IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4879-2014(O&M)
Date of decision:-29.5.2019

Sh.Sahib Singh and others

...Appellants

Versus

Sh.Gurdev Singh and another

...Respondents

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

Present: Mr.B.R. Mahajan, Senior Advocate with
Ms.Manpreet Ghuman, Advocate
for the appellants.

Mr.Baldev Singh, Advocate
for respondents.

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H.S. MADAAN, J.

Briefly stated facts of the case are that the plaintiffs Sh.Gurdev Singh and Sh.Hakam Singh, both sons of Sh.Ranjit Singh alias Jeet Ram, residents of village Nanduali, Tehsil Naraingarh, District Ambala had brought a suit against defendants Sh.Sahib Singh, Sh.Singh Ram and Sh.Balbir Singh seeking a declaration that the stipulation of the mortgage 99 years as recorded in mutation No.1853 of year 1961 while creating oral mortgage is illegal, null and void as it amounts to clog on the equity of redemption and further for a declaration that the plaintiffs are entitled to redeem the mortgage forthwith created over the land measuring 29 kanals 11 marlas detailed in the head-note of the plaint.

As per the version of the plaintiffs, the land measuring 16 kanals 14 marlas i.e. 1/3rd share out of total land measuring 50 kanals 3 marlas, 8 kanals 19 marlas i.e. 1/3rd share out of total land measuring 26 kanals 16 marlas; 2 marlas i.e. 2/9th share out of total land measuring 13 marlas, 1 kanal 3 marlas i.e. 1/3rd share out of total land measuring 3 kanals 11 marlas, 1 kanal 13 marlas i.e. 2/12th share out of total land measuring 15 kanals 18 marlas situated at village Majra, Tehsil Naraingarh, District Ambala as per jamabandi for the year 1994-95 was mortgaged by their predecessor-in-interest Sh.Ranjit Singh for a period of 99 years vide mutation No.1853 as per jamabandi for the year 1959-60 delivering the possession to the mortgagees in 1961 itself; that the mortgage was to be redeemed after payment of Rs.3,000/- after 99 years; that the mortgagor was in financial difficulty as he was a spend-thrift and was addicted to alcohol; that the defendants took advantage of poverty and helplessness of mortgagor Sh.Ranjit Singh and got the stipulation recorded in mutation for the oral mortgage sanctioned vide No.1853 to the effect that the mortgage was for 99 years. According to the plaintiffs this is a clog in the right of redemption and is illegal, null and void. The plaintiffs further contended that Amar Singh mortgagee had sold his mortgage rights to S/Sh.Sahib Singh, Singh

Ram and Balbir Singh – defendants vide sale deed dated 28.3.2003 for a sum of Rs.3,000/-, resultantly defendants No.1 to 3 stepped into the shoes of mortgagor; that the plaintiffs requested the defendants several times to admit their claim and to redeem the mortgage after taking money but they refused, giving rise to a cause of action to the plaintiffs to bring the suit in question.

On notice, the defendants appeared and filed a written statement contesting the suit raising various legal objections with regard to maintainability of the suit, locus standi of the plaintiff to bring the same; that the suit was vague and misconceived further submitting that the plaintiffs were estopped by their act and conduct from filing the suit and they had concealed material facts from the Court etc. On merits, the defendants came up with a plea that the transaction was in the nature of mortgage by conditional sale, which was made by Sh.Ranjit Singh for betterment/necessity of the family and the plaintiffs have no right to change such nature; that the entry of mutation itself was legal and valid; that huge amount of Rs.3,000/- was paid by Sh.Ranjit Singh in the year 1961, therefore, the plaintiffs cannot re-agitate the matter and say that it was just a mortgage and they have got a right to redeem the land. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

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

1. Whether the plaintiffs are entitled for decree for declaration to the effect that the stipulation of the mortgage for 99 years as recorded in mutation no. 1863 of the year 1961 is illegal, null and void? OPP.
2. Whether the plaintiffs are entitled to redeem the mortgage forthwith created over the property mentioned in the head note of the plaint? OPP
3. Whether the suit filed by the plaintiffs is not maintainable in the present form? OPD.
4. Whether plaintiffs have no locus standi to file the present suit ? OPD.
5. Whether the plaintiffs are estopped by their own act and conduct from filing the suit? OPD.
6. Whether the plaintiffs have not come with clean hands in the Court? OPD.
7. Whether the suit is bad for non joinder of necessary parties? OPD
8. Whether suit time barred? OPD.
9. Whether plaintiff has no cause of action?OPD
10. Whether this Court has no jurisdiction to entertain and try the present suit? OPD.
11. Whether the plaintiffs have not affixed the proper court fee? OPD.

