

[201] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1218-1990 (O&M)

Date of Decision : 25.01.2023

Tulsi ...Appellant

versus

Asha Etc.Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Sanjay Vij, Advocate for the Appellant.
None for the respondent.

B.S. Walia, J.

[1] Regular Second Appeal challenges judgment and decree dated 19.03.1990 passed by the learned District Judge, Gurgaon in Civil Appeal No.140 of 1989 in case titled as Asha and others vs. Tulsi decreeing the civil suit for redemption of mortgaged land subject to payment of Rs. 300/- as redemption money within three months, by reversing the judgment and decree dated 09.10.1989 passed by the learned Sub Judge-II Class, Ferozepur Jhirka (Gurgaon)whereby the civil suit filed by the respondents/plaintiffs was dismissed.

[2] Sole argument of learned Counsel is that the judgment and decree of the learned Appellate Court reversing the judgment and decree of the learned Sub Judge-II Class, Ferozepur Jhirka (Gurgaon) is legally unsustainable as the civil suit for redemption of usufructuary mortgage had been filed beyond 30 years of limitation stipulated under Article 61(a) of the Limitation Act, 1963,therefore, the judgment and decree passed by the learned District Judge decreeing the civil suit is liable to be reversed, and judgment and decree passed by the learned civil judge dismissing the

civil suit upheld.

[3] Issue in the instant case is no longer *res integra* and stands settled by the decision in ***Singh Ram (Dead) Through Legal Representatives vs. Sheo Ram and others, 2014 (9) SCC 185*** in which while referring to the maxim 'once a mortgage, always a mortgage', Hon'ble the Supreme Court in paragraph Nos.12 & 22 of its decision held as under:-

12. xxxAccordingly, we uphold the view taken by the Full Bench that in case 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 T.P. Act.

22. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.

[4] Admittedly, civil suit filed by the usufructuary mortgagor to recover possession was dismissed by the learned Sub Judge II Class, Ferozepur Jhirka on ground of limitation by holding the civil suit had not been filed within 30 years and the appellant-defendant had become owner of the suit land on account of non-redemption of the mortgaged land

within 30 years. However, the aforementioned judgment and decree was reversed by the learned District Judge, Gurgaon vide judgment and decree dated 19.03.1990 by observing that the mortgage of the land was effected by Asha etc. on the very date on which Heeran sold her mortgagee rights to the appellant/defendant on 19.11.1960 and the mortgage came into existence on the very date the mortgagee sold her rights in the land to the appellant/defendant. The learned District Judge held that as per Ex. D3 i.e. copy of Jamabandi of the year 1955-56, Sanwalia s/o Kamla, Sukhan wd/o Sheo Singh, Kashi Ram, Gulji were recorded as owners and Heeran as non occupancy tenant on payment of land revenue and said entry in Ex. D3 had not been shown to be factually wrong, that as per the cross examination of the appellant defendant, Asha had mortgaged the suit land with Heeran for Rs. 300/- in his presence, that no attempt was made by the appellant defendant to place on record the death certificate of Sanwalia in view of the stand of the respondents / plaintiffs that as per Ex. P14 i.e. copy of mutation No. 178, Asha had inherited the suit land from Sanwalia, his father on his father's demise and the mutation in respect thereto was entered on 18th March and sanctioned on 7th April, 1959 and in column No. 13 it was mentioned that inheritance had opened 3 years back and from the said position, it could be inferred that Sanwalia had died in or about March, 1956. Learned District Judge also took into account that as per Ex. P17 i.e. copy of Khasra Girdawari pertaining to Kharif 60 Rabi 61, in Kharif 60 Heeran was entered as non occupancy tenant No. 1 and the appellant defendant as non occupancy tenant No. 2 on payment of rent in the amount of 50 P per kanal totaling to Rs. 37 in regard to the land bearing Khasra No. 14/1 in Kharif 60 and for the remaining land in Rabi

mutation entered vide Badr No. 13 by the CRO in regard to oral mortgage of the land effected by Asha etc sons of Sanwalia, Kashi Ram and Gulji sons of Bhajaru in favour of Heeran mother of Jumma for Rs. 300 with the Patwari on 21st November 61 was rejected by the Revenue Officer on 22nd April, 1963. Learned District Judge held that since inheritance of Sanwalia was sanctioned in favour of Asha etc on March 18, 1959 and not before it, therefore, in the circumstances, the mortgage of the suit land was effected by Asha etc on the very date on which Heeran sold her mortgage rights to the appellant defendant and the mortgage came into existence on the very date the mortgagee sold her rights in the land to the appellant / defendant, thus the suit land was mortgaged by the respondents / plaintiffs in favour of Heeran, predecessor in interest of the appellant defendant, on 19th November, 1960, therefore, the civil suit was within limitation, accordingly, the judgment and decree passed by the learned Sub Judge II Class, Ferozepur Jhirka was reversed and the civil suit filed by the respondents/plaintiffs decreed by passing a preliminary decree for possession on redemption of the suit land on payment of redemption money by the respondents/plaintiffs in the amount of Rs.300/- within three months from 19.03.1990. No evidence to the contrary has been shown by learned counsel of the inheritance of Sanwalia having opened up earlier to March 1956 or of mutation in respect thereto not having been made on March 18, 1959 and having been sanctioned on April 9, 1959 nor has it been shown that the admission of appellant / defendant in cross examination of mortgage having been created by the respondent / plaintiff Asha in favour of Heeran in his presence was incorrect for mortgage could be created by Asha only on mutation of inheritance having been sanctioned in April 1959.

[5] In the light of the position noted above, no substantial question of law, much less question of law arises for consideration in this case. Accordingly, I do not find any ground to interfere with the well reasoned judgment passed by the learned District Judge and dismiss the appeal.

25.01.2023
'Amit'

(B.S. Walia)
Judge

Whether speaking/ reasoned : Yes/No

Whether reportable : Yes/No