IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA 2032 of 2017 (O&M)
Date of decision: 22.03.2018

Mehanga Singh and others .... *Appellants*

Versus

Jaswant Kaur (deceased) through LRs and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Sharad Mehra, Advocate
for the appellants

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Rekha Mittal, J. (Oral)

CM 4865-C of 2017

Prayer in this application is for condonation of delay of 07 days in filing the appeal.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 07 days in filing the appeal stands condoned.

Main case

The present appeal filed by the mortgagees directs challenge against concurrent findings recorded by the Courts whereby plea of the appellants/plaintiffs that they have become owners in possession of land, detailed in judgment passed by the trial Court on the basis of mortgage deed dated 10.07.1975 by efflux of time has been rejected by the trial Court and findings recorded by the trial Court have been affirmed in appeal by the

Additional District Judge, Amritsar.

As per plea of the appellants, Amarjit Singh son of Kartar Singh-respondent/defendant No. 3 mortgaged land situated at Village Ulonangal, Tehsil Baba Bakala, District Amritsar in favour of Hazara Singh and Bachan Singh sons of Ishar Singh vide mortgage deed dated 10.07.1975. The mortgagors failed to redeem the mortgage within the period of thirty years with effect from July 1978, the appellants/plaintiffs (successors-in-interest of Hazara Singh and Bachan Singh) have become joint owners in possession of land, subject matter of the mortgage.

The sole submission made by counsel is that as in the mortgage deed, it has been specifically provided that mortgage has been created for a period of three years with effect from 10.07.1975, right to redeem mortgage accrued to the mortgagors in July 1978 and as the mortgagors did not initiate any proceedings for redemption within a period of thirty years from July 1978, mortgagees got the right of foreclosure and have become joint owners in possession of land in question. It is further argued that the judgment passed by the Full Bench of this Court in **Ram Kishan and others vs. Sheo Ram and others, 2008(1) R.C.R. (Civil) 334** affirmed by Hon'ble the Supreme Court **Singh Ram (d) through LRs vs. Sheo Ram and others, 2014 (9) Scale 411** is not applicable in the circumstances of the present case because the mortgage was created for a fixed period of three years whereas in the referred authorities, mortgage was not created for any particular period and in those circumstances it was held that once a mortgage is always a mortgage and is always redeemable.

I have heard counsel for the appellants, perused the judgments passed by the Courts and cited judgments.

In Ram Kishan's case (supra), on a detailed consideration of series of judgments on the issue, this Court in para 42 of the judgment has answered the reference in the following terms:-

> *"In case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable."*

In para 40 of the judgment, observations made by the Full Bench read as follows:-

> *"40. The limitation of 30 years under Article 61 (a) begins to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage, where rents and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and profits from the interest thereof, therefore, right of foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession*

> *would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable."*

The question that calls for consideration is that *merely because of mortgage in the given case being created for a period of three years, can it be said that period of limitation to redeem the mortgage would accrue immediately on expiry of period of three years?* The answer, at the outset, appears to be negative. The mere fact that mortgage was created for a period of three years but without any stipulation that right to redeem the mortgage would accrue to the mortgagor on expiry of three years, it can safely be construed that since the mortgage was created for a period of three years, the mortgagor was not entitled to redeem the mortgage during that period of three years by payment of mortgage money secured by way of mortgage. However, cause of action to redeem mortgage would arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in the Court the mortgage money. No such plea has been raised by the appellants that the mortgagors paid or tendered to the mortgagees or deposit in the Court the mortgage money at any point of time which could be the starting point of limitation for redeeming mortgage within the stipulated period of thirty years. Under the circumstances, the Courts have rightly relied upon judgment of the Full Bench of this Court in Ram Kishan's case (supra) to conclude that the appellants cannot claim to have become owners of mortgaged land for want of failure of the mortgagor to redeem mortgage either within thirty years from the date of creation of mortgage or with effect from July 1978. As such findings of the Courts that the appellants have not become owners in respect of mortgaged land are liable to be affirmed, therefore, challenge to the power of attorney dated 23.04.1998 (Ex.D1) and sale deed dated 09.09.2010 (Ex.D5) allegedly executed by Amarjit Singh son of Kartar Singh in not tenable.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

(Rekha Mittal)
Judge

22.03.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No