

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

RSA No.776 of 1991

Parmeshwari Devi and Ors.

....Appellants

Versus

Jyoti Ram and Ors.

....Respondents

Date of Order: 04.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Rana, Advocate for
Mr. Ashish Kapoor, Advocate for the appellants.
Ms. Suman Devi, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Appellants-LRs of defendant No.1/Bhagat Ram has challenged the concurrent findings of facts recorded by both the courts below whereby the suit filed by the plaintiff has been decreed vide judgment and decree dated 25.9.1982 passed by Sub Judge, IInd Class, Karnal and the lower Appellate Court dismissed the appeal filed by defendant No.1-Bhagat Ram vide judgment and decree dated 03.12.1990.

Respondent-plaintiff filed the suit for declaration challenging the order dated 24.7.1980 of redemption passed by Assistant Collector, Ist Grade, Karnal, which was confirmed on 30.8.1982 to be illegal and ultra vires. It was alleged that Bhagwani Devi was owner of the land mortgaged in favour of Banwari Lal for a sum of Rs.4500/- vide mortgage deed dated 10.4.1947. Banwari Lal transferred his mortgtagee rights in favour of Jyoti

Ram (plaintiff) and Suraj Bhan-defendant No.2 on 17.2.1959. Jyoti Ram and Suraj Bhan, thus, became mortgagees under Bhagwani Devi. Bhagwani Devi died and was succeeded by Darshani Devi-defendant No.3 thus became mortgagor of the property. Defendant No.3 sold half share of the mortgaged suit land to Bhagat Ram-defendant No.1 vide deed dated 15.7.1977 and therefore both defendant Nos.1 & 3 became owners qua half shares each of the suit land.

Defendant No.1 filed an application for redemption and got his share redeemed vide ex parte order dated 24.7.1980 passed by Assistant Collector, Ist Grade, Karnal. In the joint written statement filed by defendant Nos.1 to 3, it was averred that the suit was barred by principle of res judicata as the plaintiff did not have locus standi. The suit was not maintainable and barred by time. On merits, it was stated that the order of redemption was perfectly legal and justified.

From the pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the order of redemption dated 24.7.80 passed by S.D.O (Civil) and which is confirmed on 30.8.82 is illegal void and ineffective and not binding on the rights of the plaintiff, as alleged?OPP*
- 2. Whether the suit is barred by principle of res judicata?OPD*
- 3. Whether the suit is not maintainable in the present form as alleged?OPD*
- 4. Whether the plaintiff has got no locus standi to file the present suit?OPD*
- 5. Whether the suit is barred by limitation?OPD*
- 6. Whether the plaintiff has got no cause of action to file the present suit?OPD*
- 7. Relief.”*

Both the parties in order to prove their case led evidence and the trial Court on the basis of evidence available on record decreed the suit and the appeal preferred by defendant No.1 met with the same fate.

Learned counsel for the appellants submitted that both the courts below have gravely erred while not appreciating the fact that the suit for declaration filed by the plaintiff pertained to half share of the mortgaged property but the plaintiff failed to challenge the redemption qua the remaining half share. The suit was also barred by the principles akin to *res judicata* as proceedings of the earlier suit had already been brought on record. Once the defendants had initially claimed in the written statement that the earlier suit filed by the plaintiff had been dismissed, therefore, the suit was barred not only by the principles of *res judicata* but also under the provisions of Order 9 CPC as well. Both the courts below have committed an error while holding that sale mortgagee rights by Banwari on 17.2.1959 did not amount to acknowledgment and extension of limitation. Even the provisions of Section 60 of the Transfer of Property Act have been misconstrued, therefore it is a fit case for dismissal of the suit.

Per contra, learned counsel for the respondent has supported both the impugned judgments and decrees by submitting that both the courts below have rightly granted declaration in favour of the plaintiff qua redemption with respect to mortgage dated 07.4.1950 and not of 10.4.1947, which was subject matter of the suit. He, thus prayed for dismissal of the appeal.

After hearing learned counsel for the parties and appraising the paper book, I find no merit in the submissions of learned counsel for the appellants. The suit of the plaintiffs was basically filed for challenging

order of the Collector. It has come on record that the defendant got redeemed half share of the mortgaged property but not other half share. The mortgage did not prescribe any period of limitation. Even the application of the plaintiff for setting aside ex parte decree was dismissed by the S.D.O, Civil vide order dated 30.8.1982 whereas the suit was also filed in 1982. In my view, both the courts below have rightly rendered the findings in favour of the plaintiff as the appellant has failed to explain as to how date of mortgage dated 07.4.1950 was related to the mortgage in question dated 10.4.1947 and in that context, it has been held that the order dated 24.7.1980 of the Assistant Collector, Ist Grade, Karnal was not binding on the rights of the plaintiff. Therefore, the defendant has totally failed to discharge his onus qua the aforesaid fact as nothing prevented him to move an application before the Assistant Collector for correction of the date of mortgage. Having failed to do the needful, in my view, he cannot be permitted to assail the well recorded findings of both the courts below.

As a sequel of aforesaid discussion, I feel helpless to form a different opinion than the one formed by the courts below.

No ground. Dismissed.

April 04, 2018
manoj

^(AMIT RAWAL)
JUDGE

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