

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

RSA-1744-2014(O&M)

Date of decision:-30.8.2019

Jaspal Singh

...Appellant

Versus

Amrik Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Veneet Sharma, Advocate
for the appellant.

Mr.Parambir Singh, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs – Amrik Singh and Dalbir Singh, both real brothers being sons of Sh.Pal Singh son of Sh.Labh Singh, residents of village Takhtu Chak, Tehsil Khadur Sahib, then District Amritsar (now Tarn Taran) had brought a suit against Sukhdev Singh and 15 others seeking a declaration that they are owners in possession in equal shares of the land measuring 8 kanals 12 marlas (hereinafter referred to as the suit land) as detailed in head-note of the plaint or in the alternative seeking a declaration that plaintiffs are mortgagees in possession of the disputed property.

As per the version of the plaintiffs one Gajjan Singh alias Gajju and Hakam Singh adopted son of Mit Singh had mortgaged

with possession land measuring 8 kanals 12 marlas bearing khasra No.31//3/2(4-0), 3/3(2-0), 19//11/1 (1-16) and 9/4(0-16) as per jamabandi for the year 1954-55 and also recorded in jamabandi for the year 1967-68 and 1997-98, in favour of the plaintiffs Amrik Singh and Dalbir Singh for a sum of Rs.1,500/- on 10.6.1968; Gajjan Singh and Hakam Singh had acquired mortgage rights of the suit land from Mit Singh son of Dewa Singh, Smt. Jeo widow of Kala Singh, Bhagat Singh son of Jowahar Singh and Dayal Singh son of Attar Singh as recorded in the jamabandi for the year 1913-14; subsequently mutation of inheritance was sanctioned and Gajjan Singh and Hakam Singh were recorded as mortgagees in possession; Gajjan Singh and Hakam Singh have expired; that Hakam Singh was uncle of Gajjan Singh, who had died issueless without leaving any wife about 5 years prior to filing of the suit; that the estate of Hakam Singh devolved upon Gajjan Singh and on death of Gajjan Singh, Sukhdev Singh stepped into his shoes; as per terms and conditions of the mortgage deed dated 10.6.1968, Gajjan Singh and Hakam Singh were entitled to get the land redeemed on or before 9.6.2003 but the same could not be got redeemed up to 9.6.2003; the defendants No.1 and 2 did not get the land redeemed from the plaintiffs or from Gajjan Singh and Hakam Singh, as such their right to do so has got extinguished since the period of 30 years has elapsed, therefore plaintiffs being legal representatives of deceased Gajjan Singh and

Hakam Singh have become owners of the suit property.

On notice, only defendants No.1, 13 to 16 had appeared through counsel, whereas the remaining defendants did not appear despite service and were proceeded against exparte. Defendant No.1 had filed his written statement whereas defendants No.13 to 16 came up with a separate joint written statement. In the written statement filed by the former, he has taken up various legal objections contending that the suit is not maintainable; that the plaintiffs were neither owners of the land nor in possession thereof; that no mortgage deed as alleged was executed by Gajjan Singh and Hakam Singh in favour of the plaintiffs. On merits, the answering defendant controverted the assertions in the plaint contending that Gajjan Singh during his life time had executed a Will in favour of Jaspal Singh, Kulwant Singh, Harjinder Singh and Tejinder Singh on 29.4.2002; that the answering defendant is legal heir of Hakam Singh and that Gajjan Singh and Hakam Singh had not executed any mortgage deed in favour of the plaintiffs; that the mortgage deed, if any is proved, that was without consideration and result of impersonation; that Gajjan Singh and Hakam Singh have expired; that estate of Hakam Singh has been inherited by Sukhdev Singh through a Will, whereas estate of Gajjan Singh has devolved upon Jaspal Singh, Kulwant Singh, Harjinder Singh and Tajinder Singh by testamentary succession; that since the land was never mortgaged so there is no

question of the same being redeemed.

In separate written statement brought on behalf of defendants No.13 to 16, they have raised various legal objections and on merits contending that Gajjan Singh and Hakam Singh were owners in respect of the suit land; that Gajjan Singh had executed a Will in favour of defendant No.16 – Tejinder Singh on 29.4.2002, whereas Hakam Singh had executed a Will in favour of Sukhdev Singh. The written statement is almost on the similar lines as that of defendant No.1.

