

In the High Court for the States of Punjab and Haryana at Chandigarh

R.S.A. No. 253 of 1982 (O&M)

Date of Decision: May 02, 2019

Banta Singh and others

... Appellants

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sushil Kumar Verma, Advocate,
for appellants no. 3 to 5.

Mr. Pawan Kumar Jangra, Addl. A.G., Haryana.

Amit Rawal, J. (Oral)

This matter has been remanded by the Supreme Court.

Present regular second appeal i.e. RSA No. 253 of 1982 preferred against the judgment and decree whereby the suit seeking redemption of the mortgage dated 22.04.1947 was dismissed by the trial Court as well as appellate Court and the appeal was allowed by this Court vide judgment dated 15.10.2004. The aggrieved party assailed the findings before the Hon'ble Supreme Court and the same was allocated a Civil Appeal No. 4987 of 2008 and vide order dated 12.05.2017 remitted to this Court. Order reads as under:-

“We have heard learned counsel for the parties and deem it appropriate to remit the matter to the High Court, after setting aside the impugned judgment and order, with the request to determine afresh on the question of limitation with reference to the date of mortgage and how much period was available after the

enforcement of the new Act.

All other questions are kept open for determination.

The impugned judgment and order passed by the High Court is set aside and the appeal is accordingly allowed. No order as to costs.”

The facts as revealed from the plaint and the records of the Courts below are that the plaintiffs claimed the declaration of ownership of the suit land to be redeemed or in alternative, for ordering the redemption of land on payment of ₹1200/- or any amount that may be fixed by the Court, by challenging the order dated 17.01.1979 of the prescribed authority passed under the Redemption of Mortgages Act, on the premise that Sewa Singh son of Jeeta Singh, Santa Singh son of Surmukh Singh and Chandu son of Uttam Singh, were owners in possession of the agricultural land comprising in Khasra No.432/273 measuring 2 bighas 14 biswas and Khasra No.434/273 measuring 24 bighas 11 biswas, total measuring measuring 27 bighas 5 biswas, situated in Village Malhari Tehsil and District Sirsa. The aforesaid land was mortgaged, vide mortgage deed dated 22.04.1947, in favour of Saidu, Wali sons of Alik Khan and Yusaf and Shafik, sons of Rugha Ali and mutation No.511, in this regard, was sanctioned on 19.11.1948. The sum secured was ₹1200/-. Santa Singh, mortgagor, died and as per his registered Will, his inheritance, devolved upon Sewa Singh. On demise of Sewa Singh, to plaintiff Nos.3 to 9. Chandu, mortgagor also died and his inheritance went to Banta Singh, plaintiff No.1 and Bhani, plaintiff No.2, in such circumstances, plaintiffs became the mortgagors. It was averred that in July 1947, mortgagees received the entire amount and the suit property was redeemed. Owing to communal riots, they suddenly

disappeared and as such, the mutation for redemption could not be entered and sanctioned. However, vide mutation No.631, the land stood redeemed on 03.06.1956, but on 04.06.1973, mutation was illegally reviewed and defendant No.1 i.e. Union of India through Secretary, Ministry of Rehabilitation, Government of India, was entered as owner in the suit land. The appeal against the aforementioned order of the review was filed on 09.12.1974 and the Union of India was recorded as mortgagee of the suit land. Defendant No.1 and 2, preferred an appeal and the same was dismissed. Since the land stood already redeemed, the plaintiffs were not liable to pay any mortgage amount, but in compliance of the directions of the order dated 09.12.1974, deposited the amount of ₹1,200/- on 13.07.1976 and consequently, submitted an application to the S.D.O (Civil), exercising the powers of the Collector, under the local redemption law, for the redemption of the suit land.

The Collector, vide order dated 17.01.1979, dismissed redemption application, on the ground of limitation, non-joinder of the necessary parties, which was assailed in the suit. It was explained that during consolidation and settlement operations, old khasra numbers of the land referred to in para No.2 of the plaint, were changed and in lieu thereof, the land measuring 70 bighas 5 biswas was converted into 148 kanals. The defendants, by taking advantage of the order of S.D.O. (Civil), threatened to interfere into the possession, therefore, the suit, aforementioned, was filed. In the alternative, prayer for redemption was also sought.

The defendant(s)/State of Haryana filed written statement on 27.08.1979 and opposed the suit by raising the preliminary issues qua nature of the land being evacuee, order of the competent authority being final,

