106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5070-2016(O&M)
Date of decision: 16.08.2022

Mahender and others

....Appellants

Versus

Ram Niwas and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.D.Yadav, Advocate for the appellants

Mr. Prashant Singh Chauhan, Advocate for respondent no. 1, 7 to 11, 13 (a to d), 15, 16, 18, 19 (b to d) and 20

ANIL KSHETARPAL, J (Oral)

The appellants are the defendants in a suit for grant of decree of declaration with a consequential relief of permanent injunction.

The plaintiffs filed a suit for grant of decree of declaration on the premise that he alongwith the proforma defendants has become owner of the suit property as the mortgage dated 19.07.1887 has not been redeemed within the period prescribed in the Limitation Act, 1963. The plaintiff claims that the property was mortgaged for Rs.335/- for a period of 20 years. The trial court has dismissed the suit whereas the First Appellate Court has reversed the judgment and decree passed by the trial court.

Learned counsel representing the appellants relies upon a judgment passed in **Ram Kishan and others vs. Sheo Ram and others 2008 (1) RCR (Civil)** to contend that for usufructuary mortgage, no period of limitation for redemption is prescribed and therefore, the suit was correctly dismissed by the trial court.

It may be noted here that the judgment passed in **Ram Kishan's case (supra)** has been upheld by the Hon'ble Supreme Court in **Singh Ram (D) through L.Rs vs. Sheo Ram and others 2014 AIR (SC) 3447.** It has been held that in case of usufructuary mortgage, the period of limitation of 30 years for redemption of the mortgage shall not commence/begin to run from the date of mortgage. In other words, it has been held that in the absence of the period for which the property was mortgaged, the mortgagee cannot file a suit for foreclosure while counting the limitation from the date of mortgage. The aforesaid judgment is not applicable because it is specifically recorded in mutation no.2 dated 16.02.1887 that the period of mortgage is for 20 years from the date of mortgage. Thus, the limitation period for redemption would begin to run after the expiry of period of 20 years from the date of mortgage. In the present case, the plaintiffs filed a suit in the year 2008. They have been continuing in possession for 121 years. The judgment relied upon by the learned counsel representing the appellants does not apply to the facts of the present case. Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

16.08.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**

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