

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

**RSA No. 3135 of 2017(O&M)
Date of Decision:09.01.2019**

Mange

.....Appellant

Versus

Bhola (since deceased) through his Lrs.

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.S.Malik, Advocate
for the appellant.

Mr. Ajay Ghangas, Advocate
for the respondents.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 17.02.2012, passed by the learned Additional Civil Judge (Sr. Division), Sonipat, as well as judgment and decree dated 25.10.2016, passed by the learned District Judge, Sonipat, whereby suit for declaration along with consequential relief of permanent injunction filed by the appellant-plaintiff, has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for declaration to the effect that order dated 02.01.2007, passed by the learned Collector, Sonipat for redeeming the suit property is null and void, thus not binding on the rights of the plaintiff, who claimed to be the owner in possession of the property in question. A decree

for permanent injunction restraining the defendants from interfering in the peaceful possession or taking forcible possession of the property in the garb of order dated 02.01.2007 was also prayed for. It was pleaded that agricultural property measuring 05 K-16M as detailed in the plaint was owned by the plaintiff, who was wrongly reflected as a mortgagee of the said property in the revenue records. Defendant's father namely Bhola filed an application on 09.09.2002 for redemption of the above said property on the ground that Bhola was the owner of the property. It was pleaded by Bhola in his application that Sadiq was the owner of 17K-8M land, out of which the suit land measuring 05K-16M was a part. Sadiq had initially mortgaged the entire 17K-8M of land to Bharat Singh, Sarup Singh and Dariao Singh by way of a usufructuary mortgage. Possession of 17K-8M was handed over to the said mortgagees. Mortgagees Bharat Singh, Sarup Singh and Dariao Singh sold their rights to Anwar, Sajawal, Bhola and Rahim Baj. The estate of Sadiq, including his mortgagor rights, qua the land measuring 17K-8M was succeeded to by Smt. Ashi, being his only legal heir. Mortgagee rights of Anwar were also inherited by Ashi, being his legal heir. She thus became the mortgagor and mortgagee of this part of land. Ashi was the widow of Mulki, brother of Sadiq. She thereafter married Bhola. Ashi sold her rights in the land measuring 17K-8M to Bhola i.e. predecessor-in-interest of defendants. It was pleaded by Bhola that one of the mortgagee namely Rahim Baj had got the land of his share redeemed in favour of Bhola vide mutation no. 1847 dated 30.04.1981. Thus 2/ 3rd share of the land stood redeemed. Bhola claimed redemption of mortgage being a mortgagor. Collector vide order dated 02.01.2007 ordered redemption in

favour of Bhola.

Present plaintiff-appellant pleaded that he was the successor of Sajawal, one of the mortgagees. Plaintiff was in possession of the suit property. Plaintiff claimed to be the owner thereof. Hence the present suit was filed.

Defendants contested the suit filed by the plaintiff with a categorical plea that the suit was time barred. Averments on merits were denied. It was denied that the plaintiff-appellant was owner in possession of the suit land. It was stated that the plaintiff was merely a mortgagee of the suit land which is duly reflected in the revenue record for the year 1977-78. Order dated 02.01.2007 passed by the Collector, Sonipat was stated to be legal and binding upon the parties. It was explained that Ashi was the sole heir of Sadiq. She had also succeeded to the share of Anwar, one of the mortgagees. Qua the share of mortgagee Anwar, Ashi became mortgagee as well as the mortgagor. Ashi sold her interest in favour of Bhola and in this context, mutation no.1386 dated 18.11.1959 was sanctioned. One of the mortgagees Rahim Baj had got redeemed the land to the extent of his share in favour of Bhola in respect to which mutation no. 1381 dated 30.04.1987 was sanctioned. It was further pleaded that in this manner 2/ 3rd of the land stood redeemed. With regard to the remaining 1/ 3rd share, order dated 02.01.2007 was rightly passed. Dismissal of the suit was prayed for.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the order dated 02.01.2007 passed by Collector, Sonipat redeeming the suit property in favour of the defendants is wrong, illegal, null and void and is liable to be set aside an revenue record is liable to be corrected in

- favour of the plaintiff as owner?OPP
2. If issue no.1 is proved then whether the plaintiff is entitled injunction as prayed for?OPP
 3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
 4. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD
 5. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD
 6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned tribunal on considering the facts and circumstances of the case as well as the evidence on record concluded that the plaintiff failed to prove its case thereby dismissing his suit.

