

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: May 06, 2016

1. R.S.A.No.2317 of 2007 (O&M)

Mewa Ram & others

...Appellants

Versus

Lekh Raj & others

...Respondents

2. R.S.A.No.2322 of 2007 (O&M)

Chandan & others

...Appellants

Versus

Rattan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.B.R.Mahajan, Senior Advocate with
Mr.Akhilesh Vyas, Advocate,
for the appellants in both the appeals.

Mr.Lokesh Sinhal, Advocate,
for the respondents in both the appeals.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals No.2317 and 2322 of 2007 as the common questions of law and facts are involved in both the appeals. The facts are being taken from RSA No.2317 of 2007.

Appellant-plaintiffs in Regular Second Appeal No.2317 of 2007 instituted Civil Suit bearing No.424 of 1998 (hereinafter referred to “Suit No.1”) seeking declaration and permanent injunction for having become owners by efflux of time owing to the fact that the earlier

mortgagors failed to get the property redeemed within a period of thirty years and sought injunction qua forcible interference and dispossession and defendants in Civil Suit No.77 of 1998 (hereinafter referred to “Suit No.2”), whereby the mortgagors sought declaration that the aforementioned earlier mortgage was redeemed and the entries, which continued to remain in the revenue record, being illegal, null and void.

Mr.B.R.Mahajan, learned Senior Counsel assisted by Mr.Akhilesh Vyas, Advocate, appearing on behalf of the appellants submits that the mortgage, aforementioned, was oral. Though period of limitation was prescribed, but as per Article 61(a) of the Limitation Act, the period for seeking redemption of the mortgage is prescribed as thirty years, which had elapsed and, therefore, right accrued for seeking declaration, whereas on the contrary plaintiffs in Suit No.2 sought the aforementioned declaration that the earlier mortgage was redeemed, but the fact remains that no evidence has been led on record to prove this fact.

Notice of motion was issued as the matter was pending before the Hon'ble Supreme Court regarding the interpretation of the judgment rendered by the Full Bench of this Court as to whether the mortgagor would be prevented from seeking redemption of the mortgage within thirty years or not, in essence, whether there would be any limitation for seeking redemption in the absence of any specific period in the mortgage deed and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr.Lokesh Sinhal, learned counsel appearing on behalf of the respondents submits that in the judgment rendered by the Hon'ble Supreme Court in **Singh Ram (D) through L.Rs Versus Sheo Ram and others,**

2014(4) R.C.R. (Civil) 179, wherein has been categorically held that where the mortgage deed does not prescribe any period for redemption, there is no limitation for seeking redemption. He further submits that the mortgage had already been redeemed and the entries continued to remain in the revenue record erroneously and declaration sought has already been granted and, thus, urges this Court for affirming the findings rendered by both the Courts below.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr.Mahajan, for, the earlier mortgage did not envisage redemption of the same within the prescribed period and in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Singh Ram's case (supra)**, there is no limitation. Accordingly, Suit No.2 seeking declaration has been decreed on the premise that the redemption had already been effected, but the entries in the revenue record erroneously showed the existence of mortgage.

Both the Courts below have rendered the findings on the examination of the oral and documentary evidence, particularly in view of the judgment rendered by the Hon'ble Supreme Court. There is no limitation to seek redemption. There is no illegality and perversity in the findings of both the Courts below. No substantial question of law arises for determination.

There is no merit in the appeals. The same are accordingly dismissed.

May 06, 2016
ramesh

(AMIT RAWAL)
JUDGE