

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

RSA No.767 of 1995 (O&M)
Date of decision: 5th February, 2020

Puran Singh (deceased) through LR

... Appellant

Versus

Balwant Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Ms. Surabhi Kaushik, Advocate for the appellant.
Mr. G.S. Attariwala, Advocate for the respondents.

FATEH DEEP SINGH, J.

The present appellant in this regular second appeal was plaintiff before the Court of learned Sub Judge, 1st Class, Tarn Taran and had preferred against the present respondents (then defendants) Balwant Singh and others, all siblings, a suit under Section 12 of the Redemption of Mortgages (Punjab) Act, 1913 (in short, 'the Act') seeking declaration that the order dated 29.09.1987 in respect of land measuring 6 Kanals 4 Marlas detailed in the head note of the plaint being illegal and void was un-partitioned and in the alternative sought a decree for possession by redemption of the said land subject to payment of ₹ 5,000/- or any other amount so determined by the Court. The learned trial Court through judgment and decree dated 29.11.1990 dismissed with costs the suit of the plaintiff.

Upon filing of the first appeal by the unsuccessful plaintiff, the Court of learned Additional District Judge, Amritsar through impugned judgment dated 09.12.1994 upheld the findings of the learned trial Court and dismissed the appeal. The same is subject matter of challenge before this Court.

Upon hearing Mr. Baldev Raj Mahajan, Senior Advocate assisted by Ms. Surabhi Kaushik, Advocate for the appellant; Mr. G.S. Attariwala, Advocate for the respondents and perusal of the records.

It is admitted stand of the two sides that upon death of the original owner Phula Singh, his estate including the suit property devolved upon his heirs and during the course of events vide registered mortgage deed dated 31.08.1969 the heir of the deceased namely Ajit Singh mortgaged the suit land with the defendants for a consideration of ₹ 5,000/-. It is by another quirk of fate, Kartar Kaur widow of Phula Singh and Mohinder Kaur widow of Ajit Singh sold the land in question to the plaintiff Puran Singh vide registered sale deed dated 09.03.1981 for a total consideration of ₹ 10,000/-, out of which ₹ 5,000/- was undertaken to be paid to the defendants being the mortgage amount.

The plaintiff filed an application under Section 4 of the Act on 27.03.1987 before the Court of learned Sub Divisional Officer (Civil), Tarn Taran exercising the powers of a Collector and which application stood declined and dismissed on 29.09.1987. The same was challenged before the appellate authority. One of the claims was to the effect that

after the agreed period of mortgage of 18 years, the defendants cannot claim to be the owners of the property under mortgage and it could not be after 48 years in the year 2016 such a right might to have crystallized. It is thereafter, the suit had come about before a Civil Court and the main thrust of the stand of the defendants was that the mortgaged land had become unredeemable since it was under mortgage for more than 30 years. The Court on the basis of the pleadings, framed following issues:-

1. Whether the suit is barred by limitation? OPD
2. Whether the plaintiff is entitled to redeem the land. If so, on payment of what amount? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

The plaintiff testified as PW1 as to the factum of death of the initial mortgagor Ajit Singh and devolution of his interest and in the process proved registered sale deed Ex.P1, order of Collector Ex.P2, copy of jamabandi for the year 1984-85 Ex.P4, mortgage deed Ex.P5, copy of the mutation Ex.P6, power of attorney Ex.P7 and closed the evidence.

The defendants on the other hand examined defendant Jarnail Singh as DW1 and proved original mortgage deed Ex.D1, khatoni pamaish Ex.D2, copy of the naqsha haqdarwar Ex.D3 and copy of the

khatoni ishtemal Ex.D4 and closed the evidence. It is thereafter, the impugned findings had been arrived at.

In view of the recent pronouncement in '**Kirodi (since deceased) through his LR vs. Ram Parkash & others**' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the State of Punjab, that there is no necessity of framing substantial question of law for disposal of an appeal.

The arguments of learned counsel for the appellant Mr.Baldev Raj Mahajan, Senior Advocate assisted by Ms. Surabhi Kaushik, Advocate that it is the registered mortgage accompanied by delivery of possession and therefore, comes within the ambit of usufructuary mortgage as defined under Section 58 (d) of the Transfer of Property Act and precisely the mortgagor having handed over the mortgage property to the mortgagee and authorizing him to retain the possession till payment of the mortgage amount was to be made, for which the mortgagee was entitled to receive the profits and rent accruing from the mortgage property. Hon'ble the Apex Court in '**Singh Ram (D) through LRs vs. Sheo Ram & others**' 2014 AIR (SC) 3447, relied upon by learned counsel for the appellant and which could not be displaced by learned counsel for the respondents, has held that the right of usufructuary mortgage is not only an equitable right and has been a

statutory recognition in terms of Section 62 of the Transfer of Property Act and have enunciated the principle that in case of such a right of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor under Section 62 of the Transfer of Property Act.

Learned counsel for the respondents with all fairness and humility has conceded to this legal proposition and has not in any manner sought to displace it. Therefore, the findings that have come about in the impugned judgments of the two courts below that with the efflux of time, the defendants have come to be the owners of mortgage land, are ill-conceived and absolutely wrong, and need to be set aside by way of acceptance of the instant appeal whereby the impugned judgments and decrees of the two courts below are set aside and the instant appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

February 5, 2020
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No