

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

RSA-1548-1989(O&M)

Reserved on:-4.5.2023

Date of Pronouncement:-11.5.2023

Bhagat Singh (since deceased) through LRs

...Appellant

Versus

Gurdit Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rai Singh Chauhan, Advocate with
Mr.Rohit Sapehiya, Advocate and
Ms.Deepika Chauhan, Advocate
for the appellant.

None for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Bhagat Singh claiming himself to be adopted son of Dalip Singh son of Attra, Jat, resident of village Litter, P.S. Tanda, Tehsil Dasuya had brought a suit against defendants Gurdit Singh and Ajit Singh, both sons of Thakar Singh, residents of that very village, seeking a declaration that he is owner in possession of land measuring 3 kanals 19 marlas bearing khasra no.677/1 to 288 in khata no.30/59 as per the jamabandi for the year 1982-83 situated in the area of village Litter, Tehsil Dasuya, District Hoshiarpur and further seeking a decree for permanent injunction restraining the defendants from interfering in his possession over the suit land.

2. As per the case of the plaintiff, the suit land was previously

owned and possessed by Dalip Singh, who died about 12 years before filing of the suit; the plaintiff happens to be a natural born son of Thakar Singh but he was adopted by Dalip Singh on 8.11.1952, therefore after death of Dalip Singh, the plaintiff inherited his estate being his sole heir; the plaintiff is in possession of the suit land as owner and the entries in the revenue record showing possession of defendants as mortgagees of the suit land are illegal and void.

According to the plaintiff, if the suit land was ever mortgaged with the defendants then it has already been redeemed on 14.7.1952, when Thakar Singh, natural father of the plaintiff and the defendants had received the entire mortgage amount of Rs.140/- from Dalip Singh; even otherwise, if the alleged mortgage is proved the suit land was not allotted in respect of the land alleged to be mortgaged on 3.4.1934 with Thakar Singh, rather it was allotted in lieu of land owned by Mara; there was another mortgage created by Mara in favour of Thakar Singh, which is referred to in mutation no.127; the suit land was allotted in lieu of the entire mortgaged land which might have been created by Mara with Thakar Singh, in that way, the defendants have no right, title or interest in the suit land and to interfere in possession of plaintiff over the same. When the defendants refused to concede the claim of the plaintiff, he brought the suit in question.

3. On getting notice, both the defendants appeared and filed a joint written statement contesting the suit raising preliminary objections that the defendants are in possession of the suit property, therefore, the suit for declaration and permanent injunction is not maintainable in law;

the plaint is also liable to be rejected on the ground that it does not disclose any particulars of the mortgage of the suit land; the suit is speculative one and is without any cause of action; the land in question was never got redeemed by the plaintiff or his predecessors at any time, therefore the defendants have acquired title in the suit land by efflux of time; they are in possession being exclusive owner; the rights, title or interest of the plaintiff in the suit land if any has got extinguished by the lapse of time. According to the defendants, the receipt dated 14.7.1952 relied upon by the plaintiff is a forged and fabricated document, in that way rights of the defendants are not effected. On merits, the defendants submitted that actually the suit land was carved out during consolidation operation in lieu of pre consolidation khasra numbers, which were mortgaged with possession by Mara predecessor of the plaintiff in favour of Thakar Singh father of the defendants vide the registered mortgage deed executed on 3.4.1934 and got registered on 4.4.1934; the mortgage was never got redeemed by the plaintiff and his predecessors in interest at any time, therefore, the defendants have become owners of the suit land by efflux of time and they are in possession as lawful owners. The defendants had however admitted that plaintiff is their real brother and he had been adopted by Dalip Singh son of Attra and after death of Dalip Singh, the plaintiff has succeeded to his estate being his sole legal heir. Denying the remaining assertions, the defendants prayed for dismissal of the suit.

4. The plaintiff had filed replication to the written statement of defendants controverting the allegations in the written statement whereas

reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether the suit land was owned and possessed by Dalip Singh deceased son of Attra resident of village Litter? OPP.
2. Whether the plaintiff is the sole heir of Dalip Singh deceased as has been alleged in the plaint? OPP.
3. Whether the plaintiff is owner in possession of the suit property? OPP.
4. Whether Marra had executed mortgage deed in respect of the suit property on 3.4.1934 registered on 4.4.1934 in favour of Thakar Singh? OPD.
5. If issue No.4 is proved whether the suit land has been got redeemed by Dalip Singh predecessor of the plaintiff on 14.7.52 on payment of Rs.140/-? OPP.
6. If issue No.5 is not proved whether the defendants have become the owners of the suit property by efflux of time? OPD.
7. Whether the suit is not maintainable? OPD.
 - 7A. Whether all the mortgagors including the mortgage dated 4.4.34 have been redeemed through receipt dated 14.7.1952? OPP.
8. Relief.

