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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 29.04.2019

1. **RSA-1465-1992 (O&M)**

Sampuran Singh (deceased) through LRs and others

... Appellants

Versus

Rajinder Singh (deceased) through LRs and others

... Respondents

2. **CRM-M-16746-1996 (O&M)**

Ravinder Singh Sandhu

... Petitioner

Versus

Gurmit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Amaninder Preet, Advocate
for the appellants.

Mr. K.S. Sidhu, Senior Advocate with
Mr. Dushyant Sarvesh, Advocate
for the respondents in RSA-1465-1992 and
for the petitioner in CRM-M-16746-1996.

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AMIT RAWAL, J.

This order of mine shall dispose of one regular second appeal bearing No.***RSA No.1465 of 1992*** titled as ***“Sampuran Singh (deceased) through LRs and others V/s Rajinder Singh (deceased) through LRs and others”***, arising out of the decreetal of the suit for possession by way of redemption filed by the respondents-plaintiffs, affirmed in appeal and the criminal petition bearing ***CRM-M No.16746 of 1996*** titled as ***"Ravinder Singh Sandhu V/s Gurmit Singh and others"***, for taking the action against the defendants, appellants in RSA No.1465 of 1992, under Section 340 of the Code of Criminal Procedure, alleging to have made an attempt to erase the figure '1' from figure '12', from the original record of the office of Sub-Registrar, to make the expiry of the redemption of the original mortgage from 12 years to 2 years.

The case has a chequered history. In order to appreciate, it would be in the fitness of the things to give the brief preface of the matter and the events occurred before that.

Bhag Singh, Dashondhi, Nawab and Saqi, were the original mortgagors of land measuring 159 Kanals 9 marlas, 168 kanals 2 marlas and 160 kanals 6 marlas (hereinafter referred to as "A", "B" & "C" respectively), created the mortgage with possession of the aforesaid land, vide three mortgage deeds dated 19.05.1943, in favour of Bachittar Singh, (now dead) represented by the Legal Representatives. Out of three parcels of land, lands mentioned in "A", some portion of "B" i.e. 151 kanals 1 marla out of 168 kanals 2 marlas and "C", were sold on 01.05.1944, 21.05.1944 and 03.05.1944, respectively. Post consolidation, the area of the land and allotment of the kewat numbers, as per the pleadings are as under:

D: 169 kanals 1 marla in khewat No.44/42

E: 123 kanals 17 marlas in Khewat No.45/44

F: 8 kanals in Khewat No.44/43

G: 72 kanals 12 marlas in khewat No.50/59.

Bachittar Singh sold the mortgagee rights to the defendant/appellant-Partap Singh (now dead) represented by LRs, Sampuran Singh, Gurmit Singh, Paramjit Singh, defendant Nos.2 to 4 i.e. appellants. Rajinder Singh/plaintiff (now dead) represented by LRs i.e. respondent No.1(d)-Gurnam Singh (deceased) represented by LRs i.e. defendant Nos.8 to 10, and Pritam Singh being vendors, sold the land measuring 72 kanals 12 marals as mentioned in “G”, to plaintiff No./respondent No.2-Balbir Singh (deceased) represented by LRs and plaintiff No./respondent No.3-Sukhbans Kaur (deceased) represented by LRs. The said vendors also mortgaged the land in favour of some mortgagees, Surnain Singh, Gurdev Singh, Gurnaib Singh, defendants/respondent Nos.5 to 7. The previous mortgagee i.e. Partap Singh (deceased) through LRs, had inducted Buta Singh, Gurnam Singh, Baldev Singh-defendants/respondent Nos.11 to 13, as tenants by way of lease. The mortgage deeds are Ex.P2 to Ex.P4, Ex.PW7/1-PW7/3, Ex.PW11/D-PW11/F, Ex.DW8/A-DW8/C. The mortgage amount was ₹10,000/- and the period, as per the averments in the plaint, was 12 (twelve) years. Rajinder Singh and his brothers got 99 kanals 3 marlas out of 160 kanals 6 marlas, redeemed from defendant Nos.15 to 23 and in a subsequent family settlement, Gurnam Singh and Pritam Singh, gave up their rights in the suit land, which had fallen to the share of Rajinder Singh.

