

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

RSA No.1765 of 2017 (O&M)

Date of Decision: 15.11.2017

Bhambu S/o Sooka now deceased through his LRs and Ors
.....Petitioners

Vs.

Shri Ram and others
.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.S.Sihota, Sr.Advocate, with
Mr.B.R.Rana, Advocate, for the petitioners.

RITU BAHRI, J. (ORAL)

CM No.4263-C of 2017

Application is allowed.

Legal representatives of appellant No.2(iv) Dharambir aged 51 years son of Pohap Singh, are ordered to be impleaded as party in the memo of party.

RSA No.1765 of 2017

The appellant has come up in appeals against the judgment and decree dated 14.10.2014 passed by Civil Judge (Jr.Division) Hathin and judgment and decree dated 16.12.2016 of the appellate Court whereby, suit of the plaintiff has been decreed for possession by way of redemption after determining the mortgage amount which is liable to be paid to the defendants and other liabilities in terms of Section 34 of CPC in favour of plaintiff.

Plaintiff filed a suit stating therein that they are owners and

mortgagors and the defendants/mortgagees of the agricultural land

comprised in Khewat No.89, Khatoni No.93, rectangle No.80, killa No.15/2(1-0), 16(8-0), rectangle No.81, Killa No.11/2(1-17), 20 (8-0), 21/1 (4-16) total measuring 24 kanals 05 Marlas situated with the revenue estate of Village Manpur,, Tehsil Hitin, District Palwal. Their predecessors mortgaged the suit land to the predecessors in interest of the defendants but no mortgage amount has been mentioned as it was agreed that the produce of the suit land was to be utilized towards settlement of the mortgaged amount. They have further claimed that the khasra numbers of the suit land have been changed several times and the suit land which was earlier being khasra numbers 2800, 2801, 2812, 2632, 2633, 2634, 691, 73 and 74` at the present date the khasra numbers as detailed above. They attested the defendants to deliver the possession of the suit land as they have already got the produce many times more than the mortgage amount but to no avail. Hence, the present has been filed.

On notice, defendant was filed joint written statement taking preliminary objections regarding maintainability, locus standi, cause of action, estoppel, limitation, jurisdiction, court fee and suppression of true and material facts. They denied that the plaintiffs are owner of the suit land and claimed themselves to be absolute owners of it. They further claimed that the plaintiffs are left with no right, title or interest in the suit land. They denied that the previous khasra numbers of the land were 2800, 2801, 2812, 2632, 2633, 2634, 691, 73 and 74 and these were changed after consolidation. They even denied the relationship of mortgagor and mortgagees between the parties and denying all other averments, they prayed for dismissal of suit.

From the pleadings of the parties, following issues were framed on 29.11.2013:-

1. Whether the plaintiffs are entitled to preliminary decree for possession by way of redemption after determining the mortgage amount which is liable to be paid to the defendants and other liabilities in terms of the order 34 CPC? OPP.
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiffs have no locus standi and cause of action to file this suit?OPD.
4. Whether the plaintiffs are estopped by their own act, conduct and acquiescence from filing the present suit? OPD.
5. Whether the plaintiffs have concealed the material facts from the Court?OPD
6. Whether the suit is barred by Limitation? OPD.
7. Relief.

To substantiate their case, the plaintiffs examined Ranjeet as PW1. He tendered his affidavit Ex.PW1/A. PW2 Shri Ram was examined as PW2. He tendered his affidavit Ex.PW2/A. Thereafter, evidence of the plaintiffs was closed by their counsel after tendering the documents Ex.P1 to Ex.P19/H i.e. revenue record.

To controvert, the defendants examined Partap Singh as DW1. He tendered his affidavit Ex.DW1/A. Hukum Singh was examined as DW-2. He tendered his affidavit Ex.DW2/A. Thereafter, evidence of the defendants was closed by their counsel.

The trial Court after going through the oral and documentary evidence held that mortgagor has a right of redemption on payment of

mortgage money in view of the judgment in the case of **Harbans Vs. Om Parkash and others 2006(2) Latest Judicial Reports 768 (SC)**. It was further held that in case of usufructuary mortgage when no time limit is fixed for seeking redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgage pays or tenders to the mortgagee or deposits in Court the mortgage money or the balance thereof. Thus, once a mortgage is always a mortgage and is always redeemable. In this case, the defendants are in possession of the suit land since long. Earlier to them their predecessors wherein possession of it. The mortgage amount has already been recovered out of the usufruct. The suit was decreed and appeal against this judgment was also dismissed.

The learned appellate Court has affirmed the judgment of the trial Court on the ground that in a case where plaintiff claims to have mortgage suit property but all particulars are not available then in case of usufructuary mortgage as right to redeem continuous to exist at all the time and mortgage by foreclosure as held in Harbans and others Vs. Om Parkash and others (supra) and Hon'ble Punjab and Haryana High court in the judgment of Gurbachan Singh (dead) through LRs vs. Harnam Singh has held that in such case mortgage will be deemed to have been redeemed from the produce of the land and the mortgagee does not acquire title merely on expiry of 30 years thus, the pleas of defendant about plaintiffs are no more left with any right in the suit property cannot be sustained and at the same time since it is a usufructuary mortgage conditions of which are not establish. From the aforesaid propositions it is clear that the court is empowered to grant a final decree of redemption when the amount was

already deposited by the mortgagor before filing a civil suit and when there was no need for ascertaining of the amount to be due as required under clause (a) of Rule 7(1) of Order 35 of Code. In the judgment Anang Pal Vs. UOI and others 2010(3)401, one plaintiff had filed a suit on behalf of villagers of a village seeking relief with regard to suit property which was a public land and in these circumstances issuance of defective notice or non issuance of notice for the purpose of Order 1 Rule 8(2) CPC was found essential so that all the villagers have notice of the fact that one resident of their village has been permitted to sue in a representative capacity in respect of public land.

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 regular second appeal is dismissed.

(RITU BAHRI)
JUDGE

15.11.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No