka gair allot shuda* was shown as mortgagee. The possession was that of mortgagor as *gair marusi* in respect of 5/22/2 (5-17). In column No.9 of the *jamabandi*, entries were made as "*Malkan Bawajah Fakul Rehan*". These entries were repeated in the *jamabandi* for the year 1976-77 Ex.P2 and in subsequent *jamabandi* for the year 1981-82 as well.

[10]. Learned counsel for the appellants has submitted that the land in question was redeemed from the Court of Sub Divisional Officer (Civil), Nuh by depositing the mortgage amount

of Rs.60/-. Plaintiff while appearing as PW1 has admitted that the land was mortgaged with one Mohammedan who migrated to Pakistan. The land was redeemed by way of depositing the amount vide voucher Ex.P1. Certified copy of voucher has been placed on record as Ex.P1, which reflects that Deen Mohammad and Dani Singh son of Chahat deposited an amount of Rs.60/- through their counsel Baba Sham Lal on 11.06.1968 and thereafter, the land was redeemed which was duly reflected in the revenue record viz *jamabandis* for the year 1976-77 and 1981-82.

[11]. Plaintiffs were recorded to be in possession of the land as "*Malkan Bawajah Fakul Rahan*". *Jamabandi* Ex.D4 produced by the defendants also showed that plaintiffs were in possession of the land after redemption of the same. The factum of redemption was duly incorporated in the revenue record/*jamabandis* and legal presumption was attached because there was no rebuttal to said presumption. Learned counsel further submitted that even if there was no order of redemption but once the factum of redemption was given effect in the revenue record, there was no rebuttal to those entries, the redemption has been treated to be proved.

[12]. Filing of application of redemption was duly admitted by the defendants. Defendants have admitted in the written statement that the plaintiffs had filed an application for

redemption in the Court of Sub Divisional Officer (Civil), Nuh but the same was dismissed in default. Filing of application coupled with deposit of the amount and thereafter, correction of revenue record cumulatively evidenced that there was redemption of mortgage. Thereafter, entries were corrected and were followed consistently and depicting the status of the plaintiff to be "*Malkan Bawajah Fakul Rahan*".

[13]. In the revenue record of the year 1961-62 and prior thereto the land was shown to be in possession of the some different persons on Chakota on behalf of the custodian. In the year 1961-62, Gore Khan son of Shitab Khan was in possession of the land on the basis of Chakota and before that the land was in possession of Ram Narain son of Chand Khan, Moj Khan son of Kalu as Licencees under the custodian. All these entries gave rise to presumption of redemption on 11.06.1968 vide which the amount was deposited by the Advocate of the plaintiffs and thereafter entries were made in the revenue record consistently from 1976-77 till date showing the plaintiffs to be "*Malkan Bawajah Fakul Rahan*".

[14]. The trial Court after recording firm findings of this particular aspect held the plaintiffs to be owners in possession of the suit land under issue No.1. It was concluded that the land was redeemed on 11.06.1968. Since the plaintiffs were held to be owners in possession, it was thought appropriate to give

finding under Issue No.3. The jurisdiction of the Civil Court was not barred as there was no dispute regarding vesting of the land in custodian after redemption thereof in the year 1968.

[15]. Other issues were also decided in favour of the plaintiffs including the issue whether suit was barred by principle of res judicata. Since the application filed before the revenue officer was not decided on merit, therefore, it was concluded by the trial Court that the suit was not barred by principle of res judicata and ultimately the suit was decreed by the trial Court.

[16]. Lower Appellate Court has reversed the findings of the trial Court primarily on the ground that particulars of the mortgage have not been pleaded by the plaintiffs, therefore, receipt Ex.P1 does not confer any such right in favour of the plaintiffs presuming that the land was redeemed in the year 1968. The application filed before the Assistant Collector, First Grade, Nuh on 17.06.1963 was dismissed in default on 24.01.1964 and that fact was also treated to be a material fact debarring the plaintiffs from seeking redemption of land.

[17]. The Lower Appellate Court referred to concealment with reference to Ex.D6 i.e. mutation of mortgage sanctioned on 27.06.1905 in which date of mortgage was shown as 16.05.1905. Mortgagors were Budhi and Jagmal and Mortgagee was Umrao. Both the mortgagors had mortgaged 2 bighas, 16 biswas of land comprised in khasra No.217 for consideration of

Rs.41/-. Similarly in mutation Ex.D8, Rai Khan son of Ghamandi mortgaged 41 bighas, 10 biswas of land in favour of Umrao. This mutation was sanctioned on 10.04.1890. No revenue record was produced nor any other documents were adduced to show that the land was ever redeemed by Budhi and Jagmal. Since the land was mortgaged on 10.04.1890 and 16.05.1905 the land was never redeemed within a period of 30 years, therefore there was no question of plaintiffs having become owners of the suit land.

