

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

**RSA No.1416 of 2012 (O&M)
Date of Order:14.05.2018**

Ramphal @ Ramphool and others

..Appellants

Versus

Ramesh Chand Mehta and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lokesh Sinhal, Advocate,
for the appellants.

Mr. Rajesh Arora, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit for declaration, permanent injunction, possession and mesne profits.

Plaintiffs claim that they are owners of the property and initially the land was mortgaged which had been redeemed on 20.11.1986 and therefore, they be declared owner and thus entitled to possession and also to mesne profits.

Defendants pleaded that they have become owner of the property having been conferred ownership being occupancy tenants.

Both the courts below after examining the evidence available on the file have decreed the suit filed by the plaintiffs while returning a finding that after redemption of the mortgage, defendants have no right to continue in possession.

Learned counsel for the appellants has raised two arguments:-

- (1) That as per the judgment of the Constitution Bench reported as **Dahya Lala and others v. Rasul Mahomed Abdul Rahim and others, AIR 1964 SC 1320**, with respect to tenancies of the agricultural land, even after the redemption of the mortgage, tenants inducted by mortgagee would continue to be a tenant. He submitted that tenancy of a mortgagee would become tenancy of a mortgagor after redemption of the mortgage.
- (2) That the subsequent suit filed by the plaintiffs was barred under Order 2 Rule 2 CPC.

On the other hand, learned counsel for the respondents has pointed out that the judgment relied upon by the learned counsel for the appellants i.e. **Dahya Lala and others**(supra), is interpreting specific provisions of the Bombay Tenancy and Agricultural Land Act, 1948, wherein in Section 4, the words used are “a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant”. Hence the aforesaid judgment further would not apply. He has submitted that as per the subsequent judgment of the Hon'ble Supreme Court in the case of **Thakur Singh (D) by LRs. & another v. Mula Singh (Dead) through LRs. and others, (2015) 5 SCC 209**, it has held that even with respect to agriculture tenancies, the tenancy created by mortgagee would come to an end unless there was some specific stipulation to the contrary. It has further been considered that if the tenant inducted by mortgagee is allowed to continue in possession as a tenant of the mortgagor after redemption of the mortgage, it would be regarded as a clog on redemption. He has further

drawn attention of the court to the findings of the learned trial court at page 31 of the paper book, which reads as under:-

“The core issue before the Court is to ascertain the capacity of defendants no.1 to 7 to cultivate the suit land mentioned in para No.6 of the plaint. From the above mentioned documents, it is clear that they are neither tenants of present plaintiffs nor in adverse possession. Even otherwise for the sake of arguments, if they are considered in a adverse possession then the question arises against whom they are in adverse possession? Against mortgagee or owner? As the defendants in their written statement as well as oral testimony had specifically stated that they do not considered the plaintiffs as an owner of the land. The plea of even occupancy tenants is not tenable because defendants No.1 to 7 stopped paying part of the produce as a rent after 1980 as it is evident from document Ex.J/E in which entry of the Batai Nisfi is not incorporated in the column NO.9.

15. The learned counsel Shri S.L.Garg vehemently contended that the plaintiffs are bound to prove the fact of 'batai nisfi' by proving the receipt of land but I do not find force in the contention on the ground that the predecessor of defendants No.1 to 7 paid part produce as a rent which defendants No.1 to 7 stopped. Hence the defendants No.1 to 7 cannot avail the plea of adverse

possession. Even when the mortgaged land got compromised, then the relationship of landlord and tenants between the mortgagee and tenants stand terminated. This fact also stand proved from the oral testimony of DW1 who specifically deposed before the court that he do not considered plaintiffs as a owner of the suit land then it is for the defendants No.1 to 7 to prove their legal capacity. The learned counsel for the defendants failed to convince the court that by dint of which capacity defendants No.1 to 7 remains in cultivating possession over the suit land. As already stated, the plea of occupancy tenants is also not sustainable because plaintiffs do not induct defendants No.1 to 7 as a tenants. So in the opinion of the court there exist no relationship of landlord and tenants between the plaintiffs and defendants No.1 to 7. Apart from it, it is relevant to take into consideration the oral testimony of the plaintiffs. Apart from examining the formal witnesses, the plaintiff No.1 himself entered into a witness box. The testimony of DW1 who in the extracted cross examination deposed at page No.3 that he do not know whether plaintiffs are owners of the disputed land. At the same time he admitted himself as owner in possession of the disputed property.”

Hence he submitted that the stand of the defendants is that neither the plaintiffs are admitted to be owners of the property nor

relationship of landlord and tenant is admitted,.

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

Let us now first deal with the argument of learned counsel with regard to status of the tenant inducted by the mortgagee after the redemption of the mortgage.

The judgment passed by the Constitution Bench in **Dahya Lala and others**(supra), is interpreting specific definition of the tenant as given in the Bombay Tenancy and Agricultural Lands Act, 1948, which uses the word “deemed to be tenant”. In para 7 of the judgment Hon'ble Supreme Court has clearly recorded that ordinarily on redemption of the mortgage, the rights of a tenant also comes to an end. Learned counsel for the appellants could not point out any para-materia definition of a tenant in the Punjab Tenancy Act, 1887.

Still further this aspect has been considered by the Hon'ble Supreme Court in the judgment in the case of **Thakur Singh (D) by LRs. & another** (supra), wherein Hon'ble Supreme Court after considering various aspect of the matter, held that “unless there is specific stipulation providing that the tenancies created by the mortgagees would be binding on the mortgagors, tenancy would come to an end. Hon'ble Supreme Court was dealing with an appeal arising from this Court. The Hon'ble Supreme Court also held that in the absence of any specific condition to the contrary, the tenancy created by the mortgagee, if allowed to continue after the redemption of the mortgage, it will be as a clog on redemption of mortgage.

In view of the aforesaid, this court is in respectful agreement

with the judgment passed by the Hon'ble Supreme Court in **Thakur Singh (D) by LRs. & another**(supra), reject the argument of learned counsel for the appellants.

Second argument of learned counsel is that the suit filed by the plaintiffs was barred under Order 2 Rule 2 of the Code of Civil Procedure.

Learned counsel frankly admitted that there was neither any issue framed by the courts below on Order 2 Rule 2 of the Code of Civil Procedure nor the pleadings of the previous litigation has come on record.

In the absence of the pleadings of the previous litigation, this Court is unable to examine the contention which is being raised before this Court for the first time.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

May 14, 2018
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(ANIL KSHETARPAL)
JUDGE

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