

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

RSA No.5652 of 2018 (O&M)

Date of Decision: 05.10.2018

Rattan Lal and others

.....Appellants

Versus

Shree Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sarfraj Hussain, Advocate
for the appellants.

TEJINDER SINGH DHINDSA J.(ORAL)

Defendants are in second appeal before this Court.

Plaintiffs-respondents filed a suit seeking decree for declaration to the effect that they are owners of the agricultural land as described in the plaint, total measuring 7 kanals 9 marlas situated within the revenue estate of Village Sondh, Tehsil Hodal, District Palwal on the averments that the same was orally mortgaged by the plaintiffs and their predecessors-in-interest with the defendants and their predecessors in interest on 24.12.1953 for ₹1100/- and mutation No.731/1706 to this effect had also been entered and sanctioned by the revenue department on 05.03.1954. It was further claimed that the plaintiffs and their predecessors-in-interest had got the suit property redeemed from the defendants and their predecessors-in-interest on payment of the mortgaged amount of ₹1100/-.

Plaintiffs asserted that on account of inadvertence mutation of redemption

of the suit land could not be sanctioned in the revenue records and as such the revenue entries continued in the name of the defendants and their predecessors-in-interest as mortgagees with possession. It was stated that the revenue entries in the name of defendants and their predecessors-in-interest are illegal, null and void and are not binding upon the rights of the plaintiffs and are liable to be rectified.

Suit was contested and the defendants filed a written statement admitting that the predecessors-in-interest of the plaintiffs had orally mortgaged the suit land with the predecessors-in-interest of the defendants on 24.12.1953 and mutation thereof had been sanctioned by the revenue department on 05.03.1954. However, stand was taken that the suit land had never been redeemed in the prescribed period that had been orally settled *inter se* the parties since the year 1974 and as such after a lapse of 30 years, the defendants had become owners in possession over the suit land.

The trial Court on 30.11.2016 partly decreed the suit and held the plaintiffs entitled to possession of the suit land on payment of mortgage amount of ₹1100/-. Judgment and decree of the Trial Court stands affirmed vide impugned judgment and decree dated 10.07.2018 passed by the learned Additional District Judge, Palwal.

Learned counsel representing the appellants has argued that the Courts below have ignored a vital aspect that the plaintiffs-respondents and their predecessors-in-interest had failed to redeem the suit land within the prescribed period orally settled between the parties since 1974 and as such after a lapse of 30 years, the suit was hopelessly barred by limitation. In support of such contention, learned counsel submits that plaintiff-respondent No.1 in his cross-examination had admitted that his father had not filed any proceedings for redemption of the suit land and had also

admitted that he does not have any receipt regarding payment of mortgage money. It is vehemently argued that since no evidence had been adduced on record by the plaintiffs-respondents with regard to redemption of the suit land and it being the conceded position that no suit had been filed from 1954 till filing of the present suit, the Trial Court ought to have dismissed the suit. No other point has been urged.

Learned counsel for the appellants has been heard at length and the pleadings on record have been perused.

The Courts below have taken a concurrent view that not even an iota of evidence was brought forth by the plaintiffs-respondents as regards the alleged payment of the mortgage amount. Furthermore, even the date, month or year of the payment of the mortgage amount was not forthcoming. Be that as it may, the appellants-defendants had admitted as regards the predecessors-in-interest of the plaintiffs-respondents having orally mortgaged the suit land in favour of the predecessors-in-interest of the defendants on 24.12.1953. Entire case set-up on behalf of the defendants was that the plaintiffs and their predecessors-in-interest having failed to redeem the suit land within the prescribed period of limitation, therefore, they have become absolute owners of the suit land by prescription. Since the appellants-defendants had admitted receiving profits from the suit land, accordingly, a view has been taken as it is a case of usufructuary mortgage and as such the suit cannot be held to be barred by limitation. In taking such view the Courts below have referred to judgment of Hon'ble the Apex Court in case **Singh Ram (deceased) through LRs. vs. Sheo Ram and Others 2014 (4)CCC 591 (S.C.)**. It is in pursuant to such view that the plaintiffs-respondents have been held entitled to possession of the suit land on payment of the mortgaged amount of ₹1100/-

and the suit was partly decreed.

This Court is in agreement with the concurrent view taken by the Courts below.

The instant appeal does not raise any question of law.

No merit.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

October 05, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No