

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 3056 of 2018(O&M)

Date of Decision: January 16 , 2019.

Virsa Singh through LRs

..... APPELLANT (s)

Versus

Mohindro @ Mohinder Kaur and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashish Aggarwal, Advocate
for the appellant.

None for the caveator/respondents No.5 and 7.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by defendant/appellant (now represented by his legal representatives), being aggrieved of judgment and decree dated 06.03.2018 passed by the learned Additional District Judge, Amritsar whereby judgment and decree dated 19.09.2011 passed by the learned Additional Civil Judge(Senior Division), Amritsar has been set aside. Consequently, suit filed by the plaintiffs/respondents was decreed.

Brief facts necessary for adjudication of the case are that, the original

plaintiffs i.e., respondents No.1 to 4 in the present appeal, filed a suit for possession by way of redemption of the suit land measuring 45 kanals 15 marlas as detailed in the plaint. Relief of permanent injunction for restraining the defendant/appellant from alienating the suit land or raising any construction thereon was also prayed for. It was pleaded by the said plaintiffs/respondents No.1 to 4 that land in question belonged to plaintiffs No.1 to 3 and their mother Smt. Labh Kaur. Labh Kaur during her life time sold her share in property to plaintiff No.4. Labh Kaur died on 18.02.2002. It was further pleaded that the plaintiffs and their mother had mortgaged the land in question vide mortgage deed 07.06.1968 to the defendant/appellant under compelling circumstances. All of them were very poor ladies. Due to poverty, they could not redeem the mortgage and such conditions had been imposed in the mortgage deed, that it would not be possible for the plaintiffs to get the mortgage redeemed. The land was mortgaged for an amount of ₹15,000/-. Oppressive clauses of redemption regarding the period (60 years) were incorporated which prevented the plaintiffs from getting the land redeemed for ever. The conditions, it was pleaded, were unreasonable, oppressive and amounted to a clog on equity of redemption. The defendant was stated to be a very clever person, who was further threatening to mortgage the land and raise construction thereon with malafide intention. Hence, suit was filed.

The defendant/appellant contested the suit. Various preliminary objections were taken in the written statement. Averments on merits were denied. It was stated that the plaintiffs were having a criminal kind of character and were facing trial for heinous crimes. It was denied that they were poor persons or that

terms and conditions of the mortgage were oppressive or unreasonable in any manner. Said terms did not amount to a clog on equity of redemption. Dismissal of the suit was prayed for. Replication was filed.

From pleading of the parties, following issues were framed by the learned trial court:-

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

1. Whether the plaintiff is entitled for possession of the property in dispute by way of redemption of the same as prayed therefore? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed thereof? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD
5. Whether the suit is barred by time of limitation? OPD
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
7. Relief.

Evidence was led by both the parties in support of their respective stands.

Learned trial court on considering the evidence on record held that the clause of 60 years incorporated, as the period of mortgage, in the mortgage deed dated 07.06.1968, was indeed a clog on equity of redemption. It was observed that a mortgage cannot be irredeemable and render the right of redemption illusory. Defendant/appellant had been deriving usufruct of mortgage land for a period of over 42 years for a meagre amount. However the suit, it was held, could not be decreed as the plaintiffs were no longer the owners of the property in question. It was observed that the land in question has already been

sold by the plaintiffs as reflected in mutation Nos.464 and 465 and as per the Jambandi for the year 2004-05 (Ex.D8), revealing that the land was sold by plaintiffs No.1 to 4 in favour of Balkar Singh, Didar Singh and Surjit Singh i.e., respondents No.5 to 7 in the present appeal. Therefore, the plaintiffs not being the owners of the property any longer did not have any locus-standi or cause of action to pursue the matter. Suit was accordingly dismissed.