Respondents/defendant Nos.5 to 7 i.e. Surain Singh, Gurdev Singh, Gurnaib Singh, applied for the redemption of the suit land through LRs of Partap Singh, by invoking the provisions of Section 4 of the Punjab Redemption of Mortgages Act, 1913 (in short 'the 1913 Act'), on payment of

₹30,000/-, which was allowed, vide order dated 21.08.1969. The aforesaid order was challenged by the LRs of Partap Singh/defendant Nos.2 to 4, by way of a civil suit under Section 12 of the 1913 Act and in those proceedings, a compromise was arrived at between defendant Nos.5 to 7 and defendant Nos.2 to 4, whereas defendant Nos.5 to 7, agreed not to enforce the order dated 21.08.1969 and withdraw the amount. On the basis of the compromise, the aforementioned suit, on 15.04.1974, was decreed. Rajinder Singh filed the appeal against the decree, which was dismissed on 04.12.1976 (Ex.P13 to Ex.P17).

Bachittar Singh and defendant Nos.2 to 4, on 15.04.1980, filed the civil suit against Rajinder Singh claiming that they became the owners of the land marked by letters "DEFG" by efflux of time, though no period of redemption was specifically mentioned. Rajinder Singh contested the suit and alleged that the mortgage period was 12 (twelve) years and not 2 (two) years. Ex.PA and Ex.PX are the plaint and written statement. The suit, on 24.03.1982, vide Ex.P18, was dismissed in default and three years thereafter, on 14.05.1985, Rajinder Singh, Balbir Singh, Sukhbans Kaur, plaintiff Nos.1 to 3, filed the present suit for redemption of mortgage (Ex.P2 to Ex.P4), on payment of ₹33,000/-.

The appellants-defendant Nos.1 to 4, in their written statement, alleged that Rajinder Singh, Balbir Singh and Sukhbans Kaur, neither signed the plaint or executed any power of attorney in favour of their counsel for institution of the suit. The suit was stated to be time barred as the land could have been redeemed within 30 (thirty) years from 18.05.1943, whereas the period of limitation expired on 18.05.1973. The mortgages were created by Rajinder Singh and his brother-Gurnam Singh created another mortggage dated 13.08.1968 in respect of the land fully described in the plaint and one share of the land for ₹33,000/-, therefore, the suit was not maintainable qua the aforesaid second mortgage, which was a distinct transaction. The factum of the land having fallen to Rajinder Singh, in the family settlement, was emphatically denied. The *locus standi* of Balbir Singh and Sukhbans Kaur, to file the suit for redemption other than 72 kanals 12 marlas, purchased by them, was disputed. The mortgage was for a period of 2 (two) years and not for 12 (twelve) years. The suit was bad for partial redemption because Dasondhi sold the land measuring 151 kanals 1 marla out of 168 kanals 2 marlas to Rajinder Singh/plaintiff and his brother Gurnam Singh and Pritam Singh, whereas the present suit for redemption was only for the land measuring 168 kanals 2 marlas. The defendants did not admit the land measuring 160 kanals 6 marlas. It was alleged that Joginder Kaur, Buta Singh, Gurnam Singh and Baldev Singh/defendant Nos.11 to 14 were the tenants in the land, in dispute and therefore, the plaintiffs were not entitled to the physical possession of the land.

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

1. *Whether the plaintiffs not signed and verified by the plaintiff and as such the suit is not maintainable? OPD 1 to 4.*
2. *Whether the suit is within time? OPP*
3. *Whether the suit is bad for mis joinder of parties and causes of action? OPD 1 to 4.*
4. *Whether the suit is not properly valued for the purposes for*

Court fee and jurisdiction ? OPD 1 to 4.

