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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2550-2012 (O&M)
Date of decision : 28.04.2016

Gulzar Singh and others

... Appellants

Versus

Gura Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. T.P.S. Tung, Advocate
for the appellants.

Mr. Raj Karan Singh, Advocate
for the respondents..

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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 rendered by the lower Appellate Court, whereby the suit claiming declaration of having become owners by efflux of time, in essence, seeking declaration as owner owing to fact that the registered mortgage dated 26.03.1935 in respect of land measuring 19 kanals 13 marals, limiting the period of 20 years for redemption had been dismissed, in essence, judgment and decree of the trial Court decreeing the suit has been reversed.

Mr. T.P.S. Tung, learned counsel appearing on behalf of the appellants-plaintiffs submits that the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in ***"Singh Ram (D) through LRs V/s Sheo Ram and others" 2014 (4) RCR (Civil) 179***, would not apply as the period of 20 years seeking redemption of the mortgage was determined. The respondents-defendants initiated the proceedings before the Revenue Court for seeking redemption in the year 1970 which was dismissed and again made an attempt in the year 2003 and those proceedings were also dismissed in the year 2005, however, having left with no other choice, filed the suit on 14.06.2004 and thus, urges this Court for setting aside the findings rendered by the lower Appellate Court by ignoring the operative part of the judgment rendered in ***"Singh Ram's*** case (supra), dismissed the suit in a most fallacious and arbitrary manner and submits that the following substantial question of law arise for determination:-

> Whether in the absence of seeking redemption within a specific period of mortgage, the plaintiffs would become owner by efflux of time.

Mr. Raj Karan Singh, learned counsel appearing on behalf of the respondents-defendants submits that no explanation has come forth in filing the suit in the year 2004, whereas the period of 20 years expired way back in the 1955. The suit is hit by *"doctrine akin to delay and laches"*. The lower Appellate Court being the last Court of fact and law, after appreciating the the law and fact. dismissed the suit and thus, no substantial questions of law arise for determination, thus, urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the plea of

Mr. T.P.S. Tung. For the sake of brevity, the operative part of the judgment rendered in ***"Singh Ram's*** case (supra) reads thus:-

> *"14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.*
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> *15. 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 expiry of 30 years from the date of the mortgage. We answer the question accordingly.*
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> *16. 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) Thr. L.R. Ratan Lal vs. Sukh Ram (supra)** *will stand over-ruled.".*

On perusal of the aforementioned findings rendered by Hon'ble Supreme Court, it is crystal clear that specific time has been prescribed for seeking redemption and mortgagor did not seek redemption. The mortgagee would be entitled to seek the right claiming ownership by efflux of time. The aforementioned ratio applies in respect of a mortgage having no time-frame for seeking redemption. In such a situation, it has been held that there would be no limitation for seeking redemption.

It is also a matter of record that twice, the respondents-defendants attempted to seek the redemption, failed to achieve/remained successful. In my view, the lower Appellate Court has misconstrued the ratio culled out in the judgment rendered by the Hon'ble Supreme Court in ***“Singh Ram's*** case (supra). In view of the ratio culled out in the judgment cited above, the suit of the appellant-plaintiff is liable to be decreed. Accordingly, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. Substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondents-defendants.

Resultantly, the appeal is allowed.

28.04.2016 **(AMIT RAWAL)**
yogesh **JUDGE**