IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1707 of 2008 (O&M)
Date of Decision.16.09.2016

Gurlal Singh (since deceased) through LRs ....Appellant

Vs

Harbans Kaur and others ....Respondents

Present: Mr. Anupam Gupta, Senior Advocate with
Ms. Savi, Advocate
for the appellant.

Mr. Tushar Sharma, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

C.M. No.5340-C of 2008

For the reasons stated in the application, delay of 188 days in filing the appeal is condoned.

Application is allowed.

RSA No.1707 of 2008(O&M)

The appellants-plaintiffs are aggrieved of the concurrent finding of fact whereby the suit seeking declaration that he has become owner by efflux of time owing to the fact that the mortgage deed executed in the year 1937-38 had become unredeemable due to efflux of time with the consequential relief of adverse possession, has been dismissed.

Mr. Anupam Gupta, learned Senior Counsel assisted by Ms. Savi, appearing for the appellants-plaintiffs submits that before the lower Appellate Court, applications Order 6 Rule 17 CPC for seeking amendment of the plaint and under Order 41 Rule 27 CPC for placing on record certain mutations and *rapat roznamcha* to establish that the mortgage was reflected in the revenue record have been filed, for, the defendants had flatly refused the execution of the mortgage deed. In fact, the mortgage had been continuing generations to generations, in essence, from 1937 and therefore, the Courts below ought to have granted the declaration. He during the course of hearing of the regular second appeal does not press his relief *viz-a-viz* the plea of adverse possession. He submits that had those documents been taken on record, it would have enabled the Court to adjudicate upon the *lis*, particularly, the foundation of the suit as the appellants-plaintiffs are in possession 1937. All these facts have been ignored by both the Courts below and therefore, there is illegality and perversity, much less, the substantial questions of law as formulated in the memorandum of appeal are required to be adjudicated upon.

Per contra, Mr. Tushar Sharma, learned counsel appearing for the respondents-defendants submits, on instructions from his client, that he does not oppose the application for amendment of the plaint and as well as the application for reception of the additional evidence, however, submits that admitting the pleading as it is, much less, the additional evidence, the suit of the plaintiff is not maintainable in view of the ratio decidendi culled out in ***Singh Ram Vs. Sheo Ram 2014(4) RCR (Civil) 179***, in essence, the suit of such nature is not held to be maintainable except the exceptions carved out viz-a-viz fixation of the mortgage period, thus, urges this Court for dismissal of the second appeal by affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book. In view of the statement made by Mr. Tushar Sharma on instructions from his client, the application for amendment of the plaint under Order 6 Rule 17 CPC and the application for reception of the additional evidence under Order 41 Rule 27 CPC are allowed and the same are taken on record as the documents carry the presumption of truth as per the provisions of Section 44 of the Punjab Land Revenue Act, 1887. On cumulative reading of the aforementioned documents and the pleadings, irresistible conclusion is drawn that the appellants-plaintiffs were mortgagees since 1937 but I am afraid that they cannot seek declaration of the ownership owing to the expression "efflux of time" used in the Limitation Act in view of the ratio decidendi culled in ***Singh Ram's case*** (supra). It would be apt to reproduce the operative part of the judgment referred supra.

> "*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 expirty of 30 years from the date of the mortgage. We answer the question accordingly.*
>
> *On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High Court in Bhandaru Ram (D) through L.R. Ratan Lal Vs. Sukh Ram (supra) will stand over-ruled.*

For the aforementioned fact, I am of the view that owing to the nature and foundation of the suit, it could not have been entertained by the Courts below as there is no limitation for seeking the redemption of the mortgage. I am of the view that the claim in the suit is not sustainable in the eyes of law. I am not in agreement with the submissions of Mr. Anupam Gupta, learned Senior Counsel *viz-a-viz* accepting the plea of mortgage.

I do not find any illegality and perversity in the findings rendered by the Courts below as the same are based upon correct appreciation of oral as well documentary evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 16, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No