5. *Whether the plaintiffs are entitled to redeem the suit land? IF so, on payment of what amount to which of the defendant ? OPP*
6. *Whether Sampuran Singh/defendant No.2 was a tenant on the mortgage lands prior to the creation of mortgage by Muslim Mortgagees in favour of Bachittar Singh? OPD 1 to 4.*
7. *If issue No.5 is found in favour of the plaintiffs, whether the defendants No.11 to 14 are entitled to tenancy rights in the suit land against the plaintiffs? If so to what effect? OPD 11 to 14.*
8. *Whether defendants No.2 to 4 have become owners of land measuring 99 kanals 3 marlas by adverse possession as alleged in para No.12 of preliminary objection of the written statement of defendants No.1 to 4? OPD*
9. *Relief.*

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

The trial Court by overruling all the objections taken by the defendants, decreed the suit and the appeal taken before the lower Appellate Court was also dismissed.

Mr. M.L. Sarin, learned Senior Counsel assisted by Mr. Amaninder Preet, learned counsel appearing on behalf of the appellants submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as the lower Appellate Court, being the last Court of fact and law was required to frame the points of determination as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, but did not assign any specific reasons while reiterating the findings. The suit of the respondents-plaintiffs was clearly barred as the mortgage was 18.05.1943 and it was for a period of 2 (two) years, whereas the suit was filed on 14.05.1985. The lower Appellate Court assumed the role of an Expert purported in terms of the provisions of Section 45 of the Indian Evidence Act, which could not have been done, for, the report of the Expert was not taken into consideration. The Courts below incorrectly adopted the approach towards the certified copies of the mortgage deeds (Ex.PW7/1-PW7/3), which were apparently fabricated documents as there was interpolation of the digits. Their preparation was 31.07.1968. On the contrary, the defendants placed on record Ex.DW8/A1, DW8/B and DW8/C, which were prepared in the year 1962. The same have been ignored on the premise that the endorsements on the said deeds were made in Pujabi Script, whereas the deed was written in "Urdu" language. The certified copies obtained by the appellants in the year 1962 clearly deciphered the period of mortgage as 2 (two) years and not 12 (twelve) years. The plaint was not signed by Sukhbans Kaur and Rajinder Singh and their cross-examination had not been read into correct perspective. The findings on issue No.6 are totally erroneous and fallacious as respondent No.11 to 14 had been in cultivating possession of the land as tenants under Sampuran Singh and others appellants as tenants at Will. The tenancy was created in terms of mortgage deeds and it would have a binding effect, even if the land is redeemed, in view of the provisions of Punjab Tenancy Act. Naqsha Haqdarwar Khatauni Pamaish and Khatauni Istemal revealed that the land measuring 72 kanals 12 marlas was allotted after consolidation, in view of the land measuring 99 kanals, which was sold to plaintiff Nos.2 and 3, thus, were not entitled to the possession of the land, because according to the averments in para No.30 of the plaint read with statement of DW8-Ravinder Singh, the land measuring 95 kanals 3 marlas out of 160 kanals 6 marlas was redeemed by his grandfather and his brothers from the previous mortgagees. In cross-examination, he admitted that this land was in possession of the appellants since the year 1944 and in such circumstances, the appellants had become owner by way of adverse possession, which is recognized in law as in the absence of any amendment in law of limitation. The Courts below have incorrectly held that the period of mortgage of 12 (twelves) was tempered with in the office of Sub-Registrar by erasing the figure '1' from '12' in the original record. The previous suit claiming ownership by way of efflux of time did not mention about the period of mortgage, thus, the plaint and the written statement could not have been looked into. The respondents-plaintiffs did not make any attempt to compare the disputed signatures with the specimen signatures in the plaint, thus, has not been proved on record whether Rajinder Singh and Sukhbans Kaur, actually appended the signatures or were of their, therefore, there is abdication and urges this Court for setting aside the judgments and decrees, under challenge.

