

(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3931 of 2016 (O&M)
Date of decision: 26.10.2018

Nirmala Devi and another Appellants

Versus

Hazara Singh and others Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Rajeshwar Singh, Advocate for the appellants.

B.S. Walia, J. (Oral)

[1] Appeal has been filed by defendant Nos.14 (ix) and 14 (x) (i.e. appellants herein) against the judgment and decree dated 12.05.2015 passed by the learned Civil Judge (Jr. Div.), Dasuya decreeing the suit and holding plaintiff/respondent No.1 entitled to redeem the suit property on payment of Rs.280/- to defendant Nos.14 (ix) and (x)/appellants as well as defendant Nos.1 to 13 (i.e. respondent Nos.2 to 14 herein) as upheld by the learned Additional District Judge, Hoshiarpur vide judgment and decree dated 30.03.2016.

[2] Learned counsel has challenged the judgment and decree of the Courts below on the ground that the suit was barred by limitation besides the L.Rs. of plaintiff/respondent No.1 and defendant Nos.1 to 13 had earlier filed an application for redemption of the mortgage on 12.06.1944 but the same was dismissed on 21.05.1946.

[3] Brief facts of the case leading to the filing of the instant appeal are that a suit was filed by respondent No.1/plaintiff for a declaration that the plaintiff and defendant Nos.1 to 13 (i.e. respondent Nos.2 to 14 herein) were joint owners in possession of 6 Kanals 2 Marlas of land situated in village Ralhan, Tehsil Dasuya as per Jamabandi for the year 2006-07 as well as for grant of permanent injunction for restraining defendant No.14 (ix) and (x) (i.e. appellants) and defendant Nos. 1 to 13 (i.e. respondent Nos.2 to 14) from taking forcible possession of the suit land by encroaching upon any part of the land and in the alternative praying for possession of the suit land by way of redemption of mortgage vide deed dated 12.09.1877 executed by the forefathers of plaintiff/respondent No.1 and defendant Nos.1 to 13 (i.e. respondent Nos.2 to 14) in favour of forefathers of defendant No.14 (ix) and (x)/i.e. appellants and defendant Nos.1 to 13 (i.e. respondent Nos.2 to 14).

[4] The Courts below rejected the two fold plea of the appellants on the ground that no limitation was applicable for the redemption of a usufructuary mortgage besides, the dismissal of the application for redemption of mortgage filed by the LR's of plaintiff/respondent No.1 and defendant Nos.1 to 13 (i.e. respondent Nos.15 to 24 herein) on 21.05.1946 was not on merits but on account of dismissal in default for non-prosecution.

[5] The first point canvassed by learned counsel for the appellants is no longer *res integra* and has been settled conclusively by a Full Bench of Hon'ble the Supreme Court in **Singh Ram (D) through L.Rs. vs Sheo Ram and others, 2014 (3) Law Herald (SC) 2445**. Relevant extract of the same is reproduced as under:-

“15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits

or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.”

[6] In view of the authoritative pronouncement on the point in issue as canvassed by learned counsel for the appellants, there is no merit in the appeal. Besides the earlier application for redumption of mortgage was not dismissed on merit but in default. In the circumstances, no substantial question of law arises. Accordingly, the appeal is dismissed in limine.

(B.S. Walia)
Judge

26.10.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No