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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5025 of 2015 (O&M)
Date of Decision:11.02.2019

Jai Narain and others ......Appellants
Vs
Parbhu and others ......Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sandeep Ghangas, Advocate
for the appellants.

Mr. Bhupender Singh, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.

CM No.11980-C of 2015

Prayer made in this application is for bringing on record the legal representatives of deceased/appellant Satyawan, who died on 16.12.2014.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Satyawan as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

RSA No.5025 of 2015 (O&M)

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below

in a suit for declaration.

[2]. Brief facts are that the plaintiffs filed a suit on the premise that predecessor-in-interest of the plaintiffs were owners in possession of the suit land and they mortgaged agricultural land with Kura son of Sondha, Neki son of Raja Ram, Hans and Man Singh sons of Ram Rattan about more than 100 years ago for a sum of Rs.136/- and 6 Anna only. Mutation No.17 to that effect was entered and sanctioned and the same was given effect in the revenue record i.e. *jamabandi* for the year 1885 and 1890.

[3]. The aforesaid mortgage was usufructuary mortgage, therefore, mortgagees came in possession of the suit property only on the strength of mortgage being usufructuary in nature. After the demise of Sondha his heirs came in his foot steps. Similarly after the demise of mortgagees their heirs came in their footsteps. In the *bandobast* of 1905-1906, new khasra numbers were allotted to the land in lieu of old khasra numbers. New entries were given effect in the revenue record. Consolidation took place in the village in the year about 1970 and the land in question was allotted in view of old *khasra* numbers by consolidation authorities. After the demise of mortgagors, the property was inherited by the plaintiffs in due course and they became mortgagors of the property in question.

[4]. Both the Courts below have appreciated the facts and legal position on record thereby holding that the nature of mortgage being usufructuary cannot be hit by law of limitation as the usufructuary mortgage can be redeemed at any point of time because interest accrued on the amount was proportionate to the usufruct of the proceeds of the land.

[5]. Admittedly, the defendants had been in possession of the suit property as mortgagees. Though the plea was taken that the relationship of mortgagors and mortgagees between the parties had already been extinguished and the land was not redeemed within a fixed period of limitation. There was no denial to the fact that the entries in the revenue record are still in favour of the plaintiffs showing existence of relationship of mortgagors and mortgagees between the parties. The extinguishment of right to redeem as claimed by the defendants could not be established on record in view of judgment of Full Bench of this Court in ***Ram Kishan and others vs. Sheo Ram and other, 2008(1) CivCC 414***. The decision was upheld by the Hon'ble Apex Court and it was held that in case of usufructuary mortgage, there is no limitation to redeem the same.

[6]. The right to redeem survives till the mortgage subsists and the same can only be foreclosed by a decree of foreclosure obtained by the mortgagees. The mortgagor has a right to pay

the mortgage money and on such payment he has a right to get the possession back from the mortgagee. In view of aforesaid legal position, the mortgagor's right cannot be defeated only on account of passage of time and the right cannot be extinguished in the manner as suggested by the defendants.

[7]. The aforesaid proposition has also been highlighted by this Court in ***Gurbaj Singh @ Baja Singh vs. Bhal Singh and others, 2010(1) R.C.R (Civil) Page 470 (P&H)***. The mortgagees remained in possession of the mortgaged property and they enjoyed the usufruct of the property and, therefore, they did not loose anything by returning the property on receipt of mortgage debt.

[8]. The finding of fact recorded by both the Courts cannot be re-appreciated in Regular Second Appeal, particularly when no question of law is involved in the present case. The questions of law as framed by learned counsel for the appellants in para no.12 of the grounds of appeal have already been answered in favour of the plaintiffs by the Full Bench of this Court in ***Ram Kishan and others' case*** (supra) which was upheld by the Hon'ble Apex Court.

[9]. In view of above, no question of law worth consideration is involved in the present appeal, the same is

accordingly dismissed.

[10]. Since the appeal has been dismissed on merit, therefore, there is no need to adjudicate upon the application for condonation of delay. The said application along with all other pending applications is accordingly disposed of.

February 11, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No