

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

RSA No.2536 of 2017 (O&M)

Date of decision : 28.08.2018

Randhir and others

...Appellants

Versus

Pala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kumar Khubbar, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs filed a suit for declaration claiming that plaintiffs Nos.7 to 12 are owners in possession of land measuring 1 kanals and 4 marlas. It is the case of the plaintiffs that originally the property was mortgaged by Dhan Singh son of Nanu in favour of predecessor-in-interest of the defendants i.e. Bhola @ Bhula on 02.07.1923. It is further pleaded case of the plaintiffs that the property was redeemed in the year 1970 and the possession was delivered to the father of the plaintiffs and to the proforma defendants.

The revenue record was also corrected but it was corrected only with regard to land measuring 12 kanals and 11 marlas vide mutation Nos.1987, 1988, 1989 and 1990 dated 14.10.1970. It is further the case of

the plaintiffs that land measuring 11 kanals 9 marlas is still mortgaged, for which separate suit filed by Tek Ram with respect to land measuring 10 kanals 5 marlas is pending. Hence, the present suit was filed for the land measuring 1 kanals 4 marlas.

The defendants contested the suit and pleaded that the plaintiffs had filed an application for redemption of mortgage under the Redemption of Mortgages (Punjab) Act, 1913, which was dismissed on 28.08.2009.

The defendants-appellants further pleaded that they have perfected their title by way of adverse possession.

The trial Court found that the land in dispute measuring 1 kanals 4 marlas has not been redeemed but since it is the case of usufructuary mortgage with no period provided for redemption, therefore, time for redemption would not begun to run from the date of mortgage.

The trial Court further noticed that the amount of mortgage money has already been deposited on 28.08.2009.

The trial Court further found that the identification of the property is not disputed when Randhir Singh-defendant appeared in the witness-box, he admitted that the land in question is same which was mortgaged. This finding of the trial Court has been affirmed by the First Appellate Court. In fact, larger Bench of Hon'ble the Supreme Court in case **Singh Ram (D) through LRs Vs. Sheo Ram and others, 2014(9) SCC 185,** has held that in case of usufructuary mortgage unless the mortgage provides for period of redemption, the limitation does not began to run from the date of mortgage deed or mortgage. The time does not begin to run unless the mortgagor tenders the amount of mortgage and mortgagee refuses to accept

the same.

Learned counsel for the appellants has raised two arguments:-

1. The plaintiffs have not led any evidence to prove that the property in dispute in the present case is same as was mortgaged.
2. The suit filed by the plaintiffs was barred by time as first application for redemption of mortgage was dismissed by the Collector on 28.08.2009.

This Court has considered the submissions. However, keeping in view the admission made by the defendants while appearing as DW1 admitting that the land mortgaged is the same as in the suit. This Court does not find any substance in the first argument of the learned counsel.

With regard to the second argument, it may be noticed that in Ex.D1, the order dated 28.08.2009 passed by the Collector, the plaintiffs were admittedly not party. The aforesaid application was filed by Tek Chand. An application filed by the plaintiffs was dismissed on 06.12.2010, whereas the present suit was filed on 08.04.2011. Hence, the suit filed by the plaintiffs was within limitation.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

28.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No