Appeal was preferred by the plaintiffs before the learned First Appellate Court and an application was moved by Balkar Singh, Didar Singh and Surjit Singh under Order 22 Rule 10 read with Section 151 CPC for impleading them as plaintiffs being necessary parties to the case. Their application was dismissed by the learned Additional District Judge, Amritsar on 06.01.2017. An application was moved by the said Balkar Singh, Didar Singh and Surjit Singh under Order 17 read with 151 CPC for review of order 06.01.2017 which was also dismissed by the learned Additional District Judge, Amritsar vide order 16.05.2017. Revision petition was filed by the abovesaid three person (subsequent purchasers) against the orders dated 06.01.2017 and 16.05.2017 passed by the learned Additional District Judge, Amritsar. This Court allowed the said revision petition and ordered Balkar Singh, Didar Singh and Surjit Singh to be substituted in place of plaintiffs No.1 to 3. Amended memo of parties was duly taken on record by the learned first appellate court. In view of the order passed by this Court, respondents No.5 to 7 were admittedly impleaded as the plaintiffs.

Learned Additional District Judge, Amritsar observed that there is no evidence on record to show that the mortgage deed was a forged or fabricated

document. Learned trial court had refused to decree the suit filed by the plaintiffs, solely on the ground that they had already sold their rights to Balkar Singh, Didar Singh and Surjit Singh, therefore, they had no locus to approach the court. However, when the abovesaid three persons were ordered to be substituted as plaintiffs by an order of this Court and finding of the learned trial court to the effect that the mortgage deed contained oppressive and unreasonable clauses which were a clog on equity of redemption were found to be in tune with the evidence on record, learned Additional District Judge, Amritsar allowed the appeal and decreed the suit in favour of the plaintiffs, including the three persons impleaded subsequently.

Aggrieved therefrom, defendant/appellant has filed this appeal.

Learned counsel for the appellant vehemently argues that the learned first appellate court has grossly erred in accepting the appeal filed by the plaintiffs. The original plaintiffs who had sold the land in question during the pendency of the suit, were not entitled to the decree as prayed for. Subsequent purchasers had stepped into their shoes and therefore, are not entitled to any relief as has been afforded by the learned Additional District Judge, Amritsar. Moreover, there is no clause in the mortgage deed dated 7.06.1968 which amounts to a clog on equity of redemption of mortgage deed. The plaintiffs are not entitled to any kind of relief. It is thus prayed that this appeal be allowed and the judgment and decree dated 06.03.2018 passed by the learned Additional District Judge, Amritsar be set aside. Consequently, suit filed by the plaintiffs be dismissed.

I have heard learned counsel for the appellant and have gone through

the file with his assistance.

The suit land measuring 45 kanals 15 marlas was admittedly mortgaged by plaintiffs No.1 to 3 and their mother Smt. Labh Kaur with the defendant on 07.06.1968 for a sum of ₹15,000/-. The period of mortgage mentioned in the deed is 60 years. As per mortgage deed dated 07.06.1968, it is clearly mentioned that as the mortgagers were facing extreme poverty and had no funds to improve the land to make it fit for agriculture purposes, they were mortgaging the land in question in favour of the defendant for an amount of ₹15,000/- for a period of 60 years. Possession of the land was handed over to the defendant. The evidence on record shows that the defendant remained in possession over the suit land since the date of its mortgage. It is rightly held by both the learned courts below that the clause as inserted in the mortgage deed does amount to a clog on equity of redemption. A mortgage admittedly cannot be made irredeemable and neither can the right of redemption be rendered illusory. The financial position of the mortgagers who were all admittedly ladies, is apparent from the deed itself where the circumstance of abject poverty is mentioned. Learned trial court has returned a categorical finding about the oppressive clause in the mortgage deed being a clog on equity of redemption but had not decreed the suit filed by the plaintiffs, solely on the ground that they were no longer owners of the property in question. However, the subsequent purchasers were admittedly ordered to be impleaded by this Court. They were substituted in place of plaintiffs No.1 to 3. Learned counsel for the appellant candidly states that order of this Court directing the impleadment/ substitution of respondents No.5 to 7 has attained finality. There is no challenge to the same. In

this view of the matter, learned first appellate court has correctly decreed the suit filed by the plaintiffs.

Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgment and decree dated 06.03.2018 passed by the learned Additional District Judge, Amritsar whereby appeal filed by the plaintiffs/respondents against judgment and decree dated 19.09.2011 passed by the learned Additional Civil Judge(Senior Division), Amritsar was allowed and their suit decreed, which warrants any interference by this Court.

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

**(LISA GILL)
JUDGE**

January 16 , 2019.
'om'

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No