Per contra, K.S. Sidhu, learned Senior Counsel assisted by Mr. Dushyant Sarvesh, learned counsel appearing on behalf of the respondents submitted that the objection qua partial redemption of the suit property is not sustainable in the eyes of law, for, it is recognized in law in view of the *ratio decidendi* culled out by this Court in ***“Harbhajan Singh (since deceased) through LRs and others V/s “Naurang Singh (since***

deceased) through LRs and another" (2019-1)193 The Punjab Law Reporter 758. The aforesaid judgment has been rendered by relying upon the judgment of Hon'ble the Supreme Court rendered in ***"Singh Ram (D) through LRs V/s Sheo Ram and others" (2014) 9 SCC 211***. The concurrent findings of fact cannot be interfered, until and unless there is gross illegality and perversity. No occasion arose for the previous mortgagors to obtain the copies of the certified copies, as the mortgagee rights were passed on to the present appellants-defendants. DW-8, admitted that the period of mortgage was 12 (twelve) years and not 2 (two) years. Ex.DW8/A though showed the period of mortgage as 2 (two) years, but on conjoint reading of Ex.P2 to Ex.P4, it was for 12 (twelve) years and therefore, the suit cannot be barred by law of limitation. Diwan K.S. Puri, though was a very renowned Expert and his work and conduct appreciated by way of judicial verdict, but in fact, he did not appear in the witness box and in his place, some other expert had appeared. Ex.PW7/1 to Ex.PW7/3, certified copies, were of 1968 reflecting the period of mortgage as 12 (twelve) years. Ex.PW11/A to Ex.PW11/C were the applications submitted by the defendants for obtaining the certified copies of the mortgage, but were not obtained. An application for production of the original mortgage was submitted, but the defendants intentionally did not produce. Reliance was laid to the provisions of Articles 60 and 62 of the Limitation Act as well as with regard to the redemption of mortgage by co-owners, by taking the aid of the judgment of Hon'ble Supreme Court rendered in ***"Vallikat Thekkedath Valappil Lakshmikutty Amma and others V/s Vallikat Thekkedath Valappil Demodara Menon and others" 1997 AIR (SC) 1909*** and on similar lines,

Villiama Champaka Pillai V/s Sivathanu Pillai and others" 1979 AIR (SC) 1937, thus, urges this Court for dismissal of the present regular second appeal by affirming the judgments and decrees, under challenge.

The attention of this Court was also drawn to the order dated 01.10.1996, whereby while admitting the appeal and to be taken up very early, this Court had determined *mense* profits by calling upon the appellants-defendants to deposit regularly and on failure, the stay of dispossession would deem to be vacated.

Mr. Sarin, informed this Court that the aforementioned order has been complied with.

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 the judgment and decree of the lower Appellate Court being the last Court of fact and law suffers from illegality and perversity in not framing the point of determination strictly as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure?*
>
> *2. Whether the mortgage deeds were for a period of twelve years or two years and in such circumstances, the suit filed in the year 1985 was within a period of limitation or not?*

The lower Appellate Court , in para Nos.29 to 31, after hearing the arguments and noticing the certain points, observed as under:-

> *"29. The trial Court had perused this evidence and concluded that as a matter of fact the period mentioned in the mortgage deeds for redemption of the land was 12 years as was clear from the certified copies of the mortgage deeds and also from*

the perusal of the original record of the office of the Sub-Registrar and, therefore, the suit of the plaintiffs is within limitation.

XXXX XXXX XXXXXX

30. I find so valid reason to disagree with the observations of the trial Court that it is 12 years and not 2 years as is the case sought to be made by the appellants.

XXXX XXXX XXXXXX

31. The trial Court had correctly observed that plea of limitation of period was not taken by the appellants in the earlier litigation and that certified copies Ex.DW8/A to DW/8 obtained in 1962 were not proceed in earlier instituted suits filed on 21.04.1990 and the same were produced for the first time in the Court on 22.2.1989."

As regards the objection qua rights of the tenants and determination of the tenancy, the lower Appellate Court non-suited the appellants only on the ground that the tenants have not come in the appeal and the tenancy, if any created by the mortgagee, cannot survive. The findings rendered in para Nos.32 and 33, in this regard, read as under:-

" 32. After carefully going through the evidence on record and considering the arguments of the counsels for the parties, I am in perfect agreement with the observations of the trial Court and reasons recorded by it in support of its findings in its judgment that the period of redemption was 12 years and not two years. The findings and observations of the trial Court in this regard are hereby upheld.

