IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.694 of 1991

Sukhdev Singh

....Appellant

Versus

State of Punjab and another

....Respondents

Date of Order: 26.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Jindal, Advocate for the appellant.

Ms. Devaki Anand Sullar, AAG, Punjab.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is in second appeal against the concurrent findings of both the learned courts below whereby the suit for declaration for correction of entries in the revenue record of State of Punjab has been dismissed vide judgment and decree dated 03.8.1987 passed by learned Sub Judge, Ist Class, Barnala and the appeal met with the same fate vide judgment and decree dated 19.1.1991.

This Court while admitting the appeal on 26.3.1991 stayed the dispossession.

Plaintiff instituted the suit for declaration on the ground that the land measuring 64 kanals as detailed in the plaint and entered in the jamabandi for the year 1982-83 showing the Provincial Government as mortgagee and the plaintiff as mortgagor in the revenue record was incorrect. It was alleged that the land in dispute had been mortgaged by

Lehna Singh, great-grand father of the plaintiff in favour of Basant Kaur widow of Narain Singh and thereafter on his demise, Kahla Singh, Darbara Singh, Sucha Singh, Mal Singh sons of Arjan Singh son of Lehna Singh got redemption in 1930, who all died. It was alleged that thereafter the plaintiff remained in possession of the land being lawful heir i.e one of the successors in interest of the original mortgagor.

The suit was contested by the defendants/Punjab State by taking pleas qua maintainability and cause of action etc. On merits, it was denied that the property was redeemed in 1930 and the aforesaid writing in this respect was stated to be fictitious document. It was alleged that after the death of Basant Kaur being issueless, the Punjab Government was in possession of the property as mortgagee.

From the pleadings of both the parties, following issues were framed:

> *"1. Whether the suit is not maintainable in its present form?OPD*
> *2. Whether the suit is barred by time?OPD*
> *3. Whether the plaintiff has got no locus standi to file the suit?OPD*
> *4. Whether the defendants are entitled to special costs u/s 35 A CPC?OPD*
> *5. Whether the plaintiff is owner in possession of the suit land?OPP*
> *6. Relief."*

In order to support his case, plaintiff examined PW1 Ajmer Singh, PW2 Harnam Singh, PW3 Joginder Singh besides appearing himself as PW4. He also tendered in evidence documents Ex.P.1 to Ex.P.5.

On the other hand, the defendants examined only DW1-Tarsem Kumar Nazul Clerk and thereafter closed the evidence under Order 17 Rule

3 CPC.

The trial Court on the basis of all the relevant material placed on record dismissed the suit ordering that the plaintiff was not able to prove his possession much less redemption receipt (Ex.P.1), which required registration. The findings were affirmed in appeal by the lower Appellate Court.

Learned counsel for the appellant submitted that the plaintiff is the sole legal heir of said Lehna Singh being successor in interest. The finding recorded by the lower Appellate Court that once mortgagor failed to seek redemption of the land within the prescribed period, the respondent-State had become owner by efflux of time, is not sustainable, in view of law laid down by Hon'ble Supreme Court in **Singh Ram (Deceased) through LRs Vs. Sheo Ram & Ors, 2014 (4) RCR (Civil) 179**. Even otherwise, there is no limitation for redemption. Once the Court did not believe the receipt (Ex.P.1), it could not have non-suited the plaintiff in the manner and mode as has been adopted and the liberty could have been granted to seek appropriate relief. But all these factors have not been taken into consideration by both the courts below, therefore both the judgments and decrees are liable to be set aside.

Per contra, learned counsel for the respondent-State submitted that the property at the hands of the State of Punjab was escheated in 1951 whereas the suit had been filed in 1985. Neither any explanation nor cogent evidence has been brought on record to prove that Lehna Singh had mortgaged the property vide receipt (Ex.P.1), which does not even bear any revenue stamp. Ex.P.6 would also not confer any right or title in favour of the appellant once the receipt had not been proved. Thus both the courts below rightly dismissed the suit.

I have heard learned counsel for the parties and perused the record carefully.

In column No.9 of the jamabandi (Ex.P.6) for the year 1954-55, there is red entry that the land had been redeemed. On perusal of the receipt (Ex.P.1), although the payment is shown to be made but there is no separate receipt as the amount, if paid in terms of any agreement required acknowledgment on revenue stamp papers, thus, was not maintainable. It is well settled that mere marking of exhibit on a document does not dispense with its proof.

The witnesses had to be conversant with the signatures of said Basant Kaur, in the absence of which the writing (Ex.P.1) cannot be said to have been proved as has been rightly observed by the court below. In my view, the appellant failed to prove his ownership by way of adverse possession. Proceedings of escheatment by the Punjab Government have also not been brought on record. The law of limitation seeking redemption of the land as per Article 61 of the Limitation Act is prescribed to be 30 years but thereafter it has been held by the Full Bench of this Court as also Hon'ble Supreme Court that in case the mortgagee does not prescribe any time for redemption, there is no limitation for redemption. I am of the view that the plaintiff could not have sought declaration once the Punjab state was shown to be mortgagee in the revenue record qua the property and the only remedy available was to seek redemption of the same.

Lastly, learned counsel for the appellant prayed that he may be permitted to withdraw the suit.

Learned counsel for the respondent-State opposed the said plea stating that it is too late in law to grant such permission as the plaintiff was aware of the aforesaid facts and that the receipt (Ex.P.1) was not correct appreciation of evidence.

The contention of learned counsel for the respondent-State is not sustainable in view of law laid down by the Hon'ble Supreme Court in **Singh Ram's case (supra)**, the operative part of which reads thus:-

> *"14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.*
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> *15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.*
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> *16. On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the*

> *Himachal Pradesh High Court in Bhandaru Ram (D) Thr. L.R. Ratan Lal vs. Sukh Ram (supra) will stand over-ruled."*

On perusal of the aforementioned findings rendered by Hon'ble Supreme Court, it is crystal clear that specific time has been prescribed for seeking redemption and mortgagor did not seek redemption. The mortgagee is not entitled to seek the right claiming ownership by efflux of time. The aforementioned ratio applies in respect of a mortgage having no time-frame for seeking redemption. In such a situation, it has been held that there would be no limitation for seeking redemption.

In these circumstances, the appellant is permitted to withdraw the suit. In case, another suit is filed by the plaintiff-appellant, the respondent-State shall be at liberty to take objection qua maintainability and the alleged claim of plaintiff being successor in interest of the original mortgagor Lehna Singh.

With these observations, the present appeal stands disposed of.

April 26, 2018 **`(AMIT RAWAL)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No