

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

RSA No. 1388 of 2016 (O&M)

Date of decision : September 27, 2018

Gurmukh Singh and others

.....Appellants

Versus

Gurdev Singh (deceased) through LR's and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gopal Sharma, Advocate for the appellants.

LISA GILL, J.

Appellant - plaintiffs are aggrieved of concurrent findings rendered against them by the learned Civil Judge (Senior Division), Fatehgarh Sahib vide judgment and decree dated 31.05.2013 as well as by the learned Additional District Judge, Fatehgarh Sahib vide judgment and decree dated 26.05.2014 and consequential dismissal of their suit.

Suit for partition by way of redemption of mortgage under Section 12 of the Redemption of Mortgagees Act filed by the appellant – plaintiffs was dismissed by the learned trial Court. Said decision was upheld by the learned First Appellate Court.

Brief facts of the case are that one Jawala Singh son of Attar Singh had mortgaged the suit property in favour of Gurdev Singh and Dalip Singh respondents – defendants No. 1 and 4. Bant Singh, Gulzar Singh, Ujagar Singh and Ajaib Singh sons of Bakhtaur Singh claimed to be the co-owners in the joint holding measuring 74 bighas 13 biswas in village Khalaspur alongwith one Jaswinder Singh to the extent of half share. Suit for declaration was filed by the said persons on 12.05.1983 for declaration that the mortgage effected by Jawala Singh in respect to 15 bighas 9 biswas

of land forming part of that joint holding was void and ineffective qua them as it affected their co-ownership. The mortgage in question was effected by Jawala Singh in favour of Gurdev Singh and Dalip Singh respondents-defendants No. 1 and 4. Mortgage was effected on 11.06.1965. Mutation dated 15.10.1980 was sanctioned in respect thereof. The plaintiffs in the said suit i.e Bant Singh etc. sought partition of their shares as well. Suit preferred by Bant Singh etc. was dismissed on 19.08.1985 while holding that Jawala Singh was competent to mortgage the property in question. However, appeal filed by Bant Singh and others was accepted while modifying the decree of the learned trial Court to the extent that defendants No. 6 to 9 in that said suit i.e. the plaintiff – appellants in the present case were declared as having a claim of redemption against defendants No. 1 to 4 in that suit (the said defendants are arrayed as defendants in the present suit as well). This appeal was decided on 04.08.1986. Pursuant thereto, the present appellant – plaintiffs filed an application before the Court of Sub Divisional Collector, Bassi Pathana for redemption of mortgage of khasra No. 377 (4-1), 378/1(2-11). This application was dismissed on the ground that it has been filed after the expiry of limitation period. In the present suit, it was pleaded that period of limitation of 30 years is not applicable, therefore, the appellant – plaintiffs are entitled to redeem the mortgage. The defendants, it was averred, were putting off the matter on one pretext or the other and had subsequently refused to admit the claim of the plaintiffs. Hence, the present suit.

Defendants – respondents No. 1 to 4 contested the suit and filed a joint written statement raising various preliminary objections and controverted the averments on merits. It was stated that civil Suit. No. 174

dated 12.05.1983 filed by Bant Singh etc. stood decided. Bant Singh etc. were declared to be joint owners of 74 bighas 13 biswas of land. Application for redemption was dismissed by the Collector, Bassi Pathana being barred by limitation. The appellant – plaintiffs have, thus, no right to seek redemption for possession for partition of the land in question. It was further pleaded that complete particulars of the alleged mortgage have not been mentioned in the plaint as are mandatory. Moreover, the plaintiffs were alleged to have concealed the factum of the earlier partition proceedings. Another suit No. 199 was stated to have been filed by the plaintiffs in September 2002 for declaration against the answering respondents with regard to land measuring 25 bighas 14 biswas at village Khalaspur but the said suit was withdrawn unconditionally. It was further pleaded that the land mortgaged by Jawala Singh is alleged to be more than 15/16 bighas whereas there is no reference with regard to the total land mortgaged and neither were the plaintiffs claiming redemption of mortgage of the entire land. The land in question was stated to have been leased out by the defendants to one Jagjit Singh. Moreover, the joint property of the parties and other co-owners including the suit property stood partitioned vide order dated 19.03.2009. Khasra Nos. 377 and 378/1 measuring 6 bighas 12 biswas had fallen to the share of Ajaib Singh, Pritam Kaur and others. The said defendants have also raised alternate plea of adverse possession claiming continuous, hostile possession without interruption for the last 37 years to the complete exclusion and ouster of the plaintiff – appellants as well as their predecessors. Partition proceedings had been finalised on the basis of order dated 16.09.2008 passed by the Financial Commissioner (Appeals), Punjab. Thus, order of partition had become final, no appeal having been preferred

against the same. Dismissal of the suit was prayed for.

Defendant No. 5 in her separate written statement admitted that the suit filed by Bant Singh etc. had ultimately been decided on 04.08.1986 by the learned Additional District Judge, Patiala. Bant Singh etc. were declared to be joint owners to the extent of half share of land measuring 74 bighas 13 biswas. Encumbrance of the mortgage in the partition proceedings fell upon the appellant – plaintiffs, who could claim redemption against defendants No. 1 to 4. Replication was filed.

