IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2054 of 2013 (O&M)
Date of Decision: 18.10.2016

POHAP SINGH AND OTHERS

......Appellants

Vs

MADAN MOHAN AND ANR

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Shashi Kumar Yadav, Advocate
for the appellants.

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RAJ MOHAN SINGH, J

[1]. Plaintiffs are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Brief facts as gathered from the record are that the plaintiffs filed a suit for declaration and permanent injunction on the ground that predecessor-in-interest of plaintiff Nos.1 to 6 i.e. Rati Ram, predecessor-in-interest of plaintiff Nos.8 to 12 Shadi Ram and predecessor-in-interest of plaintiff No.7 Kishan Lal were recorded to be mortgagees in actual possession of the agricultural land before consolidation proceedings in the year 1954-55. Shadi Ram died 28 years ago living behind plaintiff

Nos.9 to 12. Shiv Charan and Sri Chand were his sons being legal heirs/successors/legal representatives. Shiv Charan also died about 11 years ago living behind his last Will in favour of Sant Ram. Shri Chand also died about 8 years back living behind Sat Ram as his son. Rati Ram died about 19 years back living behind plaintiff Nos.1, Badam Singh and plaintiff No.6. After the death of Badam Singh, his legal heirs came to succeed him. Bharat Singh also died living behind his heirs. After the death of predecessor-in-interest of the plaintiffs, they had inherited the mortgagee rights and were in actual cultivating possession. Plaintiffs alleged that with the efflux of period of 30 years, they have become owner of the mortgaged property. They were never dispossessed from the suit land/property.

[3]. Defendant failed to appear in the suit despite service by way of publication. They were proceeded against *ex parte* and *ex parte* evidence was led.

[4]. Trial Court as well as lower Appellate Court dismissed the suit as well as appeal preferred by the plaintiffs.

[5]. I have heard learned counsel for the appellants.

[6]. Apparently, no time, place, commencement of mortgage was alleged and proved by the plaintiffs. Even, no mortgage deed was produced. No time period of redemption

was proved on record. In view of ratio laid down in ***Ram Kishan and others vs. Sheo Ram and other, 2008(1) CivCC 414***, period of 30 years under Article 61(a) of the Limitation Act begins to run, when the right to redeem or the possession accrues to the mortgagor. Right to redeem or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage where rents and profits are to be set off against interest on the mortgaged amount, right of foreclosure is co-extensive with the right to seek redemption.

[7]. Since right to seek redemption accrues only on payment of mortgage amount, therefore, right of foreclosure will not accrue to the mortgagees, till such time mortgagee remains in possession of the mortgaged property and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. The ratio in ***Ram Kishan and others'*** case (supra) was further upheld by the Hon'ble Apex Court in the case of usufructuary mortgage when there was no recital of any specified period in the mortgage deed, no limitation is attracted.

[8]. In the instant case, no mortgage deed was even produced on record. Both the Courts below have concurrently recorded findings of fact on record on the basis of evidence led

by the plaintiffs themselves. Therefore, there cannot be any re-appreciation of evidence in Regular Second Appeal.

[9]. In view of above, no law point worth cognizance is involved in the present appeal and the same is accordingly dismissed.

October 18, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No