

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.1939 of 1987 (O&M)

Date of Decision: February 23, 2018

Atma Singh (since deceased) through L.Rs

...Appellants

Versus

Virsa Singh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Ms.Alka Sarin, Advocate,  
for the appellants.

None for the respondents.

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**AMIT RAWAL, J. (Oral)**

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 16.2.1987 rendered by the Lower Appellate Court, whereby the well reasoned judgment and decree dated 12.8.1986 passed by the trial Court decreeing the suit for seeking declaration qua ownership owing to the efflux of time as per the mortgage deed Ex.P16, had been reversed.

The appellant-plaintiff instituted the suit claiming ownership of land measuring 30 kanals 16 marlas with consequential relief of injunction restraining the respondent-defendants from alienating the suit land on the premise that the aforementioned land was owned by Santa Singh and Bhagat Singh. The said owners mortgaged the same with Malook Singh and Hazara Singh in the year 1926. Santa Singh died leaving behind Bishan Singh and Kishan Singh as his only legal heirs, while Bhagat Singh died leaving

behind Amar Singh as his only legal heir. Hazara Singh and Malook Singh had also died and the plaintiff, being the only legal heir, succeeded to the mortgage rights. Kishan Singh and Bishan Singh sons of Santa Singh or Santa Singh or Bhagat Singh and defendants never paid the mortgage amount nor got the mortgage redeemed and, therefore, by efflux of time, the plaintiff became the owner.

The aforementioned suit was contested by the respondent-defendants by admitting the ownership of Santa Singh and Bhagat Singh. However, it was admitted that Bishan Singh and Kishan Singh were the sons of Santa Singh and defendants No.2 to 4, i.e., Jail Singh, Sarja Singh and Shinda Singh were sons of Bishan Singh and Amar Singh defendant succeeded Bhagat Singh. The factum of death of Hazara Singh and Malook Singh was also not denied, but it was stated that land was never mortgaged and the factum of ownership of the plaintiff, thus, was denied.

The trial Court framed the following issues:-

1. *Whether plaintiff is owner of the suit land, as alleged? OPP*
2. *If issue No.1 is proved, whether plaintiff is entitled to the declaration prayed for? OPP*
3. *Whether suit is not maintainable as alleged? OPD*
4. *Whether suit has not been properly valued for purposes of court fee and jurisdiction? OPD*
5. *Relief."*

Amar Singh defendant died during the pendency of the suit and his legal representatives were brought on record.

The trial Court, on the basis of the evidence, granted the declaration to the appellant-plaintiff by holding that the mortgagors did not get the property redeemed and, therefore, by efflux of time, the mortgagees

became the owners. The aforementioned judgment and decree of the trial Court was challenged by the respondent-defendants and the same had been reversed by the Lower Appellate Court vide judgment and decree dated 16.2.1987. It is in this contest, the present Regular Second Appeal has been filed.

There is no representation on behalf of the respondent-defendants.

Ms.Alka Sarin, learned counsel for the appellants submits that during the period when the suit was filed, a judgment was rendered by the Full Bench of this Court in **Ram Kishan and others Versus Sheo Ram and others, 2008(1) R.C.R. (Civil) 334**, which envisages that there would be no limitation for seeking redemption and also held that the suit for claiming declaration by efflux of time was held to be not maintainable, but kept an exception that where the mortgage provides time course, the limitation would run from the expiry of the aforementioned period of limitation and, therefore, the judgment would not apply retrospectively, thus, there is illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

Ex.P16 is the mortgage deed, which is in Urdu. The same has been read over through the Translator of this Court. It does not envisage any time limit. In view of such situation, the suit was not maintainable as per the ratio culled out by the Hon'ble Supreme Court in **Singh Ram (D) through L.Rs Versus Sheo Ram and others, 2014 (4) R.C.R. (Civil) 179**, wherein it has been held that there is no limitation to seek the redemption of the property and a person is deprived from filing the suit and claiming

ownership by efflux of time. It is in those cases where the mortgage deed provides specific period, the ratio culled out aforementioned would not apply. There was no limitation provided in the mortgage deed for redemption, therefore, the suit was not maintainable.

For the reasons stated above, I do not find any illegality or perversity in the judgment and decree rendered by the Lower Appellate Court. The same is upheld. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

**February 23, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**