Appeal filed by the appellant-plaintiff was also dismissed by the learned District Judge, Sonipat, vide judgement and decree dated 25.10.2016.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that possession of the appellants over the property is duly proved since such long years. The appellant as well as Bhola belong to the same family. Entries in the revenue record reflecting the appellant to be the mortgagee of the suit property are incorrect. Order dated 02.01.2007 passed by the learned Collector, Sonipat, is liable to be set aside. Bhola is not proved to be the owner of the property. Moreover, the appellant is proved to be in possession of the property in question for more than 30 years. Therefore, the defendant-Bhola was not entitled to redemption of the mortgage. It is, therefore, prayed

that this appeal be allowed and the impugned judgments and decrees passed by the learned Courts below be set aside, consequently suit filed by the plaintiff-appellants be decreed throughout.

Per contra, learned counsel for the respondent refutes the abovesaid averments while submitting that both the learned Courts below have returned a concurrent finding of fact on proper appreciation of the evidence on record. It is submitted that it is a matter of record that mortgage in question by Sadiq was a usufructuary mortgage. Bhola is proved to be the owner of the property in question. There is nothing on record to indicate the plaintiff-appellant to be the owner in possession of the property in question. Mere long possession by itself cannot in any manner vest the appellant with any kind of right to claim title to the property. It is thus prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

The factual aspect of the land in question originally belonging to Sadiq, the same being mortgaged by him by way of a usufructuary mortgage to Bharat Singh, Sarup Singh and Dariao Singh and further sale of mortgagee rights by the abovesaid three persons to Anwar, Sajawal, Bhola and Rahim Baj, is not in dispute. As per the pedigree table, it is not disputed that Mulki was the brother of Sadiq and Ashi was the widow of Mulki. She succeeded to the property of Sadiq, who died issue-less, being his sole legal heir. It is also not disputed that Ashi who was the sole successor of Sadiq, later got married with Bhola. She was also the successor of Anwar. Ashi admittedly sold the entire property measuring 17K-8M to Bhola in respect to

which mutation no.1386, Ex.D-7 was sanctioned. It is apparent that by virtue of this transaction duly reflected in mutation Ex.D-7, Bhola became the mortgagor of the entire land measuring 17K-8M. One of the mortgagees Rahim Baj had also got his share of the land in 17K-8M redeemed in favour of Bhola. Bhola became mortgagor as well as mortgagee of the land which belonged to Rahim Baj. Similarly, Ashi being the successor of Sadiq (owner of 17K-8M) and Anwar (one of the three mortgagees) became the mortgagor and mortgagee of the share of Anwar. She admittedly transferred all her rights to Bhola. In this view of the matter, the Collector, Sonipat has rightly passed the order dated 02.01.2007, on an application filed by Bhola for redemption of the suit property, the possession of which was with the plaintiff-appellant.

It is pertinent to note at this stage that long possession of the property by itself cannot vest the plaintiff-appellant with any title to the property in question. Revenue record does not reflect the plaintiff-appellant to be the owner. Admittedly, the plaintiff-appellant is at best a mortgagee of 1/ 3rd of the entire property in question. Statement of the appellant-plaintiff-PW-1 is also testimony to the same. Mortgage in question is admittedly a usufructuary mortgage therefore the question of limitation for redemption does not arise. Mere possession of the property over thirty years, thus, would be irrelevant in the facts and circumstances of the case. Reference in this respect can be gainfully made to the judgment of the Hon'ble Supreme Court in **Singh Ram (D) through L.Rs. Vs. Sheo Ram and others, 2014 (09) SCC 185.**

Learned counsel for the appellant-plaintiff is unable to point out

any question of law much less substantial question of law which arises for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 17.02.2012 and 25.10.2016 passed by the learned Additional Civil Judge (Sr. Division) Sonipat and learned District Judge, Sonipat, respectively, are upheld.

There is a delay of 53 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

09.01.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.