[18]. Facts on the basis of which the Lower Appellate Court has reversed the judgment and decree of the trial Court are not material for deciding the controversy in question. The pleaded case of the plaintiffs was with reference to the redemption by depositing of the amount and thereafter, necessary incorporation made in the revenue record. Entries in the revenue record were never assailed by the custodian till date and the plaintiffs continued to be owners on account of redemption of land since 1976-77. Therefore, no such proposition as held by the Lower Appellate Court arose in determination of this case.

[19]. In considered opinion of this Court, the Lower Appellate Court has erroneously swayed away with the background which was not necessary for determination of rights of the plaintiffs on the basis of available evidence. Questions as poised in the present appeal are with regard to vesting of the land in question in custodian on the basis of available material on record.

[20]. Admittedly a mortgagee went to Pakistan and his interest was taken over by the custodian. For vesting of such interest in custodian, a notice was required to be given to the persons who may have claimed in such property before vesting such interest in the custodian. Defendants have not sought proper issue on the point of vesting of land in custodian. Since the parties knew the case of the opponent, therefore, framing of issue may not be relevant but the defendants have failed to adduce any such evidence to show that there was a notice given to all concerned in terms of Section 6 of the Evacuee Interest (Separation) Act and therefore, the property could not have been treated as vested in custodian and Civil Court has all the jurisdiction to decide such an issue. The pleadings may be silent about this aspect of the case but once the adjudication with reference to vesting of such interest in custodian is made, aforesaid legal position becomes imperative. Reference can be made to **Jodh Singh (deceased) by LRs Vs. Joginder Singh, 1987 PLJ 6.**

[21]. Though the defendants have claimed the vesting of evacuee mortgagee share in custodian, Section 7 of Administration of Evacuee Property Act, 1950 and Package Deal Property (Disposal) Act 1976 prescribed that the custodian has to notify the evacuee property under Section 7 of the Administration of Evacuee Property Act 1950. In the absence of any such notification the property cannot be presumed to be

evacuee property. No property can be declared as evacuee property after 07.05.1954. Defendants have failed to rely upon any notification declaring the property to be evacuee on or before 07.05.1954. Reference can be made to **Union of India and others Vs. Arshad, 1981 PLJ 510, Kanwar Kamaljit Singh Vs. Custodian Evacuee Property, Punjab, 1991 PLJ 511** and **Dalip Singh Vs. Financial Commissioner (Appeals), Punjab and others. 2011(4) RCR (Civil) 305.**

[22]. In view of position as explained above, questions as formulated in the appeal do arise. In this way, questions No.1 and 2 are answered in favour of the plaintiffs. The property could not have been declared to be vesting in custodian for want of notice under Section 6 of the Evacuee Interest (Separation) Act and in terms of notification under Section 7-A of the Administration of Evacuee Property Act, 1950.

[23]. The consistent entries are in existence in favour of the plaintiffs showing them to be owners on account of redemption in the revenue record. These entries were never assailed by the defendants, therefore, these entries have presumption of truth under Section 44 of the Punjab Land Revenue Act and have not been rebutted by any evidence on behalf of defendants. Therefore, question No.3 also arise in the present case.

[24]. Appellants are proved to be in possession of the land in question and had the redemption of mortgage not done, the

plaintiffs would not have come into possession by any lawful means. There was no allegation of forcible possession by the plaintiffs nor any complaint was ever made in the context of taking forcible possession against the plaintiffs.

[25]. The facts on record conclusively proved that there was a redemption of mortgage and relevant entries were made in the revenue record showing the plaintiffs to be owners on account of redemption. In the absence of any material on record, it cannot be presumed that the property stood vested in custodian as evacuee. Evacuee share was never separated from the composite property after migration of the mortgagee to Pakistan, therefore on all the questions, the case of the plaintiffs has to be appreciated on positive note.

[26]. Therefore, I am of the view that the Lower Appellate Court has committed patent error of jurisdiction in accepting the appeal of the defendants against the judgment and decree of the trial Court.

[27]. Consequently, the impugned judgment and decree dated 19.05.1988 passed by Additional District Judge, Gurgaon is set aside and that of the trial Court dated 22.11.1985 is restored. Appeal is allowed with cost throughout.

**(RAJ MOHAN SINGH)**  
**JUDGE**

25.02.2016  
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