

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA Nos. 4736 of 2010(O&M)
Date of decision : March 2, 2016

Sohan @ Sonu and another

..... Appellants

Versus

Kewal Singh (deceased) through L.Rs and others

..... Respondents

RSA Nos. 4738 of 2010(O&M)

Sohan @ Sonu and another

..... Appellants

Versus

Kewal Singh (deceased) through L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A. K. Goel, Advocate
for the appellants.

Mr. Parveen Hans, Advocate for L.Rs No.1,3,4,5
and 10(i) to (iii) of respondent No.1.
L.R Nos. 2 and 3 of respondent No.4 and
for respondent Nos. 2 and 3.

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?

Amit Rawal, J (oral).

The appellants-plaintiffs are aggrieved of the judgment and decree of the lower appellate court whereby the counter claimed filed by the mortgagee seeking declaration that they are owners in possession of the suit land and the respondents-

defendants have no concern with the same on account of lapse of the mortgage/failure of the mortgage has been allowed.

The appeal of the plaintiffs viz-a-viz claiming declaration that they have become owner in possession of the land described in the suit has been dismissed and the defendants have been held entitled to land measuring 25 Kanals 12 Marlas as reflected in column No.2 in the jamabandi for the year 1994-95.

Learned counsel appearing on behalf of the appellant submits that the plaintiffs filed a suit claiming declaration that they are owners in possession of land measuring 25 Kansls 12 Marlas and also challenged the entry in column No.2 reflected in the jamabandi for the year 1994-95 but have been mortgaged in favour of the defendants-respondents branding them as mortgagees.

He further submits that the mutation was entered into in the year 1930 for a valuable consideration of ₹41/- which was increased to ₹959/- as reflected in the jamabandi for the year 1961-62 and mortgaged the land for a sum of ₹1,000/-. There was no time limit for redemption of the mortgage and therefore the ratio decidendi culled out by the Hon'ble Supreme Court in **Singh Ram (dead) through L.Rs. Vs. Sheo Ram and others (2014)9 SCC 185** would not apply. In essence, there was no limitation to seek redemption where the mortgage does not prescribe any time frame.

The counter claim in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Singh Ram's case (supra)** seeking declaration on behalf of the mortgagee claiming declaration, aforementioned is not maintainable. He further cites

judgment rendered by this Court in Ram Kishan and others Vs. Sheo Ram and others 2008 (1)RCR (Civil) 334. The suit was partly decreed viz-a-viz land measuring 25 Kanals 12 Marlas giving liberty to the plaintiffs to seek redemption of the mortgage and thus urges before this court that following substantial questions of law arise for determination by this Court:-

- “i) Whether in the absence of any limitation or time prescribed in the mortgage, the mortgagor could seek redemption?
- ii) Whether the judgment and decree of the lower appellate court accepting the counter claim in view of the judgment of Hon'ble Supreme Court in Singh Ram's case (supra) is sustainable in the eyes of law or not?
- iii) Whether the mortgagee is entitled to seek declaration on acquiring ownership by efflux of time?

Learned counsel appearing on behalf of the respondents-defendants submits that there was time limit for the mortgage and rightly so, the counter claim was filed and the lower appellate court being the last court of fact and law, has appreciated the aforementioned proposition of law by placing reliance on provisions of Section 60 of the Transfer of Property Act, 1882, therefore, submits that no substantial question of law arise for determination by

this Court and there is no illegality and perversity in the impugned judgment and decree.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force in the plea of learned counsel for the appellant. The judgment rendered by the trial court granting liberty to seek redemption of land measuring 25 Kanals 12 Marlas is in consonance with the judgment of Hon'ble Supreme Court in **Singh Ram's case (supra)** as the mortgage do not contain any time limit for redemption. In such case, the mortgagee does not have any right to seek declaration or ownership in case mortgagor fails to seek redemption within a period of 30 years.

In view of the aforementioned observations, the impugned judgment and decree is not sustainable and is accordingly the same is set aside and the judgment of the trial court is restored whereby liberty has been granted to seek redemption of the mortgage.

Accordingly, the substantial questions of law mentioned above are answered in favour of the appellants-plaintiffs and against the respondents-defendants. The counter claim is rejected.

The appeals stands allowed.

(AMIT RAWAL)
JUDGE

March 2 , 2016
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