IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4322 of 2016
Date of Decision: 15.12.2017

Shyam Lal and others ....Appellants

Vs.

Ranvir Singh and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ashish Gupta, Advocate, for
Mr.Mahender Singh Tewatia, Advocate, for the appellants.

Mr.C.B.Goel, Advocate, for the respondent/caveators.

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RITU BAHRI, J. (ORAL)

The present regular second appeal has been filed against the judgment and decree of the appellate Court dated 08.10.2015 and decree of the trial Court dated 20.12.2013 whereby the suit of the respondents/plaintiff for possession by way of redemption has been decreed.

After hearing counsel for the parties, the present appeal deserves to be dismissed. The brief facts of the case are that plaintiffs were the owners/mortgagors of the agricultural land i.e. Khewat No.173, Khata No.230 to 232 rect No.120, killa No.4/1(0-7), 4/7 (0-2), 8/4(0-18), 8/5 (0-18) Rect. No.20, Killa No.23 (8-0), 24/1(6-7) Rect. No.83, Killa No.15/2 (5-7) i.e. total measuring 22 Kanals 9 Marlas of land situated in Village Janoli, Tehsil and District Palwal and the defendants were the mortgagees in possession of the land. The plaintiffs were the descendents of original mortgagors Sh.Kallan and Budha sons of Sh.Ratti Ram and the defendants were the descendents of the original mortgagees Sh.Kabil son of Padam Singh. The present appellants/defendants were legal representatives Kabir son of Padam Singh, this fact was admitted by all the three witnesses DW1 to DW3 in their written statement and at the time of their cross-examination. Since it was correct that the Kallan and Buddah had mortgaged the suit land to Kabil son of Padam Singh, the suit of the plaintiff had been decreed as right of mortgagor to redeem usufructuary mortgage cannnot be extinguished by efflux of time. In case of usufructuary mortgage where no time is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when mortgagee pays or tenders to the mortgagee or deposits in Court the mortgage money. As reference has been made in the case of **Kulwant Singh and others Vs. Gurbaksh Singh and others, 2009 (3) RCR 258 (PH).** A reference has also be made to the judgment passed by this Court in the case of **Gurmail Singh Vs. Bhagwan Singh 2010(5) RCR 386** wherein, it has been held that when there is no limitation fixed for redemption of a usufructuary mortgage, the cause of action and a right to seek redemption would arise only on the date when the mortgage money is deposited.

Learned counsel for the appellant/defendants has further argued that in the file all the defendants have not been made a party and the same is in violation of Order 34 Rule 7 of CPC and the second arguments is that Civil Court has not jurisdiction to pass a final decree on mortgage under Order 34 Rule 7 CPC. He further submits that the respondents/plaintiffs should have got redeemed the suit land within 60 years, therefore, the respondent/plaintiffs have lost the right to get the mortgage redeemed.

Since the land had been given on mortgage on 24.50Ps. to the respondents/plaintiff and they are enjoying the possession of the suit land, the present decree is to be treated as final decree under Order 34 Rule 7 CPC and no further orders are required to be passed for final decree. Moreover, the appellants/defendants have not led any evidence to show that it was the terms and conditions of the mortgage that the suit land is to be redeemed within 60 years of the mortgage. So, no other terms and conditions have been proved on record. Consequently, it was usufructuary mortgage. The reliance can also be placed on record in the case of ***Singh Ram (D) Thr. L.Rs. Vs. Sheo Ram and Others RCR 2014 (4), page 179*** wherein, it has been held 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 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 declaration that he had became 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 the predecessors-in-interest of respondents/plaintiffs should have got redeemed the suit land within 60 years of the mortgage, is not tenable. The findings given by both the Courts that the mortgage in favour of plaintiff was usufructuary mortgage has been rightly given and requires no interference as there was no time limit for redemption for such a mortgage as the defendants failed to lead any evidence that they were any terms and conditions that a suit land had to be redeemed within 60 years of mortgage.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

15.12.2017
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No