

In the High Court of Punjab and Haryana, at Chandigarh

RSA-748-2012 (O&M)

Date of Decision : 12.04.2016

Rajinder Singh and Others

... Appellants

Versus

Kulwant Kaur and Others

... Respondents

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. D.S.Pheruman, Advocate
for the appellants.

Mr. V.K.Sandhir, Advocate
for the respondents.

SHEKHER DHAWAN, J.

Present regular second appeal against the judgment and decree dated 30.11.2011, passed by learned Additional District Judge, Tarn Taran, whereby judgment and decree dated 4.1.2010, passed by learned Civil Judge (Senior Division), Tarn Taran was set aside and suit of the plaintiffs was decreed.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

3. Relevant facts of the case that plaintiffs filed a suit for declaration that they have become owner in possession of the suit land measuring 3 kanals 16 marlas situated in the area of village Ram Rauni Tehsil Tarn Taran on lapse of equity of redemption with consequential relief of permanent injunction restraining defendant No.1 from alienating the suit land or from dispossessing the plaintiffs forcibly and illegally. As per plaintiffs, Hazara Singh took the land on mortgage with possession on 27.2.1951 for a consideration of ` 1,300/- vide registered mortgage deed of the same date. During consolidation of holdings, khasra No. 470(4-12) changed to khasra No. 22/11/1(3-16) as entered in copy of jamabandi for the year 1957-58. Mutation on the basis of mortgage deed was sanctioned in favour of Hazara Singh and the entry as such continued to be reflected in his name from 1957-58 to 2000-01. Hazara Singh died on 28.10.1964 and his estate including the suit land was inherited by the plaintiffs and thereafter plaintiffs continued to be in possession till date. The suit land was not got redeemed within stipulated period of thirty years which expired in the month of Chet 1982 and as such plaintiffs have become owner of the suit land by afflux of time.

4. Defendants contested the suit *inter alia* taking the plea that in fact, the land in dispute was owned by Kehar Singh son of Kala Singh which was mortgaged by him in favour of Karnail Singh, Massa Singh, Gopal Singh, Dalip Singh sons of Hazara Singh, Gurmej Singh son of Kehar Singh filed an application for redemption of 1/4th share of land

measuring 21 kanals 12 marlas comprising khasra Nos.22/11/1, 23/15/3, 22/11/2, 20/2, 22/11/2, 12/1, 23/16 and 23/16/1 against plaintiffs No. 1 and 4 and the land was ordered to be redeemed by the Court of Sh. H.R. Megh, PCS, Assistant Collector 1st Grade, Tarn Taran, vide order dated 31.8.1977. Possession of the land was also delivered to Gurmej Singh son of Kehar Singh through warrant of the Court. The plaintiffs are neither the owners nor in possession of the suit land. Neither the suit for declaration nor for permanent injunction was maintainable. More so, suit filed against Kehar Singh son of Kala Singh, who died before filing of the suit, is nullity. Defendant denied that Hazara Singh had taken the land on mortgage from Kehar Singh vide mortgage deed dated 27.2.1951. Defendant also denied that khasra No. 470 was converted into khasra No. 22/11/1. As per defendant, redemption order dated 31.8.1977 has already attained finality and Gurmej Singh got possession of the land in execution thereof. Plaintiffs have nothing to do with the suit land and it was prayed that suit be dismissed.

5. On these facts, the Court of first instance settled the issues and the parties were put to trial. The Court of first instance, after appreciating the evidence, returned the finding that plaintiffs failed to prove their case and dismissed the suit. The first Appellate Court reversed the said finding and allowed the appeal thereby declaring the plaintiffs to be owner of the suit land as the mortgager has failed to get the suit land redeemed even after the lapse of mortgage period and the defendants were restrained from alienating the suit land to anybody.

6. Learned counsel for the appellants submitted that the Court of first Appeal while deciding the first appeal did not consider the fact that the suit of the plaintiff is not maintainable that the plaintiffs had already become owners of the suit land on lapse of period of thirty years. On this point, reliance was placed upon the judgment from Full Bench judgment of this Hon`ble Court in **Ram Kishan and others Vs. Sheo Ram and others** 2008(1) PLR 1 wherein, it has been held that the mortgagees do not become owners by prescription if the mortgagee failed to get the land redeemed. The period of limitation is not to start to run from the date of mortgage, but the period of limitation shall start when mortgagor pays or tenders to mortgagee or deposits in Court the mortgage money.

7. Learned counsel for the appellants also submitted that the plaintiffs failed to prove the mortgage deed dated 27.2.1951 in accordance with law because as per provisions of Section 68 of the Evidence Act, if the execution of a document required to be attested is to be proved, it will be necessary to examine the attesting witness, but in case the document is a registered one, then it is not necessary to call the attesting witness. More so, the first Appellate Court failed to appreciate that Gurmej Singh got 1/4th share redeemed from the plaintiffs through the Court and the said case was contested by the plaintiffs in the year 1977 and prayed that the appeal be accepted and the judgment and decree dated 30.11.2001 passed by the first Appellate Court be set-aside and the suit of the plaintiffs be dismissed.

8. Learned counsel for the respondents submitted that the mortgage of 1951 was not redeemed and redemption was not with regard to the land bearing khasra No. 22/11/1 measuring 3 Kanals 16 Marlas and Court of first Appeal had rightly recorded the finding and the present appeal is liable to be set aside.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the plaintiffs had originally filed suit for declaration that they had become owners of the suit property because the suit property measuring 3 Kanals 16 Marlas was mortgaged with possession on 29.2.1951 for a consideration of Rs.1,300/-. During consolidation proceedings, Khasra No. 470 measuring 4 kanals 12 marlas was changed to khasra No. 22/11/1 measuring 3 kanals 16 marlas as shown in jamabandi for the year 1957-58. It was held by the Court of first Appeal that the suit land was not redeemed by the mortgagor within stipulated period of 30 years and as such, the plaintiffs have become owners of the suit land by afflux of time. However, as per latest judgment of Hon`ble Supreme Court in **Singh Ram [D] through LRs. Vs. Sheo Ram and others, 2015 (1) PLR 167** this controversy has been set at rest and Hon`ble Supreme Court while upholding the judgment from Hon`ble Full Bench of this Court in **Ram Kishan's case [supra]**, observed that in case of usufructuary mortgage, mere expiry of period of 30 years from the date of creation of mortgage does not extinguish the right of mortgagor under Section 62 of the Transfer of

Property Act, 1882 and as such, the present suit filed by the plaintiffs for declaration that they had become owners on the expiry of period of 30 years is not maintainable and is liable to be dismissed and the Court of first Appeal has recorded findings which are not in accordance with law and as such, the findings recorded by the Court of first Appeal are hereby reversed.

10. The Court of first instance had rightly observed that the mortgage deed dated 27.2.1951 was never proved. The plaintiffs had sought permission from the Court for proving the said document by leading secondary evidence as required under Section 65 of the Evidence Act, but the same was not proved in accordance with law.

11. In view of the above, present regular second appeal stands allowed and the findings recorded by the Court of first Appeal vide judgment and decree dated 30.11.2011 are set-aside. Resultantly, the suit of the plaintiffs for declaration stands dismissed and the judgment and decree dated 4.1.2010 passed by Civil Judge [Senior Division], Tarn Taran are maintained.

(SHEKHER DHAWAN)
JUDGE

April 12th, 2016
"DK/som"