12.Relief.

In order to prove their case, the plaintiffs had examined Sh.Parveen Kumar as PW1 and Sh.Hakam Singh (plaintiff No.2) as PW2 besides tendering certain documents.

On the other hand, the defendants had examined Sh.Vikram Dutt as DW1, Sh.Sunil Grover as DW2, Sh.Bhagmal, Patwari as DW3, Sh.Rikhi Ram as DW4 and Sh.Sahab Singh (defendant No.1) as DW5 besides tendering certain documents.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 6.12.2011 decreed the suit of the plaintiffs with costs.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Ambala, which was assigned to learned Additional District Judge, Ambala, who vide judgment dated 14.7.2014 dismissed it.

The defendants are feeling dissatisfied with the said judgments and decrees passed by the Courts below and have knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by the plaintiffs against them be dismissed.

On getting notice of regular second appeal, the respondents had appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal and the same is liable to be dismissed.

Learned counsel for the appellants/defendants contended that mortgage for 99 years did not constitute any clog on the equity of redemption and the Courts without assigning any reason for coming to such conclusion had decreed the suit of the plaintiffs. Learned counsel for the appellants has further submitted that the Courts below have wrongly come to the conclusion that mortgage does not amount to mortgage by conditional sale and terms of 99 years is clog in the right of mortgagee to redeem the property, which is illegal, null and void and the plaintiffs are entitled to redeem the property on payment of Rs.3,000/- before the appropriate Court of jurisdiction with regard to redemption and that there is no limitation in the right of mortgagor to redeem the mortgage which is in the form of a usufructuary mortgage. As per the learned counsel for the appellants, the Courts below have placed reliance upon authority ***Harbans Versus Om Parkash & Ors., 2006(1) Civil Court Cases 309***, wherein Hon'ble Supreme Court while coming to the conclusion ignoring the fact that the Apex Court in earlier decision in ***Ganga Dhar Versus Shankar Lal, AIR 1958 SC 770*** had held that long period of 85 years itself does not amount to the conclusion that it was an oppressive term and that long term of redemption is not necessarily a clog and such a term is required to be considered having regard to other circumstances of the case, which in the present case have not been referred to at all. Therefore, the appeal deserves to be allowed and the same be accepted, setting aside the judgments and decrees passed by the Courts below.

Whereas, learned counsel for the respondents has stoutly defended the judgments passed by the Courts below stating that the evidence adduced by the parties has been considered and legal position kept in mind, while decreeing the suit filed by the plaintiffs. Learned counsel for the respondents has pressed into service authority ***Singh Ram (D) through LRs Versus Sheo Ram and others, 2014(4) RCR(Civil)179*** by the Apex Court wherein it was observed that in case of usufructuary mortgage, right to recovery of possession commences 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 as provided under Section 62 of the Transfer of Property Act and that until then, limitation does not start for the purpose of Article 61 of the Schedule to the Limitation Act. It was further observed that in such type of mortgage mere expiry of a period of 30 years from the date of creation of mortgage does not extinguish the right of mortgagor under Section 62 of the Transfer of Property Act.

Learned counsel for the respondents further relied upon

Shivdev Singh Versus Sucha Singh, 2000(2) RCR(Civil) 765 by the Apex Court wherein it was observed that putting clog on the equity of redemption by making provision in the mortgage deed not to redeem the mortgage before a particular fixed period is void and against the statutory provisions of the Act, which gives right to the mortgagor/owner of the property to redeem the mortgage any time after the mortgage money becomes due and that by redemption the mortgagee is not put to any disadvantageous position especially when he was enjoying the benefits of mortgage for a long time. In this case, various important judgments on the topic including ***Ganga Dhar V. Shankar Lal, AIR 1958 Supreme Court 770*** were discussed.

After hearing learned counsel for the parties, going through the record and perusing the judgments referred to by them, I find that the Courts below on proper appraisal of evidence and correct interpretation of law, have rightly come to the conclusion that period of 99 years provided in the mortgage deed is definitely a clog in the right of redemption and the Courts were justified in removing that clog and rejecting the version of the defendants that it was rather mortgage by conditional sale. The First Appellate Court has observed that if the transaction was a mortgage by conditional sale then it would not have been mentioned in the mortgage deed that it would stand for a period of 99 years and right of the plaintiffs or the mortgagor to get the same redeemed could not have been blocked by mentioning the period of mortgage in the said deed. The Courts below had come to the conclusion keeping in view the facts and circumstances of the case, the evidence adduced by the parties and the law on the subject and no fault can be found with such inference arrived at by the Courts below.

The judgments and decrees passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

No substantial question of law comes out to be there.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

29.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No