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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2405-2014 [O&M]

Date of Decision : March 17th, 2016

Subhash Chand

.... Appellant

Versus

Som Nath and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Diwan S. Adlakha, Advocate,
for the appellants.

SHEKHER DHAWAN, J.

For the reasons mentioned in CM No.5729-C of 2014, which is supported by an affidavit, delay of 38 days in re-filing the present appeal is condoned.

CM stands disposed of.

Main Appeal

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, the suit filed by the plaintiff-appellant for declaration that he has become owner of the suit property by efflux of time in view of Section 27 of the Limitation Act, was dismissed by the Court of first Instance vide judgment and decree dated 4.10.2011. The appeal filed by him was also dismissed by learned Additional District Judge, Yamuna Nagar vide judgment and decree dated

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21.10.2013.

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 for the purpose of decision of this appeal; that as per plaintiff, ancestors of defendants No.1 to 10 had mortgaged the suit property to the ancestors of the plaintiff vide registered mortgage deed dated 6.6.1918. Ancestors of both the parties had died. Defendants or their ancestors failed to get their land redeemed and as more than 30 years had passed, as such plaintiff and Sadhu Ram have become owners of the suit property by efflux of time in view of Section 27 of the Limitation Act and the rights of defendants No.1 to 10 have been extinguished. Oral request was made to the defendants No.1 to 10 but to no avail and as such necessity of the suit.

4. Defendants contested the suit *inter alia* admitting the factum of mortgage deed. However, they took the plea that ancestors of defendants had already got the suit property redeemed and mutation has not been sanctioned and entries in the name of Jyoti Ram and Sadhu Ram are continuing in the record which are liable to be corrected. The possession is with the defendants. No mortgage subsists as the same has been redeemed and entries are liable to be corrected.

5. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance dismissed the suit of the plaintiff. However, defendants No.1 to 10 were directed to make the payment of mortgage money to the plaintiff within one month from the date of said

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judgment, i.e. 4.10.2011. The appeal filed before the Court of first Appeal was also dismissed being devoid of merit. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant mainly took the plea that the Court below have completely ignored the material and evidence available on the file which resulted into erroneous findings and the same are liable to be set-aside.

7. Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that both the Courts below have correctly recorded the findings that earlier suit property was mortgaged by ancestors of defendants No.1 to 10 to the ancestors of the plaintiff and Sadhu Ram and the said fact finds recorded in Jamabandis, Ex. P1 to P3 and copies of mutation, Ex. P4 to P11. However, law on the point is settled that once the mortgagee always remain a mortgagee and there is no time limitation for redemption of the suit land. Such a view was taken by the Full Bench this Court in **Ram Kishan Vs. Sheo Ram, 2008 (1) PLR 1** and the concurrent findings of fact do not call for any interference.

8. As per view taken by Hon`ble Supreme Court in **Deity Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57,** the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon`ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs. P.Shanmugama & Ors., JT 2005 (1) SC 201** and **Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582,** second appeal cannot be entertained if

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there is no substantial question of law involved therein.

9. In the present second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

10. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 17th, 2016
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