IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2303 of 2014(O&M)

Date of decision:14.3.2016

Sham Lal ….Appellant

VERSUS

Amrik Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Pradeep Goyal, Advocate for the appellant.

Mr. R.M. Sharma, Advocate for respondents No.1 and 2.

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REKHA MITTAL, J.

The present appeal has been directed against the judgment and decree dated 02.12.2013 passed by Additional District Judge, Sangrur, whereby the appeal against the judgment and decree dated 18.03.2011 passed by the trial Court has been allowed and the suit filed by the appellant/plaintiff was ordered to be dismissed.

The facts relevant for disposal of the present appeal are that the appellant/plaintiff filed a suit for declaration and permanent injunction on the allegations that Mehar Singh son of Nathu Singh was owner in possession of the suit land and he mortgaged the same with possession to Sh. Lehar Chand, father of the plaintiff, vide registered mortgage deed

No.1392 dated 19.09.1963. Mutation No.3784 was sanctioned in favour of the mortgagee. Lehar Chand died on 27.10.2002 leaving behind the plaintiff and performa defendants as his legal heirs. Mehar Singh died 20 years back and he was unmarried and issueless. Sher Singh, Chhota Singh, Lal Singh and Nihal Kaur were his legal heirs who have also died. Defendants No.1 to 6 are legal heirs of Chhota Singh, No.7 and 8 of Sher Singh and No.9 to 11 of Nihal Kaur. The suit land has not been redeemed despite a period of more than 45 years has elapsed. After expiry of stipulated period of 30 years, the plaintiff and performa defendants have become exclusive owners in possession of the suit property and the defendants No.1 to 11 have no concern with the same. They got entered mutation No.8839 regarding redemption of land on the basis of a forged and fabricated document and the same is illegal, null and void and not binding upon rights of the plaintiff and performa defendants.

Defendants No.1 to 5 filed the written statement raising preliminary objections, inter alia, that the plaintiff has no locus standi and cause of action to file the suit; the suit is bad for non-joinder and mis-joinder of parties and is barred by limitation. On merits, ownership of Mehar Singh qua suit property is admitted and so also the factum of mortgage of suit land created by Mehar Singh in favour of Lehar Chand. The suit property was redeemed as Lehar Chand received an amount of Rs.300/- from Chhota Singh and issued a receipt on 21.03.1980, on the basis whereof mutation of redemption bearing No.8839 was entered. Chhota Singh is in possession of the suit property from the date of redemption.

Defendants No.7 and 8 filed their separate written statement in line with the allegations raised in the written statement filed by defendants No.1 to 6 with a prayer for dismissal of the suit

The learned trial Court framed issues; permitted the parties to adduce evidence in support of their respective claims and eventfully decreed the suit of the appellant/plaintiff.

The judgment and decree passed by the trial Court became subject matter of challenge in appeal preferred by Amrik Singh and another, Additional District Judge, Sangrur, accepted the appeal, set aside the judgment and decree passed by the trial Court and the suit filed by the appellant/plaintiff was ordered to be dismissed with costs throughout.

Feeling aggrieved by the judgment and decree passed by the first Appellate Court, the present appeal has been preferred by Sham Lal, unsuccessful plaintiff.

Counsel for the appellant has submitted that the Appellate Court reversed the judgment and decree passed by the trial Court without correctly examining and appreciating recitals in the mortgage deed in regard to the aspect of time limit qua redemption of the mortgage. It is argued that as per mortgage deed (Ex.P1), the mortgagor was entitled to redeem the mortgage in the beginning of the next year i.e. 1964 as the mortgage was created in August, 1963. According to counsel, as the mortgagor or his successors-in-interest failed to get the mortgage redeemed within a period of 30 years w.e.f. 1964, they have lost their right to redeem the mortgage and as a consequence, the appellant and performa defendants have become the co-owners in possession of the suit land. It is further argued that in view of a special contract between the parties prescribing a specific time limit for redemption of the mortgage, the contesting respondents cannot derive any advantage to their contention from the Full Bench judgment of this Court Ram Kishan and others vs. Sheo Ram and others, 2008(1) RCR (Civil) 334, affirmed by Hon'ble the Supreme Court.

Counsel for the contesting respondents, on the contrary, would urge that the learned trial Court mis-interpreted contents of the mortgage deed and committed a gross error by holding that the mortgage was created only for one year and period of limitation for redeeming the mortgage commenced w.e.f. the year 1964 and expired by the year 1994, therefore, the appellant/plaintiff and performa defendants have become co-owners in possession of the suit land. It is further submitted that the error committed by the trial Court was rightly rectified by the Court in appeal and the judgment passed is based upon appreciation of the mortgage deed in right perspective. It has been urged that as there was no time limit fixed for redemption of mortgage, the principle of 'once a mortgage is always a mortgage' would be attracted in the present case and judgment passed by Full Bench of this Court in Ram Kishan's case (supra) squarely covers the issue that there is no limitation for redemption of the mortgage.

I have heard counsel for the parties and perused the records.

The precise question that calls for determination is whether there was time limit fixed for redemption of the mortgage created by Sh. Mehar Singh in favour of Sh. Lehar Chand vide mortgage deed registered on 07.08.1963 in respect of land measuring 4 kanals comprised in Killa No.281/4 for mortgage amount of Rs.200/-.

Counsel for the appellant has placed on record a copy of the mortgage deed in vernacular along with its translation in English for appreciation by this Court. The crucial words in the mortgage deed, germane to the controversy reads as follows:-

> "Whenever in the beginning of a year the entire mortgage amount shall be paid, the land will be got released."

Counsel for the appellant has asserted that the words 'beginning of the year (shuru saal)' would refer to year succeeding the year in which the mortgage was created i.e. 1963. I find myself unable to accept the submission in this regard. The learned Appellate Court discarded the plea that there was a time limit of one year and the period of limitation for redemption of mortgage commenced in the year 1964.

A relevant extract from the judgment in para 13 reads thus:-

> "13……There was no limitation period for redemption of the mortgage because no specific period was mentioned for redemption thereof. Ex.P1 clearly shows that from any start of the year, by making the payment of mortgage money, the mortgagors can redeem their land. It is no where mentioned that if the mortgage was executed on 19.9.1963, the same was to be redeemed from the start of cultivating year in the year 1964. It only means that property can be redeemed from the start of cultivating year i.e. any year, but that does not mean that it was in 1964 only. Rather there is no specific recital for redemption in the year 1964. There is no doubt in it that if the deed gives time for redemption in terms of the contract, the limitation for redemption would run from the date fixed in the mortgage-deed. But however,

in the present case, there is no time fixed for redemption in terms of the contract between the parties….."

This Court agrees with the findings of the first Appellate Court that the aforesaid words used in the mortgage deed cannot possibly be read in the manner sought to be interpreted by counsel for the appellant. Rather as per contract between the parties, it was left open for the mortgagor to pay the mortgage amount in the beginning of any year and to get the land redeemed. In absence of any time limit fixed for redemption of the mortgage, contention raised by counsel for the respondents gets support from the judgment in Ram Kishan's case (supra), affirmed by Hon'ble the Apex Court.

Keeping in view the above, principle 'once a mortgage always a mortgage' is attracted in the present circumstances sufficient to negate plea of the appellant that he has become owner in possession of the suit land for failure of the mortgagor to redeem the mortgage within the stipulated period of limitation namely 30 years w.e.f. 1964.

No other point has been raised.

As an upshot of the aforesaid discussion, no substantial question of law arises for adjudication. As a natural corollary, the appeal fails and is, accordingly, dismissed with costs.

MARCH 14, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**