

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

RSA No.1911 of 2017 (O&M)

Date of decision:13.11.2018

Ram Saroop (deceased) through LRs and another ... Appellants

Vs.

Badami and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Kaushik, Advocate
for the appellants.

AMIT RAWAL J.

The appellant-defendants have not been successful in defending the suit for possession by way of redemption.

It was alleged that defendants were mortgagees in possession of agricultural land measuring 16 kanals situated within the revenue estate of village Ghor, Tehsil and District Palwal which was mortgaged by Khubi in favour of Dam Dei for an amount of Rs.118/-. Some co-owners in the year 1946 became mortgagee being inhabitants as mutation of redemption was sanctioned as "*Fak Ul Rahan Takmil*" but the suit land remained in possession of the defendants as mortgagees and by showing the willingness to pay the mortgaged amount, the possession was sought.

The defendants opposed the suit to be not maintainable by denying the extent of mortgage. Mutation bearing No.1258 with regard to redemption of suit land was also denied.

The trial Court framed the following issues:-

- “1. Whether plaintiff are entitled for decree of possession by way of redemption of the suit land on payment of Rs.118/- to the defendants as prayed for? OPP*
- 2. Whether suit is not maintainable in the present form?OPD*
- 3. Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD*
- 4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct to file the present suit?OPD*
- 5. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court?OPD*
- 6. Relief.”*

The plaintiffs examined as many as four witnesses and brought on record Ex.P1 to P10. Defendants examined two witnesses and brought on record Ex.D1 to Ex.D10.

On preponderance of the evidence, the trial Court decreed the suit and the appeal taken by the appellants was also dismissed.

Mr. Ashok Kaushik, learned counsel appearing on behalf of the appellants submitted that filing of suit for redemption was immaterial as the plaintiffs had already availed the remedy under Section 4 of the Redemption of Mortgages (Punjab) Act, 1913 (hereinafter referred to as “1913 Act”). The limitation for redemption of the property is thirty years, therefore, the

suit was not maintainable. In this context, he has also relied upon the order dated 14.09.2018 passed in RSA No.6446 of 2017 titled as Sanwalia and others vs. Neelam Kumari and others, wherein, similar point involving the same question, notice of motion has been issued.

I am afraid the aforementioned argument is not sustainable in the eyes of law as 1913 Act, do not envisage non-obstante clause for non-applicability of the provisions of Transfer of Property Act for seeking redemption of the property. Section 4 of 1913 Act, reads as under:-

“4. Petition of redemption

The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed, and where the mortgage is with possession that he be put in possession of the mortgaged property. The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector.”

In such circumstance, suit for redemption to redeem the property can be barred in law. The Hon'ble Supreme Court in **Singh Ram (D) through LRs Vs. Sheo Ram and others 2014 AIR SC 3447**, held that

there is no limitation in the absence of any time line in the mortgage deed. Instant case is of such kind where mortgage was not fixed for any period, therefore, the objection with regard to suit being barred by law of limitation is rejected.

As an upshot of my findings, arguments of Mr. Ashok Kaushik, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 13, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No