IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2785 of 2009 (O&M)
Date of Order: 10.08.2018

Kundan Lal and another ..Appellants

Versus

Babu Lal and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.K.Sibal, Sr. Advocate, with
Mr. Dhawal Bhandari, Advocate,
for the appellants.

Mr. Madan Pal, Advocate,
for respondents no.15, 29, 57, 60, 88 and 97

Ms. Reena, Advocate, for
Mr. Rajesh Lamba, Advocate,
for respondents no.28, 43 and 65.

Mr. Rajesh Malik, Advocate,
for respondent no.58.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for declaration claiming that since time for redemption of usufructuary mortgage has elapsed therefore, they are owners of the property. Plaintiffs in alternative also prayed for decree for possessions.

Ganga Sahai and Chander Bhan, who were original owners and mortgagors, mortgaged the land in favour of Ramji Lal through separate registered mortgage deeds dated 19.10.2004. Plaintiffs pleaded that the mortgage has since not been redeemed and therefore, they have acquired title by prescription of time.

The suit was contested and it was pleaded that the predecessors of the defendants were "Ahirs" and they could not have mortgaged the land under Punjab Alienation of Land Act, 1900. It was further pleaded that the widow of Ramji Lal has already sold the property to Mangtu. It was further pleaded that the mortgage has been redeemed.

Both the courts while determining issue no.5, have held that since mortgage has not been redeemed, therefore, plaintiffs are entitled to declaration that they have become owners of the property.

During the course of arguments, learned counsel for the appellants has pointed out that it is undisputed case of a usufructuary mortgage with possession. He submitted that there was no time prescribed in the mortgage deed for redemption. Hence, he while relying upon the judgment passed by a larger bench of the Supreme Court in the case of ***Singh Ram (D) through L.Rs v. Sheo Ram and others, (2014) 9 SCC 185*** and others, submitted that in case of usufructuary mortgage which does not provide for any period of redemption, the period does not begun to run from the date of the mortgage deed. He submitted that the limitation for redemption would being to run only from the date the mortgagor tenders/offers money to the mortgagee for redemption and refused by the mortgagees.

On the other hand learned counsel for the plaintiffs-respondents pleaded that certain property was sold and only two defendants-appellants have filed the appeal. Therefore, two defendants cannot seek reversal of the decree passed against the remaining defendants.

This court has considered the submissions of learned counsel for the parties and with their able assistance gone through the judgments passed by the courts below and the record.

As far as argument of learned counsel for the appellants, it is covered by a judgment passed by a larger bench of the Supreme Court in the case of ***Singh Ram (supra)***. In the present case, no evidence has been led to prove that the mortgagor tendered money and mortgagee refused to redeem the mortgage. Therefore, the limitation to redeem the land has not begun.

As regard argument of learned counsel for the respondents that only two defendants have filed appeal and they cannot seek reversal of the entire decree, this court can conveniently refer to provisions of Order 41 Rule 4 of the Code of Civil Procedure which clearly provide that one of the several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Hence this court does not find any substance in the first submission of learned counsel for the respondents.

As regards second submission of learned counsel for the respondents to be noted that whosoever have sold the property that would always be subject to rights of the mortgagor.

Mortgage as noticed is of the year 1904. Even if some of the parties have sold the property, they have stepped into the shoes of mortgagor or mortgagee.

In view thereof, the appeal is allowed. The judgments and decrees passed by the courts below are set aside.

August 10, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No