6. The parties were afforded adequate opportunities to lead evidence in support their respective claims.

7. After hearing learned counsel for the parties, the trial Court

of Sub Judge IInd Class, Dasuya decided issue No.1 holding that Mara at the time of execution of the mortgage deed dated 3.4.1934 had delivered the possession in favour of Thakar Singh son of Tabba. This possession continued to be reflected in the revenue record till year 1977-78 when name of the mortgagees was deleted from the column of cultivation and name of the plaintiff was incorporated in the said column. The trial Court had concluded that under the circumstances, it cannot be said that Dalip Singh was previously in possession of the suit property. Coming to issue No.2, the verdict was given that the plaintiff being adopted son of Dalip Singh had inherited his properties after death of Dalip Singh. Issue No.4 was decided holding that Mara had executed the mortgage deed on 3.4.1934 in favour of Thakar Singh son of Tabba with respect to the suit property. Issues No.5 and 7A were decided holding that as the receipt Ex.PW2/A dated 14.7.1952 placed on record by the plaintiff regarding redemption of land is inadmissible for want of stamp and registration and similarly for the reason that it does not disclose the khasra number etc., therefore it cannot be said that the mortgage deed dated 4.4.1934 or any other mortgage has been got redeemed through such receipt. Issues No.3 and 6 were decided observing that possession of the plaintiff for the first time came in the revenue record during Sauni, 1977 as per the jamabandi for the year 1977-78 Ex.P3 and the order of mutation no.552 Ex.D1 regarding the redemption of the suit land was rejected by Assistant Collector IInd Grade on 2.7.1973, which shows that entry in the name of the plaintiff showing his possession is wrong and without any authority. The suit land was never redeemed at any time and defendants mortgagees

have never surrendered the possession of the suit land to the plaintiff. The trial Court had given verdict that the defendants have become owners of the suit land by way of efflux of time since they are in continuous possession of that suit land w.e.f. 3.4.1934. Issue No.7 was decided against the plaintiff in favour of the defendants holding that presently the plaintiff is neither the owner nor in possession of the suit land, therefore, he had got no locus standi to bring the suit and suit filed at his instance is not maintainable. In view of the issue-wise findings the trial Court had dismissed the suit of the plaintiff. This was so done vide judgment and decree dated 30.10.1986.

8. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Hoshiarpur, which was assigned to Additional District Judge, Hoshiarpur, who vide judgment and decree dated 15.3.1989 affirmed the judgment and decree passed by the trial Court and dismissed the appeal.

9. Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit filed by them be decreed.

10. I have heard learned counsel for the appellant besides going through the records and I find that there is no element of merit in this regular second appeal.

11. Here both the Courts on proper appraisal and appreciation of evidence and correct interpretation of law have found that plaintiff is not

in possession of the suit land, rather the possession of such land rests with the defendants in their capacity as mortgagees, therefore, the claim of the plaintiff was not found to have any merit and was rejected. Receipt placed on record by the plaintiff vide which the mortgage had been allegedly got redeemed was found to be inadmissible in evidence on account of non registration for the reason that since as per recital on payment of Rs.140/-, the possession is said to have been delivered by the mortgagees, therefore, it required compulsory registration. It being not so, it was inadmissible in evidence. Even the khasra number of the property allegedly redeemed vide that receipt was not found to be mentioned in recital of the receipt. Therefore, redemption of the mortgage was not proved on record. It was observed that the defendants had not surrendered possession of the suit land in favour of the plaintiff. Therefore, a suit for declaration simpliciter without seeking the possession by redemption of the mortgage was not maintainable and suit was rightly dismissed by the trial Court.

12. Similarly, learned Additional District Judge, Hoshiarpur found himself in agreement with the trial Court vide the judgment delivered by him.

13. Learned counsel for the appellant has placed reliance upon judgment *Singh Ram (D) through LRs Versus Sheo Ram and others, 2014(4)RCR(Civil) 179*, wherein it was observed that in case of usufructuary mortgage mere expiry of a period of 30 years from the date of creation of mortgage does not extinguish the right of the mortgagor under Section 62 of the Transfer of Property Act.

14. There cannot be any dispute with the proposition of law laid

down in this judgment. However, this judgment does not help the appellant in any manner for the reason that the plaintiff is not seeking recovery of possession of suit land by redemption of the mortgage deed. Rather he claimed himself to be in possession of the suit land stating that it has already been got redeemed on 14.7.1952 but his such claim has not found to be correct.

15. With the concurrent findings recorded by the Courts below with which I do not see any reason to disagree and with no substantial question of law arises, the present appeal is bound to be dismissed.

It is ordered accordingly.

Since the main regular second appeal stands dismissed, miscellaneous application(s), if any, pending in the appeal stand disposed of accordingly.

11.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No