

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

RSA No.1476 of 2013
Date of Decision.02.05.2018

Jai Bhagwan and othersAppellants

Vs

Dharminder and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay S. Kajla, Advocate
for the appellants.

Mr. R.S. Malik, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the suit seeking possession by way of redemption of the mortgage has been dismissed, in essence, judgment and decree of the trial Court whereby the aforementioned suit was decreed, has been set aside.

The appellant-plaintiff instituted the suit bearing No.276 dated 29.1.2003 claiming redemption of the suit property comprised in Khewat No.71/70, Khata No.102, Land No.5//10 (7-11), 12//12(8-0) measuring 15 kanals 11 marlas situated in revenue estate of Village Chhanauli, Tehsil Kharkhoda, District Sonipat, which was mortgaged by forefathers of plaintiffs to the defendants by way of oral mortgage with possession. Details of the same are given as under:-

Sr. No.	Mortgagee	Mortgagor	Khasra No.& area	Amount	Date
a.	Kanhaiya, Bhudu, Chhotu ss/o Nand Lal	Shanker s/o Tulsi	566/594 1B-10B	250/-	199/- 2.2.1919

Sr. No.	Mortgagee	Mortgagor	Khasra No.& area	Amount	Date
b.	-do-	-do-	284 2B-3B	85/-	261/- 30.12.21
c.	Sheo Chand s/o Sucha	Jot Ram s/o Dhanni	563, 581 0B-16B	150/-	296/- 19.1.1925
d.	Chhotu, Bhodu sons of Nand Lal	Sheo Chand s/o Sucha	563, 581	150/-	369/- 15.6.1929
e.	Puran s/o Data Ram	Jot Ram s/o Dhanni	581, 563 0-16	400/-	604/- 19.8.1943
f.	Hari Ram, Sheo Chand ss/o Kewal	Puran s/o Data Ram	363, 581, 0-16	400/-	606/- 20.8.1943
g.	Chhotu, Bhodu ss/o Nand Lal	Jot Ram s/o Dhanni	444(3-7) 450 (1-14) 476 (0-8) 1005 (2-2)	400	351/- 16.4.1929.

It was further claimed that Shankar and Lajjan died and were succeeded by Jot Ram son of Dhanni to the extent of $\frac{1}{2}$ share and Sheo Chand s/o Suba, Panipat s/o Sucha to the extent of $\frac{1}{4}$ share each. Jot Ram also died issueless and Sheo Chand succeeded him to the extent of $\frac{1}{2}$ share. After death of Sheo Chand, Panipat succeeded. In this manner, Shankar and Jot Ram became mortgagors of the suit property. Defendant Kanhiya also died and Bhodu and Chhotu succeeded his inheritance.

At the time of consolidation, Sheo Chand and Panipat separated/partitioned. Land measuring 6 bighas 10 biswas remained mortgaged but the mortgagor changed during consolidation. A new killa no.5/10 and 12/18 was mortgaged with forefathers of the plaintiffs. Sheo Chand sub-mortgaged the property to Chhotu and Bhodu-father of defendants vide mutation No.369 dated 15.6.1929 for a sum of ₹150/-. Forefathers of the plaintiffs were not party to the sub-mortgage. Puran son of Data Ram also mortgaged his rights in the names of defendants, Hari Ram, Shri Ram on 20.08.1943 vide mutation No.606. Despite numerous requests, defendants did not accept the mortgage amount of ₹644,

necessitating the plaintiffs to file application before the Collector, Sonipat. The same was rejected, therefore, the suit aforementioned was filed.

The defendants filed the written statement and besides taking preliminary objections contested the suit, much less, relation of the plaintiffs' forefathers to that of mortgagors. It was stated that the application for redemption had already been dismissed vide order dated 20.01.1975 and therefore, the suit was barred. Even counter-claim was filed claiming that they had become owners of the suit property by efflux of time.

The trial Court on the basis of pleadings frame the following issues:-

- “1. Whether the plaintiffs are entitled for a decree of possession by way of redemption of the land as detailed in para No.1 of the plaint? OPP*
- 2. Whether the plaintiffs have no cause of action to file the present suit? OPP*
- 3. Whether the Civil Court got no jurisdiction to try and entertain the present suit? OPD*
- 4. Whether the suit of the plaintiffs not maintainable in the present form? OPD*
- 5. Relief.”*

In support of averments made in the plaint, the plaintiffs tendered following documents:-

- “1. Ex.P1 is document in Urdu language.*
- 2. Ex.P1/A is mutation No.606.*
- 3. Ex.P2 is document in Urdu language.*
- 4. Ex.P2/A is mutation No.607.*

