

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

RSA No.1790 of 2017

Date of Decision: 15.11.2017

Bhambu S/o Sooka now deceased through his LRs and ors

.....Petitioners

Vs.

Smt.Sheesh Kali 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.4347-C of 2017

For the reasons stated in the application, delay of 4 days in filing the appeal is condoned.

Application stands disposed of.

CM No.4350-C of 2017

Application is allowed.

Legal representatives of appellant No.3(iv) Dharambir aged 51 years son of Pohap Singh, mentioned at Para No.2 are ordered to be impleaded as party in the memo of parties. Registry is directed to do the needful.

RSA No.1790 of 2017

The appellant has come up in appeals against the judgment and decree dated 29.09.2014 passed by Addl. Civil Judge (Sr.Division), Hathin and judgment and decree dated 02.11.2016 of the appellate Court whereby, suit of the plaintiff has been decreed for possession by way of redemption.

Brief facts of the case are that the plaintiffs are owners and mortgagors and the defendants/mortgagees of the agricultural land comprised in Khewat No.87, Khatni No.91, rectangle No.79, Kill No.20/2(1-0), 21/1(5-0), rectangle No.96 killa No.1(07-07) total measuring

13 Kanals 07 Marlas situated with in the revenue estate of Village Manpur, Tehsil Hathin, District Palwal. Their predecessors mortgaged the suit land to the predecessors in interest of the defendants in the year 1888-89. Khasra No.3059 was mortgaged for a sum of Rs.28/- and no amount of mortgage was mentioned in respect of killa No.3060. They requested 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 suit was filed.

On notice, defendant was filed join 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 3059 and 3060 and these were changed after consolidation. They even denied 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 in the present form? 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 ?OPD
6. Whether the suit is barred by Limitation? OPD.
7. Relief.

To substantiate their case, the plaintiffs examined Bir Pal 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 i.e. revenue record. On 28.05.2014.

To controvert, the defendants examined Ranbir as DW1. He tendered his affidavit Ex.DW1/A. Partap Singh was examined as DW-2. He tendered his affidavit Ex.DW2/A. Thereafter, evidence of the defendants was closed by their counsel on 20.08.2014.

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 dismissed the appeal by referring the list of mortgagees and mortgagor has been issued by the office of SDO (Civil), Hathin Ex.P11. Apart from it, the names of mortgagees, who have been surfaced vide mutation No.8728 Ex.P2, in which, mutation has been entered in the name of Mahender Singh son of Binda, mutation No.8705 Ex.P9 mutated in favor of Mahender Singh son of Binda, mutation no.8862 Ex.P-10, which was mutated in favour of Mahender Singh son of Binda, who is respondent No.27. However, mutation No.8881 Ex.P-3 was mutated in favour of Jagdish Chand son of Bhambu, who is appellant No.1(i). Though, Partap Singh @ Parti, who was appellant No.3(ia) had examined himself as DW-2 stated it correct during his cross-examination that respondents did not ask them to get the land redeemed and apart from the suit, no suit has been filed by the respondents. In paragraph 13 of the judgment of the lower appellate Court further observed that entries were existing since 1885-86, in the jamabandi Ex.P-12/H and jamabandi 1888-

89 Ex.P-18/H. As per jamabandi 1907-08 Ex.P-15/H, khasra number has been changed from 3060 to 2809, then the same has been changed from 2809 to 3176, as per jamabandi 1939-40 Ex.P-14/A then 1954-55, 1960-61. Then as per jamabandi 1997-98, khasra numbers have been surfaced as 75/69 and Khatoni No.79, khasra No.79//20/2 (1-0), 21/1 (5-0), 96/1 (7-7), total measuring 13 kanals 7 marlas, same entries have been repeated in jamabandi 2002-2003, on the basis of which, suit has been filed. These entries in favour of plaintiff and they have been never been changed by the present appellants. The appellate Court has referred to the judgment passed by this court in the case of **Gurbachan Singh (Dead) through LRs Vs. Harnam Singh 2005(2) PLR 843**, in this case it has been held that when there is mortgage of agricultural land with possession, a mortgagee can claim to be owner without rendering account of produce from the land. The mortgagee will be deemed to have been redeemed from the produce of the land and the mortgagee did not acquire title merely on expiry of 30 years and there is no time limit fixed for redemption of mortgage.

After hearing counsel for the parties and going through the judgment passed by the Court below, no ground is made out to interfere in the judgments as the entries are existing since 1885-86, in the jamabandi Ex.P-12/H and jamabandi 1939-40 Ex.P-14A, then 1954-55, 1960-61 where it is shown that plaintiffs were owner of land falling in khasra No.3060 to 2809 and this fact is appeared in the jamabandi from the years 2002-2003. Hence, this fact was further reflected in the mutation Ex.P-2, Ex.P-9 and Ex.P-10.

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 present appeal is dismissed.

(RITU BAHRI)
JUDGE

15.11.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No