

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

**RSA No.5115of 2018 (O&M)
Date of Decision:07.05.2019**

Ram Lal through his LRs and others

.....Appellants

Versus

Shyamwati and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Bharat Bhushan Sharma, Advocate
for the applicants-appellants.

LISA GILL, J.

Appellants-defendants are aggrieved of judgment and decree dated 20.08.2015, passed by the learned Civil Judge (Jr. Division), Palwal, as well as judgment and decree dated 25.10.2017, passed by the learned Additional District Judge, Palwal.

Brief facts necessary for the adjudication of the case are that the plaintiffs arrayed as respondents no.1 to 4 in this appeal filed a suit for possession of the suit property as detailed in the plaint by way of redemption of mortgage. It is pleaded that the plaintiffs and proforma defendants in the plaint were owners of agricultural land fully described in Schedule-A of the plaint. Defendants, it is stated are the mortgagees in possession of the suit land. Specific and clear particulars of the mortgage and the property are clearly mentioned. The suit property, it is stated was mortgaged in the year 1890. It is further stated that the plaintiffs could not redeem the land in question due to their poor financial condition. Price of food-grains had

increased more than 100 times over, since the date of mortgage and the defendants have already received more than the mortgage money. The plaintiffs, it is stated are entitled to redeem the suit land without payment of the mortgage amount i.e. ₹125/-. Plaintiffs requested the defendants for redemption of the suit property and in the alternate to receive mortgage amount of ₹125/-. However, defendants refused to do so, on or about 31.03.2011. Pursuant thereto, suit was filed on 04.04.2011.

Defendants no.11, 12, 16 to 20, 24, 27, 36 to 40 appeared on notice and filed a joint written statement. Various preliminary objections were raised. It is stated that the said answering defendants along with other contesting defendants were absolute owners in possession of the suit property and claim of the plaintiffs was denied. It is further stated that the alleged mortgage by the predecessors-in-interest of the plaintiffs and of the proforma defendants bears no date. No particular date of the mortgage has been mentioned. Plaintiffs have thus lost every kind of right, title or interest in the suit land and the cultivating mortgagees claimed to be absolute owners in possession of the suit property.

Defendants no.1 to 10, 34 and 35 also contested the suit and filed their written statement. It is denied that the plaintiffs and the proforma defendants are owners of the suit property. Name of the original mortgagors and mortgagees, it is stated along with other particulars was not detailed. It was denied that the plaintiffs had any right to get the suit land redeemed. Dismissal of the suit was prayed for.

Rest of the defendants were proceeded against *ex parte*.

From the pleadings of the parties, following issues were framed

by the learned trial Court:-

1. Whether the plaintiffs and proforma defendants are owners of the agricultural land fully detailed and described in Schedule-A attached with the plaint?OPP
2. Whether the plaintiffs are entitled to the decree of possession to the land in dispute on the ground mentioned in the plaint?OPP
3. Whether the suit of the plaintiffs is not maintainable in the present for,?OPD
4. Whether the plaintiffs have no locus-standi and no cause of action to file the present suit?OPD
5. Whether the plaintiffs have not come with clean hands and have suppressed the true and material facts from the Court?OPD
6. Whether the suit is time barred?OPD
7. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD
8. Relief.

Evidence was led by the plaintiffs. Defendants failed to lead any evidence despite several opportunities. Their evidence was thus closed by order.

Learned trial Court on considering the evidence on record- concluded that the plaintiffs had successfully proved their case. Accordingly, suit was decreed and the plaintiffs along with the proforma defendants were held entitled to possession of the suit property being owners thereof. It was directed that the plaintiffs are entitled to get the mortgage property redeemed after deposit of the mortgage amount within one month.

Appeal preferred by the present appellants was dismissed by the learned Additional District Judge, Palwal, vide impugned judgement and decree dated 25.10.2017.

Aggrieved therefrom, present appeal has been filed by the appellants.

Learned counsel for the appellants vehemently argues that both

the learned Courts below have grossly erred in decreeing the suit filed by the plaintiffs-respondents. It is submitted that the present appellants have been in possession of the property since the year 1890. Ownership of the respondents-plaintiffs over the suit property does not stand proved on the basis of the evidence on record. Moreover, details of the mortgage have not been brought on record. It was for the plaintiffs to prove their case, but they have miserably failed to prove the same before the learned Courts below. It is thus prayed that this appeal be allowed and both the judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiffs be dismissed throughout.

I have heard learned counsel for the appellants and have gone through the file with his assistance.

It is the specific case of the plaintiffs that the suit property was mortgaged in the year 1890 by their predecessors-in-interest namely Kallan son of Daulta to the predecessors-in-interest of the defendants namely Umrao and Kadheru for a consideration of ₹125/-. Jamabandi for the year 1890-91, Ex. P-27, is reflective of the mortgage of the said property. Ex.P-2 to P-26 are the Jamabandies for the subsequent years, which reveal the continuation of the same situation i.e., the land standing mortgaged by the predecessors-in-interest of the plaintiffs in favour of the predecessors-in-interest of the defendants. It is rightly observed by both the learned Courts below, that it is only the names of the heirs of both the parties, which have been inserted after their death. New khasra numbers which came to be allotted in place of the old numbers are also reflected. As per the jamabandi for the year 1965-66, Ex.P-10, exact area of the present suit is reflected. This

jamabandi was prepared after consolidation when an area of 97 Kanals 90 Marlas was allotted to the owners in lieu of the old holding. As per Ex.P-5 i.e., jamabandi for the year 1990-91, names of the present plaintiffs are duly incorporated as mortgagors of the suit property.

Learned counsel for the appellants is unable to deny that the mortgage in question is a usufructuary mortgage. There is no limitation for redemption of the same. It is rightly held by the learned trial Court that a mortgagee under a usufructuary mortgage, is not entitled to file a suit for declaration and cannot claim ownership of the suit property merely on the expiry of 30 years from the date of mortgage. In the present case, contention of the defendants that they were the owners of the suit property from the beginning, is not borne out from the evidence on record. The appellants are not entitled to claim ownership merely on the basis of long possession as is sought to be argued.

Similarly, there is no merit in the argument raised by learned counsel for the appellants that details of the mortgage are not available on record. As noticed earlier, the entire position is crystal clear from the revenue record duly proved by the plaintiffs.

Learned counsel for the appellants-defendants, 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. Both the learned Courts below returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 20.08.2015 and 25.10.2017 passed by the learned Civil Judge (Jr. Division) Palwal and learned Additional District Judge, Palwal, respectively, are upheld.

There is a delay of 164 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

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

07.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.