

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

282

RSA-3501-2016(O&M)

Date of Decision:22.09.2017

Raghubir and another

.....Appellants

Versus

Badami and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.J.S.Hooda, Advocate,
for the appellants.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendants No.7 and 8 are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession by way of redemption filed by the plaintiffs-respondents was decreed by the learned trial court vide its impugned judgment and decree dated 23.05.2014 and the first appeals of the defendants were also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 22.09.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that it is averred that the appellants/defendants are mortgagees in possession of agricultural land bearing Khasra No.94, Khatoni No.102, Rect.No.20, Killa No.16/1, measuring 5 kanals 7 marlas situated within the revenue estate of Village Ghorī, Tehsil & District Palwal. Suit land was mortgaged by Khoobi etc. in

favour of Smt. Ramdei for an amount of Rs.118/-. In the year 1946, some of the co-sharers became mortgagee on account of inheritance and a mutation of redemption of land bearing No.1258 was sanctioned as Fakul Raham Takmili i.e. technical redemption but the suit land is still in possession of the appellants/defendants as mortgagees. It was claimed that respondents/plaintiffs are entitled to get possession of the suit property as appellants/defendants have been reaping the benefits of suit land since the time of mortgage and suit land stand redeemed on account of payment of redemption through produce from the land. Moreover, respondents/plaintiffs were prepared to pay mortgage amount if any found due. It was further averred that at the time of mortgage, no time of redemption was fixed. Further, one of the mortgagor namely Ram Gopal son of Lakhmi has died issueless and respondents/plaintiffs No.9 to 13 are entitled to his share to the suit land to the extent of 1/4th share. Numerous requests were claimed to have been made by the respondents/plaintiffs to deliver possession of the suit land but all went in vain and respondents/plaintiffs were constrained to file the present suit.

Defendants were put to notice. Defendant Nos.1 to 6 filed their joint written statement whereas defendant Nos.7, 8 and 9 filed their separate written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

“1. Whether the plaintiffs are entitled to the decree for possession by way of redemption of the suit land on the payment of Rs.118/- to defendants?OPP

2. Whether suit is not maintainable in the present form?OPD

3. Whether plaintiffs have no locus standi and cause of

action to file the present suit?OPD

4. *Whether plaintiffs have not come within clean hands and have concealed and suppressed the material facts from the Court?OPD*

5. *Whether plaintiffs are estopped by their own act and conduct from filing the present suit?OPD*

6. *Whether suit is time barred?OPD*

7. *Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their case by bringing on record cogent and convincing evidence. Accordingly, suit of the plaintiffs for possession by way of redemption of suit land was decreed by the learned trial court vide its impugned judgment and decree dated 23.05.2014. Defendants felt aggrieved. Two sets of defendants filed two separate but identical appeals. One appeal was filed by defendant Nos.1 to 6 and the other appeal was filed by defendant Nos.7 and 8. The first appeals were dismissed by the learned first appellate court, vide its common impugned judgment and decree dated 22.09.2015. Defendant Nos.1 to 6 did not approach this Court by way of their separate regular second appeal. Hence, this regular second appeal, at the hands of unsuccessful defendant Nos.7 and 8.

Heard learned counsel for the parties.

A combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that the plaintiffs have duly proved their case by bringing on record cogent and

convincing evidence. Relevant revenue documents were duly proved on record in the form of jamabandi Ex.P1 for the year 1887-88, jamabandi Ex.P2 for the year 1957-58, jamabandi Ex.PW3/A for the year 2004-05 and also copies of numerous mutations in the form of Exs.P4 to P14. It was also duly established on record that it was a usufructuary mortgage. The amount of mortgage was also specifically pleaded and duly proved by the plaintiffs. After due appreciation of the documentary as well as oral evidence brought on record by the plaintiffs, the learned trial court rightly came to conclusion that the plaintiffs were successful in proving their case, in accordance with law. Similarly, the learned first appellate court rightly did not find any patent illegality or perversity in the findings recorded by the learned trial court and rightly dismissed the first appeals of the defendants. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent and convincing relevant findings recorded by the learned Additional District Judge in para 16 to 20 of his impugned judgment, which deserve to be noticed here, read as under:-

