IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

132

RSA No.1590 of 2018 (O&M)
Date of decision: 17.12.2018

Hardev Singh (deceased) through his LRs and others ...... **Appellants**

Versus

Jagga Singh and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ashish Verma, Advocate for the appellants.

Mr. Jagga Singh, Advocate for the respondents.

*****

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Amar Singh was the original owner who had mortgaged the land in favour of Jagat Singh, mortgagee. The mortgagee sold his rights in favour of predecessor-in-interest of the defendants. The plaintiffs claiming to be purchaser of the property from the original owner has filed the suit for possession by way of redemption of the mortgage with respect to the land measuring 17 kanals and 2 marlas. Both the Courts after examining the evidence have found that it was a case of usufructuary mortgage and therefore, period of limitation cannot be held to begin to run from the date of mortgage.

Learned counsel for the appellants submitted that the plaintiffs have not produced any evidence qua their ownership. On the other hand, learned counsel for the respondents has pointed out that the ownership of the plaintiffs has not been challenged in the written statement and Bikram Singh, the only witness examined by the defendants has admitted the plaintiffs to be owners of the property. Bikram Singh has stated that Amar Singh has sold the property in favour of the plaintiffs.

Keeping in view the aforesaid facts, once the ownership of the plaintiffs is not in dispute, the findings of the Courts below cannot be held to be erroneous. As regards limitation, a Larger Bench of the Hon'ble Supreme Court in the case of *Singh Ram Vs. Sheo Ram, 2014(4) SCC 750* while upholding a Full Bench decision of this Court in the case of *Ram Kishan Vs. Sheo Ram, 2008(1) Civil Court Cases 414* have held that in case of usufructuary mortgage, the limitation would not begin to run from the date of mortgage. Admittedly the mortgage was not for a fixed period.

In view of the judgment passed by the Hon'ble Supreme Court, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

17.12.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No