5. *Ex.P3 is document in Urdu language.*
6. *Ex.P3/A is mutation No.605.*
7. *Ex.P4 is document in Urdu language.*
8. *Ex.P4/A is mutation No.604.*
9. *Ex.P5 is document in Urdu language.*
10. *Ex.P5/A is jamabandi for the year 1958-59.*
11. *Ex.P6 is document in Urdu language.*
12. *Ex.P6/A is jamabandi for the year 1944-45.*
13. *Ex.P7 is document in Urdu language.*
14. *Ex.P7/A is jamabandi for the year 1944-45.*
15. *Ex.P8 is mutation No.1363.*
16. *Ex.P9 is mutation No.1364.*
17. *Ex.P10 is mutation No.1365.*
18. *Ex.P11 is mutation No.1366.*
19. *Ex.P12 is mutation No.1367.*
20. *Ex.P13 is certified copy of order dated 4.6.2007 of Collector, Sonipat.*
21. *Ex.P14 and Ex.P-14/A are jamabandies for the year 1999-2000.*
22. *Ex.P15 is jamabandi for the year 1999-2000.*
23. *Ex.P16 is certified copy of order dated 17.1.1977 of Senior Sub-Judge, Sonipat.*

The defendants brought on record Ex.D1, copy of the order dated 20.01.1975 of the Collector.

The trial Court on the preponderance of oral and documentary evidence and the case laws decreed the suit but the lower Appellate Court

reversed the finding by holding that the limitation for redemption of the property after the proceedings have been taken under the Limitation Act, 1963 was one year.

Mr. Vijay S. Kajla, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law, in view of the law laid down by Hon'ble Supreme Court in *Harbans Singh and another Vs. Guran Ditta Singh and another (1991) 2 SCC 523* where it has been held that even if the application for redemption under the Punjab Redemption of Mortgages Act, 1913 had been dismissed and the order had become final, the suit for redemption after expiry of one year cannot be said to be barred by limitation. In view of the judgment rendered by Full Bench of this Court in *Ram Kishan and others Vs. Sheo Ram and others 2008(1) RCR (Civil) 334* and reiterated by Hon'ble Supreme Court in *Singh Ram (D) through LRs Vs. Sheo Ram and others (2014) 9 SCC 211*, there is no limitation to seek redemption and recovery of possession of immovable property mortgaged. Therefore, the counter-claim filed by the defendants was liable to be dismissed, for, mortgage was for an infinite period and not for specified period, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court being against the law and suffered from illegality and perversity.

Per contra, Mr. R.S. Malik, learned counsel appearing on behalf of the respondents-defendants submitted that in view of the ratio decidendi culled out by Hon'ble Supreme Court in *Mithu Singh Vs. Kishan Singh 1988(2) RRR 260*, the limitation, after having attained finality of the proceedings under the 1913 Act, is one year. Once aforementioned order

dated 20.01.1975 rejecting the application attained finality, the suit filed in the year 2003 was hopelessly barred by law of limitation and rightly so, the lower Appellate Court being last court of fact and law after examining the case law and documentary evidence dismissed the suit, thus, urges this Court for upholding the judgment and decree under challenge.

I have heard learned counsel for the parties, appraised the paper book and judgments cited at bar. The order dated 20.01.1975 (Ex.D1) passed by the Collector dismissing the application seeking redemption of the mortgage under the Punjab Redemption of Mortgage Act, 1913 is not in controversy. The only point to be pondered upon by this Court is whether limitation would be of one year for mortgagor to seek redemption before knocking the door of the Court. The aforementioned question though earlier rendered against the mortgagor in Mithu Singh (supra) but in the subsequent judgment in Harbans Singh (supra) it has been held that there is no limitation of one year. For the sake of brevity para 9 of the aforementioned judgment reads as under:-

“9. We hold that applying the principle of justice, equity and good conscience though Section 60 of the Transfer of Property Act per se did not apply, the principles in Section 60 would apply. Though the application for redemption was dismissed under Section 11 of the Act and became conclusive under Section 12 of the mortgagor's right to redemption is not barred. A suit for redemption under Section 60 of Transfer of Property Act will be maintainable and the Civil Court has jurisdiction to grant the decree of redemption.”

The Full Bench of this Court in Ram Kishan's case (supra)

after lot of deliberation and pondering upon various case laws held that when there is not limit fixed for the mortgagor, the mortgagor can seek redemption at any time, in essence, time limit of 30 years provided under the Limitation Act was held to be not applicable. The aforementioned view of the Full Bench of this Court has been upheld by the Hon'ble Supreme Court in **Singh Ram's** case (supra).

The mortgage deed had not fixed any time line where it could be said that the suit had to be filed within the period of limitation. The mortgage was for infinite period. The suit aforementioned, *de hors* of the fact that the appellant-plaintiff has lost the right to seek redemption before the Collector in the year 1975, cannot be said to be barred by doctrine akin to *res judicata* or by way of limitation. The finding of the lower Appellate Court, in my view, is not sustainable as suffers from illegality and perversity and against the settled proposition of law.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a

correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a

competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgment and decree of the lower Appellate Court is set aside and that of the trial Court is restored. The appeal stands allowed. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

May 02, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No