

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

RSA No. 1676 of 1991

Date of Decision:-15.02.2018

Joginder Singh

...Appellant

Versus

Gurdial Singh (deceased) through LRs

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.K. Kataria, Advocate
for the appellant.

Mr. Anupam Gupta, Sr. Advocate with
Mr. Digvijay Singh, Advocate
for the respondents & Ashok Kumar.

AMIT RAWAL J.(Oral)

Appellant-plaintiff is in regular second appeal against the concurrent findings of fact, whereby the suit for possession by way of redemption of the property as per the mortgage deed dated 09.9.1948 executed in favour of Gurdial Singh deceased-defendant No.1 for a period of 59 years has been dismissed as premature.

The appellant-plaintiff set up a case that he mortgaged 95 Kanals 13 Marlas of land described in the suit for a sum of Rs.4500/- as per the registered mortgage deed ibid 09.9.1948 in favour of Gurdial Singh for a period of 59 years. He re-mortgaged the said land in favour of deceased-Gurdial Singh on 16.3.1954 for a consideration of Rs.960/-. Owing to the

consolidation of holdings in the village in the year 1955, 75 Kanals 5 Marlas of land comprising khasra No.1536/2/1-2, 1554/2/2-18, 1712 Min/15-18, 1713/1/14-16, 1714/1/17-10, 1711/16-11, 17/12 Min/6-0 was carved out. The plaintiff was under heavy debts. Defendant No.1 got the land mortgaged by taking the advantage of his poor financial condition. The right to redemption was deferred for 59 years. The condition of imposition for redemption for a 59 years was onerous. Defendant No.1 sold the mortgaged rights Benami to defendants No.2 to 4 vide sale deed dated 27.2.1978 and therefore sought the redemption of the property on payment of Rs.5460/-.

The defendants contested the suit controverted the allegations that the suit was premature and there cannot be no clog on the redemption. The suit was liable to be dismissed. The plaintiff had not impleaded Zarra Singh, Jeon Singh, Harphul Singh, Sukhdev Singh and Surjit Singh, who were necessary parties to whom plaintiff had sold the land by way of sale deed dated 23.6.1954 registered on 30.7.1984, thus prayed for dismissal of the suit.

From the pleadings of the parties, the learned trial Court framed the following issues for determination :-

- “1. Whether the suit is pre-mature as the suit land cannot be redeemed before a period of 59 years w.e.f. 9.9.1948? OPD
2. Whether the suit is time barred ?OPD
3. Whether the suit is bad for non-joinder of Zarra Singh, Jeon Singh, Harphul Singh, Sukhdev Singh and Surjit Singh of village Sheer Singh Wala ?

OPD

4. Whether the plaintiff is entitled to the possession of the suit land by way of redemption on payment of Rs.5460/- ? OPP
5. Relief.”

The trial Court dismissed the suit and the appeal was also dismissed by the learned Appellate Court.

Learned counsel appearing on behalf of the appellant submitted that there cannot be any clog on the redemption. The suit has erroneously been dismissed as the redemption can be sought on deposit of the mortgaged amount. The judgments and decrees of the Courts below therefore suffer from illegality and perversity.

Mr. Anupam Gupta, Advocate learned senior counsel assisted by Mr. Digvijay Singh, Advocate submitted that in view of the judgment rendered by Hon'ble Supreme Court in **Seth Ganga Dhar vs. Shankar Lal and others AIR 1958 SC 770** wherein it has been held that in view of the period prescribed in the mortgage deed, the suit for redemption before the expiry of period is not maintainable. And on similar lines referred to the ratio decidendi culled out by this Court in **Parma Nand vs. Babu Ram 1985 P.L.J. 391** and **Brij Lal (deceased) represented by his Legal Representatives vs. Madan Lal Jain 1987(1) PLR 167**. He submitted that the judgments and decrees of the Courts below do not call for any interference and do not suffer from any illegality.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force in the contentions of

learned counsel for the appellant.

In view of the findings rendered by Hon'ble Supreme Court in **Seth Ganga Dhar's** case (supra) it is held that the suit for redemption before expiry of period was not maintainable. The mortgage deed is of 1948 whereas the suit was filed in 1987. Therefore, the findings of the Courts below are perfect. However, with regard to the interpretation of the provision of Article 61 of the Limitation Act, the Full Bench of this Court in **Ram Kishan vs. Sheo Ram and others 2008(1) RCR (Civil) 334**, which has been reiterated and affirmed by the Hon'ble Supreme Court in **Singh Ram vs. Sheo Ram and others 2014 AIR SC 3447**. In case the appellant-plaintiffs are not prevented to seek redemption as there is no limitation and they can seek the redemption in accordance with law.

While upholding the judgments and decrees of the Courts below, I do not find any illegality or perversity. With the above said observations the appeal stands dismissed.

February 15, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No