33. It was next argued by the learned counsel for the appellants that the entries in the revenue record placed on the file prove that the respondents No.11 to 14 are in cultivator possession of the land in dispute as tenants under the appellants, being tenants at Will, and that since this tenancy *was created according to the terms of the mortgage and act of good management, the same is binding on respondents No.1 to 3, who are not entitled to possession of the land in dispute and who could not eject respondents No.4 to 14 otherwise than according to the provisions of Section 9 of the Punjab Security of Land Tenures Act. The argument is clearly fallacious. A perusal of the copies of the mortgage deeds placed on record has been made by me. The recital made in these documents clearly shows that the land in dispute under the mortgage was free from encumbrances of all sorts at the time of creation of the mortgage. There can be no dispute with the proposition of law that no one can create tenancy beyond their rights after the creation of the mortgage. It also cannot be disputed that the tenancy/goss with the redemption. The tenants have not come up in appeal. The tenancy, if any, created by the mortgagee cannot survive. The findings and observations of the trial Court in this regard are, therefore, affirmed."*

It would be apt to reproduce the provisions of Order 41 Rule 33 of the Code of Civil Procedure, which reads as under:-

*"**Order 41 Rule 33 of CPC***

33. Power of Court of Appeal

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [25][and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or

> *any of the decrees, although an appeal may not have been filed against such decrees]*"

The lower Appellate Court being the last Court of fact and law, was/is enjoined upon an obligation to refer to all the oral and documentary evidence and at one stage, the lower Appellate Court, assumed the role of an Expert, which though is permissible, as per the provisions of Section 45 of the Indian Evidence Act, which reads as under:-

> ***"Section 45 of the Indian Evidence Action***
> *45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting 35 [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 36 [or in questions as to identity of handwriting] 35 [or finger impressions] are relevant facts. Such persons are called experts."*

The aforementioned powers can only be exercised, when there are two contradictory reports. The plaintiffs have not taken any steps to compare the signatures of Rajinder Singh and Sukhbans Kaur, except through testimony of the witnesses, who stated that they had actually appended the signatures, but the fact of the matter is that they did not come forward or volunteer to give their specimen for comparison.

There is another aspect of the matter that the certified copies of the mortgage deeds taken in the year 1962 revealed that it was for a period of two years and not twelve years. The present suit has been filed in the year 1985. There cannot be remote possibility of any criminal *mens rea* in the minds of the defendants or the previous mortgagees. The law of limitation for redemption of the mortgage deed is no longer *res integra* in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in ***Singh Ram's case*** (supra), with a rider that if there is time line, the suit can always be non-suited being barred by law of limitation. 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.*
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> *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."*

The present suit has been filed in the year 1985. The mortgage deeds are of 18.05.1943. The period of thirty years expired in the 1973. Now if there is a time line, mortgagor or subsequent mortgagee, on acquisition of title either through transfer or purchase, is required to seek the redemption within a period specific therein. If the period is to be taken as two years, the suit *ex facie* barred by law of limitation, but if otherwise, i.e. 12 (twelve) years, there cannot be possibly objection qua limitation. The aforementioned exercise was required to be undertaken by the lower Appellate Court by not assuming the role of Expert, but on the basis of the oral and documentary evidence.

Some part of land is not subject matter of the suit but not gone into detail by the Court below. As regards maintainability of suit by one of the mortgagor, the application of case law relied upon by Mr. Sidhu, would be seen by the lower Appellate Court.

In view of such circumstances, I am of the view that the it is a fit case, which requires to be revisited, at the level of the lower Appellate Court. The Substantial Questions of Law, as framed above, are, thus, kept open and remain undecided.

As a corollary, the judgment and decree of the lower Appellate Court is set aside and the matter is remitted to the lower Appellate Court to frame the points of determination, strictly as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure and render the decision thereon, in accordance with law.

The parties or through their counsel are directed to appear before the lower Appellate Court on 22.05.2019.

Let the records of the Courts below be sent back.

Mesne profits deposited are directed to be released in favour of the appellants, in accordance with law.

As regards the criminal petition, since this Court had not adjudicated the controversy on merits, no separate orders are required to be passed in the criminal petition and accordingly, the same is disposed of.

(AMIT RAWAL)
JUDGE

29.04.2019
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**