IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 13.12.2017

1. RSA No.5752 of 2017(O&M)

Kanwar Pal and others ......Appellants
Vs
Khajan Singh through his LRs and others.....Respondents

2. RSA No.5754 of 2017(O&M)

Gulkandi and others ......Appellants
Vs
Khajan Singh through his LRs and others.....Respondents

3. RSA No.5757 of 2017(O&M)

Gulkandi and others ......Appellants
Vs
Khajan Singh through his LRs and others.....Respondents

4. RSA No.5761 of 2017(O&M)

Kanwar Pal and others ......Appellants
Vs
Khajan Singh through his LRs and others.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. D.S. Matya, Advocate
for the appellants.

****

RAJ MOHAN SINGH, J.

[1]. Vide this common order RSA No.5752 of 2017 titled Kanwar Pal and others Vs. Khajan Singh through his LRs and others, RSA No.5754 of 2017 titled Gulkandi and others Vs. Khajan Singh through his LRs and others, RSA No.5757 of

2017 titled Gulkandi and others Vs. Khajan Singh through his LRs and others and RSA No.5761 of 2017 titled Kanwar Pal and others Vs. Khajan Singh through his LRs and others are being decided. Facts are being taken from RSA No.5752 of 2017.

[2]. Defendants/appellants have preferred these appeals against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and redemption.

[3]. Pleaded case of the plaintiffs was that the plaintiffs and proforma defendant are owner in possession of agricultural land measuring 36 kanals, 3 marlas situated in the revenue estate of village Manpur, Tehsil Hathin, District Palwal. Predecessors-in-interest of the plaintiffs mortgaged the suit land with the predecessors-in-interest of defendants No.1 to 27 with possession orally for a sum of Rs.100/-. Along with the suit land, the land bearing khewat/khata No.702/798, rectangle No.148, killa No.20/2(4-0), 21/2(5-17) was jointly mortgaged by predecessors of the plaintiffs in favour of predecessors of defendants No.1 to 28 for Rs.100/-. No period of limitation for redemption of the mortgage was fixed. Plaintiffs pleaded that the suit land was got redeemed by the predecessors of the plaintiffs by paying Rs.100/- to the predecessors of defendants No.1 to 27 and possession was also delivered to them. Defendants No.1 to 27 in collusion with defendants No.28 to 31

purchased the mortgagee rights in the suit property from defendants No.15 to 17 vide different mutations and taking undue advantage of wrong revenue entries, they threatened to take forcible and illegal possession of the suit land. Plaintiffs further pleaded that they were ready to make payment of Rs.100/- to get the land again redeemed, but of no avail.

[4]. The suit was contested by the defendants.

[5]. Trial Court decreed the suit of the plaintiffs vide judgment and decree dated 11.12.2014. Defendants remained unsuccessful before the Lower Appellate Court who dismissed the appeal vide judgment and decree dated 28.02.2017.

[6]. Learned counsel for the appellants vehemently submitted that the appellants are in possession being mortgagees and the land was not redeemed within 30 years, therefore, they have become owner by efflux of time. Learned counsel further submitted that the correction of revenue records was not the prerogative of the Civil Court for which the plaintiff should have approached the competent revenue authorities.

[7]. I have heard learned counsel for the appellants and have also perused the material on record.

[8]. Conceded case of the appellants was that they are mortgagees of the land for the last 100 years and are in possession. The Courts below on the basis of material on record found as a matter of fact that the mortgage was

usufructuary mortgage, where interest was warded off by giving possession. The controversy on the concept of usufructuary mortgage is no more *res integra* in view of judgment of Full Bench of this Court in ***Ram Kishan and others Vs. Sheo Ram and others, 2008(1) RCR (Civil) 334*** which has already been upheld by the Hon'ble Apex Court. The possession of the property was delivered to the mortgagees, who apportioned rent and profit in lieu of interest on the principal amount. No personal liability was incurred by the mortgagors, who were not to foreclose the mortgage or were not to sue for the sale of the mortgaged property. No limitation is attracted for usufructuary mortgage to be redeemed in view of ***Ram Kishan and others' case (supra)***.

[9]. Since the plaintiffs further desired to redeem the mortgage even by making fresh payment, therefore, the readiness and willingness on the part of the plaintiffs cannot be credited to their disadvantage. After redemption of the mortgage, consequent correction in the revenue record would be a natural consequence. The prayer for redemption itself included in its ambit the prayer for possession of the land after redemption. Even otherwise correction of the revenue record after preparation of jamabandi would fall exclusively under the domain of civil Court.

[10]. Both the Courts below have concurrently decreed the suit of the plaintiffs. No illegality can be noticed in the impugned judgments and decrees passed by the Courts below. No legal submission worth consideration could be made during course of arguments and even no law point worth cognizance is involved in the present appeals. The present appeals are accordingly dismissed.

[11]. Since the present appeals have been decided on merits, therefore, there is no necessity to pass any order in the application of delay and other miscellaneous applications and the same are accordingly disposed of.

13.12. 2017 **(RAJ MOHAN SINGH)**

Prince **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No