“The contention of the respondents/plaintiffs is that their predecessors-in-interest namely Khoobi etc. mortgaged with possession the suit land to the predecessors-in-interest of the appellants/defendants namely Smt. Ramdei for a sum of Rs.118/- which stands proved from the revenue record i.e. jamabandi Ex.P1 for the year 1887-88, jamabandi

Ex.P2 for the year 1957-58, jamabandi Ex.PW3/A for the year 2004-05 and from the copies of mutation register Ex.P4 to Ex.P14. It is further contended that appellants/defendants had purchased the mortgagee rights of the suit land from the heirs of the original mortgagee and thus, they stepped into the shoes of the mortgagee. It is further contended that mortgage was usufructuary mortgage and the appellants/defendants have not given any account of income and profit of the suit land and as such, the mortgage stood redeemed from the profit earned by the mortgagee from the suit land. It is also contended that even if the mortgage is not redeemed even then the respondents/plaintiffs are entitled to get the suit land redeemed on payment of Rs.118/- being the mortgage amount to the appellants/ defendants and the appellants/defendants are liable to deliver the possession of the suit land.

On the other hand, the contention of the appellants/defendants is that the appellants/defendants should have got redeemed the suit land within 60 years, therefore, the respondents/plaintiffs have lost the right to get the mortgage redeemed.

It is not disputed between the parties that the suit property has been mortgaged by the predecessors of the respondents/plaintiffs to the predecessors-in-interest of the appellants/defendants for a sum of Rs.118/-. It is also not disputed that the appellants/defendants are in possession of the suit land and further the same is also reflected in the revenue record. So, it is established that the mortgage in question was the mortgage with possession. The respondents/plaintiffs have not pleaded any terms and conditions of the mortgage in the plaint itself. It is contended by learned Counsel for the appellants/defendants that suit land is to be redeemed within 60 years but the appellants/defendants have not led

*any evidence to show that it was the term and condition of the mortgage that the suit land is to be redeemed within 60 years of the mortgage. So, no other term and condition has been proved on record. Consequently, it was a usufructuary mortgage. The reliance can be placed in this regard upon judgment cited as **Raj Karan Singh Vs. Jagmohan Singh, 2012(2) RCR(Civil) – 216** wherein it is held that:*

“Admittedly, the mortgage in question was mortgaged with possession. No other terms and conditions have been pleaded even by the appellant/plaintiff. Consequently, it was usufructuary mortgage.”

*Further, the Hon'ble Apex Court in its full Bench Judgment titled as **Singh Ram (D) Thr. L.Rs. Vs. Sheo Ram & Ors. RCR 2014(4) page 179**, has held in para no. 15 that :-*

“We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recovery possession commence 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 deceleration that he had become an owner merely on the expiry of 30 days from the date of the mortgage. We answer the question accordingly.”

Applying the above proposition of law in the present case, the contention of the appellants/defendants that their predecessors-in-interest have become the owners of the suit land as the respondents/ plaintiffs have failed to get the suit property redeemed within 60 years of the mortgage, is not tenable.”

Facts are hardly in dispute. Defendants-appellants were trying to build their case only on technicalities. Possession of the appellants-defendants on the suit land, consequent upon the mortgage in favour of their predecessor-in-interest was not in dispute. Similarly, ownership of Late Sh.Khoobi, predecessor-in-interest of the plaintiffs was duly established on record. Suit land was mortgaged by the predecessor-in-interest of the plaintiffs with possession to the predecessor-in-interest of the appellants-defendants for a sum of ₹118/- and this fact has also been duly proved on record with the help of abovesaid numerous revenue documents. Under these undisputed circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure.

In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 22, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No

**CM-9171-C-2016 in
RSA-3501-2016**

**Raghubir and another
Versus
Badami and others**

Present: Mr.J.S.Hooda, Advocate,
for the applicants-appellants.

Applicants seek condonation of delay of 44 days in re-filing the
appeal.

After hearing the learned counsel for the applicants-appellants,
instant application is allowed, for the reasons stated therein. Delay of 44
days in re-filing the appeal is condoned.

C.M. stands disposed of.

September 22, 2017
seema

**(RAMESHWAR SINGH MALIK)
JUDGE**