

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA 3872/2015 (O&M)
Date of decision:26.10.2017**

Dalip Kaur and others

.....Appellants.

v.

Smt.Pritam Kaur and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.GS Nagra,Advocate for appellants/defendants 3 to 5.

Jaswant Singh,J,(Oral).

Defendants 3 to 5 are in appeal against the judgment and decree of reversal dated 5.1.2015 passed by Additional District Judge, Amritsar whereby suit of the respondents/plaintiffs for possession by way of redemption of suit land was decreed and the judgment and decree dated 2.9.2011 passed by Addl.Civil Judge (Sr.Div.)Ajnala,dismissing the suit of the respondents/plaintiffs was set aside.

Briefly noticed the facts giving rise to the present appeal are that suit land measuring 39K-7M was mortgaged by plaintiff (since deceased and represented through her legal representatives) vide mortgage deed dated 18.3.1975 alongwith delivery of possession for a sum of Rs.2000/- for 99 years. It was alleged that at that time financial condition of the plaintiff was poor and defendants incorporated the term of 99 years in the mortgage deed which amounted to clog on the equity of redemption. It was further alleged that defendant no.1 had further sold mortgage rights to the extent of 1/3rd share out of total land in favour of defendants 8 and 9 and

mutation had been sanctioned in their favour. Since plaintiff's request to defendants to receive the mortgage money and deliver back the vacant possession of the suit land to the plaintiff fell of deaf ears, hence the suit.

Defendants 8 and 9 despite notice did not turn up and were proceeded against ex parte. No written statement had been filed on behalf of defendant no.7. Defendant 1 to 6 appeared and contested the suit on various grounds. It was alleged by them that deed dated 18.3.1975 was a transfer deed under Section 54 of the Transfer of Property Act and that they had become owners of the suit land by efflux of time. It was further alleged that the suit was barred by limitation.

On the pleadings of the parties issues were framed. Both sides led evidence in support of their respective pleas.

The learned Additional District Judge, after hearing both sides and perusing the evidence led by the parties, has rightly relied upon law laid down by Hon'ble the Supreme Court in **Shivdev Singh and Anr. V Sucha Singh and Anr. 2000(1)Apex Court Journal 511 (SC)** to hold that it is a settled law that once a mortgage always a mortgage. A clog or fetter on the equity of redemption is void. Further relying upon law laid down by Hon'ble the Supreme Court in **Murarilal v Dev Karan AIR 1965 SC 225**, the learned appellate Court has rightly observed that if a deed contains a stipulation which unreasonably restrains or restricts the mortgagors equity or redemption, Courts were empowered to ignore the stipulation and enforce the mortgagor's right to redeem. It has further been held that the rule against clog on the equity of redemption is that a mortgage shall always be redeemable and a mortgagor's right to redeem shall neither be taken away nor be limited by any contract between the parties and that the Court can

ignore the contract, the effect of which is to deprive the mortgagor of his right to redeem the mortgage.

Further while decreeing the suit of the plaintiffs/respondents, it was rightly noticed that insertion of a period of 99 years in the mortgage deed coupled with the fact that a large chunk of land had been mortgaged for a meager amount of Rs.2000 and plaintiff being in poor condition at that time,all this amounted to clog on the equity of redemption.

Further while rejecting the plea of the defendants that the suit was barred by limitation, the learned Additional District Judge has rightly held that limitation period would start when the Court would go into the aspect when any term and condition in the mortgage deed has amounted to clog on the equity of redemption. While holding so reliance has been placed upon **Shivdev v Suha AIR 2000 SC 1935, Pomal Kanji v Vrajlal AIR 1989 SC 436.**

At the time of arguments, learned counsel for the appellants has not been able to show anything contrary to what has been held by the learned Additional District Judge in the judgment of reversal.

In view of the above, no question of law much less substantial question of law arises for consideration in this appeal.

Dismissed.

26.10.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No