Following issues were framed on the basis of the pleading:-

- i) Whether plaintiffs are entitled for partition by way of redemption of mortgage as prayed for?OPP.
- ii) Whether plaintiffs have not come to Court with clean hands as prayed for?OPD
- iii) Whether suit is not maintainable in the present form? OPD.
- iv) Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiffs while observing that the joint property already stood partitioned vide an order passed by the competent Revenue Court Exs.D1 to D3. The plaintiffs were party to the partition proceedings. They were arrayed as respondents no. 5 to 8 as reflected in Ex.D2. Order of partition (Ex.D3) was based on a mutual compromise/settlement. Therefore, there could not be any order of re-partition of the suit land by way of redemption of mortgage. Jurisdiction of the civil Court for partition of the land was observed to be barred under Section 158 of the Punjab Land Revenue Act. The land in question is admittedly agricultural. Moreover, specific details/material particulars with respect to the total area under mortgage, stipulated rate of interest, mortgage amount, nature of mortgage etc. were not mentioned in the plaint. Partial

redemption of 6 bighas 12 biswas was claimed whereas total land mortgaged by Jawala Singh was 15 bighas 9 biswas. Such severance of mortgaged security in the absence of express agreement, it was held, was not permissible. Therefore, the suit filed by the appellant – plaintiffs was dismissed being inherently flawed. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Fatehgarh vide judgment dated 26.05.2014 Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that though the appellant – plaintiff was a signatory to compromise dated 19.03.2009, it cannot in any manner be construed that they have given up their right or relinquished their right in the property in question. The appellants were vested with specific rights in property vide judgment and decree dated 04.08.1986, therefore, order dated 29.02.2003 (Ex.P7) has been duly challenged. It is further contended that the present being usufructuary mortgage, there is no question of limitation for the purpose of redemption of the same. In this situation, learned courts below have grossly erred in dismissing the suit filed by the appellant – plaintiffs. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 31.05.2013 passed by the learned Civil Judge (Senior Division), Fatehgarh Sahib and judgment and decree dated 26.05.2014 passed by the learned Additional District Judge, Fatehgarh Sahib be set aside and suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellants and have perused the file as well as photocopy of the record, which was furnished by him in Court today.

Land measuring 15 bighas and 9 biswas, was admittedly mortgaged by Jawala Singh son of Attar Singh in favour of defendants – respondents No. 1 and 4. Mutation dated 15.10.1980 was entered in this respect. Vide judgment and decree dated 04.08.1986 it was decided that Bant Singh etc. were co-owners to the extent of half share of the property. The present appellant – plaintiffs, who were arrayed as defendants in the said suit, were held entitled to a claim of redemption against defendants No. 1 to 4. It is not in dispute that partition proceedings between the co-sharers have since been finalised on the basis of order dated 16.09.2008 passed by the Financial Commissioner (Appeals), Punjab. As per order dated 19.03.2009, Khasra Nos. 377 and 378/1 i.e. 6 bighas 12 biswas has fallen to the share of Ajaib Singh, Pritam Kaur and others. The appellant – plaintiffs have filed a suit for partition by way of redemption of mortgage. Suit has been filed in respect to 6 bighas 12 biswas of land though Jawala Singh is stated to have mortgaged the land measuring 15 bighas 9 biswas. Redemption is sought of only a part of the mortgaged land. Learned First Appellate Court has rightly observed that cause of action for two reliefs sought is different and clubbing them together would necessarily result in misjoinder of causes. Partition of agricultural land can be ordered only by a Revenue Officer and the jurisdiction of the civil Courts is expressly barred. Moreover, as observed in the foregoing paras partition in this case has already been effected.

Learned counsel for the appellants is unable to deny that the plaint does not give any details regarding the mortgage. Material particulars are conspicuous by their absence. PWs 1 to 4 in their testimonies have stated that they have never seen the mortgage deed nor do they know about

the month, year and or any particulars thereof. Raghbir Singh, PW4 in his cross examination stated that the defendants are in cultivating possession of the suit property for the last 28 years. He admitted that khasra Nos. 377 and 378/1, which are the subject matter of the suit land, have fallen to the share of Ajaib Singh in the partition proceedings finalised on 19.03.2009. No appeal or revision has been filed by the plaintiffs against the said order of partition.

Learned trial Court has rightly observed that there are material discrepancies in the depositions of the plaintiffs and their witnesses, which reflect that even the plaintiffs are not clear about their stand in the civil suit and have taken self contradictory and inconsistent pleas.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellants is unable to point out any illegality and infirmity in impugned judgment and decree dated 31.05.2013 passed by the learned Civil Judge (Senior Division), Fatehgarh Sahib and judgment and decree dated 26.05.2014 passed by the learned Additional District Judge, Fatehgarh Sahib which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

September 27, 2018
rts

(Lisa Gill)
Judge

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