IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) RSA No.6001 of 2014 (O&M)
Date of Order:18.04.2018

Naresh Kumar and others

..Appellants

Versus

M/s Jyoti Parshad Anil Kumar

..Respondent

(2) RSA No.2 of 2015(O&M)

Naresh Kumar and others

..Appellants

Versus

M/s Jyoti Parshad Anil Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Fateh Saini, Advocate,
for the appellants.

Ms. Nupur Choudhary, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeals against the concurrent findings of fact arrived at by the courts below while deciding inter-parties suits regarding the same dispute.

Counsel for the parties are agreed that both the cases can be disposed of by a common judgment.

It is a case where the defendants-appellants along with their predecessors have tried to play fraud with the plaintiff. Late Sh. Ajmer Singh predecessor-in-interest of the defendants-appellants was owner of 49 kanals and 2 marlas of land. He suffered a consent decree with regard to the aforesaid land in favour of his wife and children on 10.08.1988, however, mutation of the consent decree was not sanctioned in favour of the defendants-appellants. In other words, revenue record was not got updated. Thereafter, late Sh. Ajmer Singh recorded as a owner in the revenue record, mortgaged the land against loan of Rs.7,00,000/- vide registered mortgage deed dated 14.08.2001. It was provided in the mortgage deed that possession would remain with the mortgager, however, the mortgager shall be liable to pay interest @ 2% per month from the date of mortgage. It was further provided that in case the interest, which was payable after a period of 6 months is not paid, the same shall become part of the principal. After the mortgage deed had been executed and registered, mutation of the consent decree dated 10.08.1988 was got sanctioned on 19.07.2002.

Plaintiff-respondent filed a suit for recovery of the amount dated 15.06.2009.

On the other hand, defendants-appellants filed another suit challenging the validity of the aforesaid mortgage deed dated 14.08.2001. The suit filed by the defendants-appellants challenging the mortgage deed was dismissed. Appeal filed by them also met with the same result. One appeal has been filed against the aforesaid judgment.

In the suit for recovery of the mortgaged amount, the defendants-appellants pleaded that the mortgage was outcome of fraud.

Both the court after appreciation of the evidence available on the file have found that the mortgage deed, which is registered, is a genuine document and late Sh. Ajmer Singh had borrowed a sum of Rs.7,00,000/- through the mortgage deed.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below in both the suits as well as the record.

Learned counsel for the appellants has made the following submissions:-

(i) the suit filed by the plaintiff was barred by limitation as it was filed beyond the period of 3 years;

(ii) the payment of the amount is not proved as the plaintiff's firm did not reflect the amount in their income tax record;

(iii) no books of accounts have been produced, although, the plaintiff's firm is in the business of the commission agent;

(iv) issue no.10 which was with respect to cause of action has not been decided.

(v) although, it is true that mutation of the consent decree was sanctioned on 19.07.2002, however, the consent decree was reflected in the revenue record and therefore, the mortgage by late Sh. Ajmer Singh was not valid in the year 1990.

On the other hand, learned counsel for the respondent-plaintiff has submitted that in the mortgage deed, which is a registered document, it is stated that the mortgage amount shall be received before the sub-Registrar. She has further drawn attention of the Court to the endorsement recorded by the sub-Registrar wherein receipt of payment of Rs.7,00,000/- in the presence of the sub-Registrar has been admitted. She has further drawn attention of the Court to Article 62 of the Schedule attached to the

Limitation Act, 1963 and has submitted, to enforce payment of the money secured by a mortgage, the period of limitation is 12 years. Hence, she submitted that the judgments passed by the courts below do not require any interference. She has also brought attention of the court to mutation of the consent decree passed in the year 1988 was got sanctioned on 19.07.2002 and contended that for the first time after the mortgage deed had been registered, entry was made in the revenue records in favour of the defendants-appellants.

As regard first argument of learned counsel for the appellants, on limitation, Article 62 of the Limitation Act, 1963 is clear. The limitation is 12 years in case the suit is filed to enforce payment of money secured by a mortgage. In the present case, plaintiff while filing the suit has specifically stated that the amount was secured by a mortgage. Details of the mortgage deed were given in paragraphs 3 and 4 of the plaint and the suit for recovery was filed to enforce payment of the amount secured by a mortgage.

Still further a reading of the mortgage deed proves that no period for redemption of the mortgage was stipulated. It was at the wish of the mortgager. It has been pleaded in the plaint that cause of action accrued to the plaintiff on 10.06.2009 when the defendants refused to pay the amount. Learned counsel for the appellants has relied upon a judgment passed by the Bombay High Court reported as ***State Bank of India v.Ramkrishna J. Sakharkar and another, 2006(3) RCR(Civil), 194***, to contend that if a loan is secured by creating a charge on immovable property, the limitation would be 3 years and not 12 years. In the aforesaid judgment, Hon'ble Bombay High Court had noted in paragraph 12 that the suit was not filed on the basis of charge created. A reading of the entire plaint proves that it was a simpliciter suit for recovery based on accounts. In such situation, the aforesaid judgment would not help the appellant.

Even otherwise, as noted earlier the mortgage deed did not stipulate any period for redemption and it was at the wish of the mortgager. It has been pleaded that the cause of action accrued to the plaintiff on 10.06.2009, whereas the suit was filed on 15.06.2009. Hence, there is no force in the first argument of learned counsel.

Next argument of learned counsel for the appellants is that the payment has not been proved.

The argument is just to be noticed and rejected. The mortgage deed is available on the record. As per the mortgage deed, the payment was to be received before the sub-Registrar. Endorsement before the sub-Registrar proves that the payment was duly received by the mortgager and acknowledged in the presence of the sub-Registrar. The mortgage deed is thumb marked by late Sh. Ajmer Singh. The mortgage deed is a registered document which has presumption of genuineness.

Next argument of learned counsel is that since the plaintiff-respondent had admitted that this amount was not reflected in the income tax record, therefore, the suit for recovery would not be maintainable.

Even this argument of learned counsel has no substance. Learned counsel for the appellants could not point out any provisions of the Income Tax Act which debars recovery of the amount of loan if the amount is not reflected in the income tax record.

Next argument of learned counsel for the appellants is that books of accounts have not been produced and, therefore, as per Section 34 of the Indian Evidence Act, recovery suit would not be maintainable.

In the considered opinion of this Court, the argument is fallacious. The present suit is not filed on the basis of account books. The suit is filed for recovery of the amount and enforcement of the claim on the basis of a registered mortgage deed.

Last argument of learned counsel for the appellant is that Issue no.10 which was subsequently framed by the court has not been decided.

At the outset, it must be noticed that the learned counsel for the appellants has admitted that this argument was never raised or pressed before the first appellate court. In any case, issue no.10 is on the cause of action. Both the courts while deciding the issue of limitation have found that the cause of action accrued to the plaintiff on 10.06.2009. This court has also noticed that fact. It is not in dispute that the mortgage deed did not had any period of redemption, it was on the wish of the mortgager. Such being the position, the issue of cause of action has already been decided by the courts below.

In view thereof, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

April 18, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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