In the end, all the defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are mortgagees in possession in view of mortgage deed dated 10.6.1968 executed by Gajjan Singh and Hakam Singh in favour of the plaintiffs? OPP.
2. Whether the plaintiffs are entitled to a declaration as prayed for? OPP.
3. Whether the suit as claimed is not maintainable? OPD.
4. Whether the suit is not properly valued for the purposes of

Court fee, jurisdiction? OPD.

5. Relief.

In order to prove their case, the plaintiff No.1 Amrik Singh had got recorded his statement as PW1. In addition to that the plaintiffs had examined Sh.Nirmal Singh as PW2, Sh.Amanpreet Singh as PW3, Sh.Mohanjit Singh, Registration Clerk as PW4, Sh.Tarsem Lal as PW5 and Sh.Jagjit Singh as PW6.

On the other hand, defendants had examined Sh.Baldev Singh as D1, Sh.Joginder Singh as DW2, Sh.Jaspal Singh as DW3, Sh.Mohanjit Singh, Registration Clerk as DW4 and Sukhdev Singh as DW5.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against the defendants, issues No.3 and 4 against the defendants and in favour of the plaintiffs. Resultantly, the trial Court vide judgment and decree dated 12.8.2011 decreed the suit in favour of the plaintiffs and granted a declaration to the effect that the plaintiffs are owners in possession of the suit land.

Feeling aggrieved by the said judgment and decree, the defendants No.13 to 16, namely, Jaspal Singh, Kulwant Singh, Harjinder Singh and Tejinder Singh had filed an appeal before Additional District Judge, Tarn Taran, who vide judgment and decree dated 12.11.2013 dismissed the same upholding the impugned

judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant Jaspal Singh has filed the present regular second appeal before this Court, notice of which was issued and the respondents and contesting respondents No.1 and 2 have appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the appellants has condemned the judgments passed by the Courts below submitting that the same are totally against settled judicial position that no time limit is fixed for redemption and the mortgagor has the right to seek redemption at any time on payment of mortgage debt and the mortgagee can certainly not acquire ownership rights after expiry of period of 30 years the period of limitation provided for redemption of the mortgage. In support of his contention, he has referred to Full Bench judgment of his Court i.e. Ram Kishan and others Versus Sheo Ram and others, 2008(1) RCR(Civil)334, wherein dealing with a usufructuary mortgage of land, it was held that no period of redemption is fixed and even if the land is not redeemed for 60 years, the mortgagees do not become owners by prescription since once a mortgage always a mortgage and it is always redeemable. It was further observed that a mortgagor has a right to seek redemption at any time on payment of

mortgage debt and period of 30 years limitation for redemption under Limitation Act is not applicable and that time limit of 30 years given in Limitation Act to seek redemption would not begin to run from the date of mortgage itself but will arise when mortgagor pays or tenders to mortgagee or deposits in Court the mortgage money.

Learned counsel for the respondents though made an effort to put forward a plea that this authority is not applicable to the facts of the present case but he could not distinguish this judgment on any point. I find that the same is applicable to the facts of the case in hand and this case is squarely covered by the judgment referred to by learned counsel for the appellants.

Another argument advanced by learned counsel for the appellants was that the suit for declaration is not maintainable since as a matter of fact the mortgagees had prayed for foreclosure. Order 34 CPC provides a full-fledged procedure as to how the foreclosure is to be sought. As per Sub-Rule (2), in a suit for foreclosure, if the plaintiff succeeds, then the Court is to pass a preliminary decree ordering that an account be taken of what was due to the plaintiff at date of such decree for principal and interest on the mortgage, the cost of suit if any awarded to him and other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage security together with interest thereon or declaring the amount so due at that time with relevant directions and thereafter the

final decree is to be passed. In terms of Section 61 of the Limitation Act, 1963, the limitation period to redeem or recover possession of immovable property mortgaged by a mortgagor is 30 years, which starts when the right to redeem or to recover possession accrues.

As such, the Courts below fell in error in granting declaration to the plaintiffs that they have become owners of the suit land by prescription, as a result of extinguishing of right to redemption of the mortgagors because in terms of ratio of authority ***Ram Kishan and others*** (supra), no time limit for redemption is fixed in such a case. The plaintiffs by their unilateral act cannot decide that right of mortgagor to get the mortgage redeemed has got extinguished.

The judgments are result of misappraisal of evidence and misinterpretation of law, which has resulted in miscarriage of justice. Therefore, the judgments and decrees passed by the Courts below are hereby set aside by way of acceptance of appeal. Resultantly, the suit of the plaintiffs for declaration stands dismissed.

30.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No