limitation as well as maintainability. On merits, it was alleged that one Sewa Singh son of Jita etc. mortgaged the suit land in favour of Shambu Mal etc. before 1920 and his successors sold their mortgagee rights to Saidu etc, (muslim evacuees), vide mutation No.511 and after partition of the country, the suit land became composite property and was to be dealt with, as per the provisions of Evacuee Interest (Separation) Act, 1951. Sewa Singh, mortgagor, on 27.10.1955 filed the claim before the Competent Officer, Hisar and vide order dated 14.12.1955, the said claim was dismissed in default and the suit property vested in the Custodian Department free from all encumbrances and liabilities. The aforementioned order remained unchallenged by the plaintiffs. As per the provisions of Article 61 of the Limitation Act, 1963, period of limitation was reduced from 60 years to 30 years and since the land was mortgaged before 1920, the suit filed on 13.03.1979, was barred by law of limitation. The factum of redemption of land, as alleged by the plaintiffs, was emphatically denied. The revenue authorities instead of mutation of the land in favour of Custodian Department, erroneously mutated the land in favour of Sewa Singh, vide mutation No.631 dated 03.06.1856. However, on review, mutation No.1112 dated 04.06.1973, was sanctioned in favour of Custodian Department. Santa Singh, legal heir of Sewa Singh, filed the appeal before the Collector, against the order dated 04.06.1973 of Assistant Collector 2nd Grade and 07.11.1972 of S.D.O. (Civil). The Collector, vide order dated 09.12.1974, set aside the orders and held the mortgagor should be allowed to pay the mortgage money. The appeal against the order of the Collector was filed before the Commissioner and the Commissioner, vide order dated 17.05.1976, ordered for the change of entries with Custodian as mortgagee

and the plaintiffs as mortgagors. Santa Singh filed an application before the Collector for redemption of the land on payment, which was dismissed in default, on 21.07.1977. The application, after restoration of the same, dismissed, vide order dated 17.01.1979. Santa Singh also filed a civil suit, which was dismissed, on 07.09.1978 and therefore, the present suit was not maintainable. By efflux of time, the defendants claimed ownership of the property, in the absence of redemption.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are owners in possession of the suit land, free from all incumbrances as alleged?*
- 2. If Issue No.1 is not proved, whether the plaintiffs are entitled to get the suit land redeemed as alleged?*
- 3. Whether the impugned order dated 17.1.79 passed by the Collector, Sirsa is liable to be set aside as alleged?*
- 4. Whether the suit is within time? OPP (objected to)*
- 5. Whether civil court has no jurisdiction to try this suit?*
- 6. Whether the suit is barred by the principle of res-judicata?*
- 7. Whether suit is not maintainable against defendant no.3?*
- 8. Whether the order passed by the Competent Officer, under the Evacuee Interest (Seperation) Act, 1951 has attained finality and cannot be called in question?*
- 9. Relief.”*

Both the parties led extensive evidence in support of their respective cases.

The trial Court, on the basis of the evidence brought on record, rendered the finding, on issue No.1 that the plaintiffs did not deposit any

amount to the mortgagee and issue Nos.2 & 4 decided together and it was held that the suit was not within timeline, though the plaintiffs deposited an amount of ₹1,200/- and filed an application before the SDO (Civil), but the original mortgage had taken place in 1920 as reflected from the jamabandi Ex.D3 pertaining to year 1920-21, in essence, the suit was dismissed on the ground of limitation. The appeal taken before the lower Appellate Court also met with the same fate.

Mr. Sushil Kumar Verma, learned counsel appearing on behalf of appellant Nos.3 to 5 submitted that the question to be decided in the present case is whether the mortgage is of 1947 or 1920. The fact of the matter is that amount, as noticed by the trial Court as well as lower Appellate Court, was deposited, on 13.07.1976, when the application before the SDO (Civil), was submitted. In view of ratio decidendi culled out by Hon'ble the Supreme Court in “Singh Ram (D) through LRs V/s Sheo Ram and others” 2014 (4) R.C.R. (Civil) 179, in the absence of any time-line for redemption, there is no limitation. In other words, even if, the mortgage is of 1947 or 1920, the suit for redemption in the year 1979, cannot be thrown out on the ground of limitation. The lower Appellate Court relied upon the jamabandi for the year 1920-21 (Ex.D3), to form an opinion that the name of Sambhu Mal, was recorded as mortgagee and treated the mortgage of 1920 and not from 1947.

Per contra, learned counsel appearing on behalf of the respondents submitted that the *ratio decidendi* culled out in “Singh Ram's case (supra) would apply prospective and not retrospective. Since the suit was filed in 1979, at that time, as per the provisions of Article 61-A of the Limitation Act, 1963, the limitation to seek the redemption of the land is 30

years and 30 years from 1920 or 1947, elapsed, in the year 1977 as the suit was filed on 13.03.1979. Filing of the application, on 09.07.1977, was also barred by law of limitation i.e. beyond three months from 30 years reckoned from 1947. The order of the Collector dated 17.01.1979 (Ex.P1), rejecting the application, cannot be said to be suffering from illegality and perversity, much less, without jurisdiction, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination:-

1. Whether in view of law laid down by Hon'ble the Supreme Court in “**Singh Ram's case** (supra), while upholding the judgment of Full Bench of this Court, held that in the absence of any time-line, there is no limitation for seeking redemption of the land, the suit can be thrown out on account of limitation or not”
2. Whether the judgments and decrees of the Courts dismissing the suit for redemption of mortgage from 1947 or 1920 being barred by law of limitation suffer from illegality and perversity?

