

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

RSA No.2880 of 1998(O&M)

Date of decision: 16.7.2019

Umed (since deceased) through LRsAppellant

VERSUS

Rozdar and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.S. Bhatia, Advocate for the appellant.

Mr. Ashok K. Singla, Addl. A.G., Haryana.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration and permanent injunction filed by the appellant/plaintiff (since deceased) now represented by his LRs was dismissed by the trial Court vide judgment and decree dated 27.07.1996 that came to be affirmed in appeal by the Additional District Judge, Faridabad.

The appellant staked his claim for declaration to be owner of the suit land primarily on the ground that suit land was mortgaged with possession with forefathers of the plaintiff by forefathers of defendants No.1 to 9 in the year 1931 and mutation to this effect was sanctioned. The defendants and their forefathers never cared to get the suit land redeemed, thus, they lost their right, title and interest in the suit land. The plaintiff had been cultivating the suit land on behalf of one Nooru being mortgagee

with possession had acquired ownership rights by way of lapse of period of redemption as said Nooru had not been heard for the last about 20 years being not seen in India. It is further averred that defendants are bent upon to dispossess the plaintiff from suit land forcibly and to get enter mutation of redemption in collusion with the revenue officials without having any right, title or authority to do so. He, in the alternative, prayed that in case he is not held to be owner of the suit land by prescription, defendants be restrained from taking illegal and forcible possession of suit land.

Defendant No.10 i.e. State of Haryana through Collector, Faridabad filed the written statement raising preliminary objections pertaining to locus standi, limitation, jurisdiction and suit being bad for non-joinder of necessary parties. On merits, it has been pleaded that the plaintiff has no right, title or interest in the suit land as the same has vested in custodian / Government automatically being acquired evacuee property by operation of law after migration of the Muslim owners/mortgagees to Pakistan, under Section 4 of the East Punjab Evacuees (Administration of Property) Act, 1947 as well as Section 8 (2-A) of the Administration of Evacuee Property Act, 1954. According to mutation No.1376, suit land was mortgaged by one Husena and others with Rehmat Ali son of Fateh Khan who further mortgaged in favour of Sh. Aslat son of Sh. Nathu Ram. The suit land was not got redeemed by its mortgagors within the period of limitation. The custodian / Government became its full-fledged owner by efflux of time under Section 27 of the Limitation Act, 1963 as the mortgage stood extinguished on expiry of limitation period. The mortgagee has no right, title or interest in the suit land.

The trial Court framed issues on 25.03.1992, reproduced in para 4 of the judgment of said Court.

Having heard counsel for the parties in the light of materials on record, the trial Court rejected plea of the appellant that he has become owner of the suit land by efflux of time on account of the mortgagor having failed to redeem the mortgage and also rejected his plea for grant of injunction against dispossession. On the contrary, the Court has held that the suit land has vested in custodian as per law and since limitation period of 30 years already stood expired and suit land had not been redeemed, the custodian / Government had become full-fledged owner of the suit land by operation of law, free from all encumbrances.

The trial Court has rejected the plea for grant of injunction on two counts namely that plaintiff is not entitle to retain possession and is liable to restore possession of suit land to the custodian / Government and secondly he had not come to the Court with clean hands and had tried to suppress the true and material facts by not disclosing that the original mortgagor/mortgagees had migrated to Pakistan having left India permanently. As has been noticed hereinbefore, the appeal preferred by the plaintiff did not find favour with the first Appellate Court.

Counsel for the appellant has fairly conceded that plea qua ownership of the suit land on account of failure of the mortgagor to redeem the mortgage is not sustainable in view of judgment of this Court **Ram Kishan and others vs. Sheo Ram and others, 2008(1) RCR (Civil) 334** and judgment of Hon'ble the Supreme Court **Singh Ram (D) through LRs Vs. Sheo Ram and others, 2014(9) Scale 411**. As such, findings of

the Courts determining issue No.1 against the appellant cannot be faulted with.

However, he has submitted that the Courts have not rejected plea of the appellant that he is in possession of suit land, therefore, cannot be dispossessed except in due course of law. He has also sought to assail findings of the Courts with regard to suit land having vested in custodian or Government of Haryana under the enactments dealing with evacuee property. It is argued that as no notice was issued to the appellant by custodian / Government under the relevant provision in law, findings of the Courts that suit land has automatically vested in the custodian / Government cannot be allowed to sustain.

Counsel representing the respondent – State of Haryana, on the contrary, has supported findings of the Courts that suit land has vested in the custodian / Government being evacuee property and no notice was required to be issued to the appellant in this regard.

After making submissions with regard to findings of the Courts in respect of suit land having vested in the custodian / Government of State of Haryana, counsel for the parties are *ad idem* that it is not within domain of Civil Court to decide if the suit land is evacuee property and vested in the custodian / Government. They have further agreed that the appeal may be disposed of with the observations that findings recorded by the Civil Court with regard to vesting of suit land in custodian / Government are set aside for want of jurisdiction of the Civil Court.

Counsel for the State of Haryana has made a statement that he has the instructions to say that State of Haryana will recover possession of

suit land from the plaintiff (since deceased) represented by his LR's in due course of law as the land has vested in the custodian / Government.

In view of the above, findings recorded by the Courts rejecting claim of the plaintiff with regard to his ownership of suit land are liable to be affirmed and ordered accordingly. The State of Haryana did not file any counter claim in order to assert its right of ownership on the basis of vesting of suit property in the custodian / Government by way of operation of law being evacuee property. It is not clear on record if defendants No.1 to 9 are the erstwhile owners of the suit land. The Civil Court cannot go into the question if the suit land is evacuee or otherwise. Above all, in view of concession recorded by counsel for the parties, the findings recorded by the Courts with regard to suit land having vested in custodian / Government are set aside. Since both the Courts have not doubted that the plaintiff now represented by his LR's is in possession of suit land and State of Haryana intends to recover possession through process of law, plea of the appellant for grant of injunction is allowed to the limited extent that he will not be dispossessed except in due course of law.

In view of what has been discussed hereinbefore, the appeal stands disposed of with the aforesaid observations.

JULY 16, 2019

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no