

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.449 of 2017 (O&M)

Date of Decision: May 21, 2019

Noor Mohammed

...Appellant

Versus

Ram Karan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

AMIT RAWAL, J. (Oral)

Appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiffs for declaration and possession with consequential relief of permanent injunction acquiring the title being in possession of the suit property as mortgagee, has been decreed by the trial Court and affirmed in appeal.

It was alleged that the plaintiffs by virtue of the registered mortgage deed Ex.P6 dated 29.05.2003 were put into possession of the suit land on payment of ₹ 35,000/-. It was required to be redeemed within a period of three years after the payment of the mortgage money putting a condition that on failure of payment, the mortgaged land shall be deemed to have been sold to the plaintiffs. It was also alleged that the petition under Sections 7 and 8 of the Bengal Land (Redemption and Foreclosure) Regulation 17 of 1806 was decided on 18.12.2009.

The defendant opposed the suit, but did not deny the execution

of the mortgage deed. It was alleged that he is innocent and illiterate person and did not know the contents of the mortgage deed and no time was fixed for redemption.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled for the decree of declaration as prayed for? OPP*
- 2. Whether the plaintiffs are entitled for a decree of permanent injunction restraining the defendant from alienating the suit land as prayed for? OPP*
- 3. Whether the suit of the plaintiffs is not maintainable in the eyes of law? OPD*
- 4. Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 5. Whether the plaintiffs have no cause of action to file the present suit? OPD*
- 6. Whether the plaintiffs are estopped from filing the present suit by their own act, conduct, omission, admission, latches and acquiescence? OPD*
- 7. Whether the plaintiffs have concealed the true and material facts from the court? OPD*
- 8. Relief.”*

Plaintiffs examined PW-1 Ram Karan (plaintiff No.1) and brought on record documents Ex.P1 to Ex.P6, i.e., jamabandies, mutations and copy of order dated 18.12.2009, whereas the defendant himself appeared as DW-1.

Mr. Ashish Gupta, learned counsel representing the appellant-defendant submitted that against the order dated 18.12.2009, Civil Revision No.2187 of 2017 is pending adjudication in this Court. The entire basis/genesis of the suit was on that order. The mortgage deed was under

challenge and, therefore, the present suit could not have been decreed. Decretal of the suit resulted into miscarriage of justice. The mortgage deed has also not been proved by examination of the attesting witnesses, though it is a registered document, therefore, the presumption has erroneously been drawn.

I have heard the learned counsel for the appellant-defendant and appraised the paper book.

The law with regard to the redemption of the mortgage having a time line or in its absence is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble the Supreme Court in **Singh Ram (D) through L.Rs Versus Sheo Ram and others, 2014 AIR (SC) 3447**. The pith and substance of the judgment reveals that a person in the absence of any time line in the mortgage deed cannot be permitted to seek a declaration claiming ownership alleging foreclosure, but with a caveat that in case of fixing a time line and on expiry, in the absence of redemption, suit would be maintainable.

The recital of the mortgage deed specifically mentioned the limitation as three years. Date of mortgage deed is 29.05.2003 and the date of redemption is 28.05.2006. Present suit was filed in 2014. During all this period, appellant-defendant had not taken any steps to redeem the property. There had been some force in the argument of Mr. Gupta had there been a complete denial regarding the execution and existence of the mortgage deed.

The contents of the written statement reflecting the innocence and illiteracy about the contents of the mortgage are an admission and as per the provisions of Order 8 Rule 5 CPC cannot be treated as a vague denial.

The provisions of the Bangal Land (Redemption and Foreclosure) Regulation 17 of 1806 do not prohibit the invocation of jurisdiction of the civil court and, therefore, the argument of Mr.Gupta regarding maintainability of the suit must fail.

For the reasons aforementioned, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

May 21, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No