As per the stand taken in the written statement, though vide mutation No.631 sanctioned on 03.06.1856, the land was mutated in favour of Sewa Singh and etc., but later on vide order dated 07.11.1972, the order was reviewed and mutation No.1112, was sanctioned, in favour of the Custodian, on 04.06.1973, but the order of 04.06.1973 was assailed and the Collector, vide order dated 09.12.1974, set aside the orders and held the

mortgagor should be allowed to pay the mortgage money. For the sake of brevity, para No.6 of the written statement reads as under:-

“6. In reply to para no.6 of the plaint it is submitted that the revenue authorities instead of mutating the suit land in favour of the custodian wrongly mutated the land in favour of Shri Sewa Singh etc. vide mutation No. 631 sanctioned on 3.6.1856. Later on the Sub Divisional Officer (Civil) vide his order dated 7.11.1972 reviewed his order dated 3.6.1956 and mutation No. 1112 was sanctioned in favour of the Custodian dated 4.6.1973 by the order of the Assistant Collector IInd Grade, Sirsa, dated 4.6.1973. Shri Santa Singh s/o Surmukh Singh etc. legal heirs of Shri Sewa Singh filed an appeal on 31.8.1973 before the Collector, Hissar against the order of Assistant Collector IInd Grade, dated 4.6.1973 and the order of the Sub Divisional Officer (Civil) dated 7.11.1972. This appeal was barred by limitation. However, the Collector vide his order dated 9.12.1974 accepted the appeal and set aside the order of the Sub Divisional Officer (Civil) dated 7.11.1972 and held that the mortgagor should be allowed to pay the mortgage money. It is further submitted that an appeal was filed against the order of the Collector dated 9.12.1974 before the Commissioner, Hissar Division, Hissar. The Commissioner, Hissar Division, Hissar vide his order dated 17.5.1976 ordered for the change of entries with Custodian as mortgagee and the plaintiffs as mortgagors. Thereafter, Shri Santa Singh filed an application in the Court of Collector Sirsa for the redemption of land on payment. The same was dismissed in default vide Collector's order dated 21.7.1977. Shri Santa Singh filed an application for the restoration of the case. The Collector vide his order dated 17.1.1979 rejected application of the plaintiffs for the redemption of the land

in suit on payment and held that the same was time barred. Shri Santa Singh also filed a Civil Suit in the court of Sub Judge Ist Class, Sirsa. The said civil suit was dismissed on 7.9.1978. The present suit is not maintainable on the principle of res-judicata. The orders passed by the Collector dated 17.1.1979 is legal and within jurisdiction. As the land was mortgaged before 1920 the plaintiffs had already lost their rights to redeem the land in suit due to the expiry of 30 years period prescribed under the Limitation Act, 1963. The plaintiffs have no right, title and interest in the land in suit.”

However, the Commissioner, vide order dated 17.05.1976, ordered for the change of entries with Custodian as mortgagee and the plaintiffs as mortgagors, thus, the relation of mortgagee and mortgagor is not in dispute. The point to be seen is whether the mortgage is of 1947 or 1920.

No doubt, Ex.D3, jamabandi for the year 1920-21, reflected the name of Jeeta, Santa sons of Sarmukh Singh in equal shares to the extent of half as mortgagor and Shambhu Mal son of Khushi Ram as mortgagee, but the fact of the matter is that the status of the defendants, is of mortgagee and not owners. The application was filed before the Collector, on deposit amount of ₹1,200/- on 13.07.1976, which was dismissed on 17.01.1979 being barred by law of limitation, giving a cause to file the suit for declaration and in alternative, relief of redemption. The provisions of the Redemption of Mortgages (Punjab) Act, 1913, do not envisage any non-obstante clause barring the parties to avail statutory remedy of redemption before the Civil Court as per the provisions of Order 34 of the Code of Civil Procedure.

There was a dispute with regard to the applicability of Article 61-A of the Limitation Act, taking away the right of the mortgagors to seek the redemption of the property. The same can be debated upon by Hon'ble the Supreme Court in **"Singh Ram's case (supra)"**. For the sake of brevity, the relevant paras of the judgment read as under:-

"Para Nos.14 to 16 of the Singh Ram's case (supra)"

14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.

15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.

16. On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High Court in Bhandaru Ram (D) Thr. L.R. Ratan Lal vs. Sukh Ram (supra) will stand over-ruled."

On perusal of the aforementioned findings, it is evident that

there was no time line for seeking the redemption. Since redemption did not envisage any time line i.e. after expiry of 30 years, mortgagor is competent to seek redemption of the property, the suit could not have been thrown out on the ground of limitation.

Keeping in view the aforementioned facts and circumstances, the judgments and decrees of the Courts below are not sustainable in the eyes of law and the same are hereby set aside. The suit is decreed. Decree sheet is ordered to be prepared. The Substantial Questions of Law, as framed above, are answered in favour of the appellants-plaintiffs and against the respondents-defendants.

Resultantly, the present second appeal is allowed.

May 02, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No