

IOIN-RSA-4314-1999 in/and
RSA-4314-1999(O&M)

-1-

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

IOIN-RSA-4314-1999 in/and
RSA-4314-1999(O&M)
Date of decision:-27.1.2023

Pallo etc.

...Appellants

Versus

Baldev Singh etc.

...Respondents

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

Present: Mr.Atul Lakhanpal, Sr.Advocate with
Mr.Arvindpal Singh, Advocate
for the appellants.

Mr.Surinder Dhull, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Baldev Singh, Jagrup Singh and Bhajan Singh sons of Gajan Singh son of Kishna son of Nihala, residents of village Fatehpuri, Tehsil Tohana, District Hisar had brought a suit against Harpal Singh (since deceased) represented through his LRs and 10 others, seeking a declaration that plaintiffs had become owners in possession of the agricultural land measuring 36 kanals situated within the revenue estate of village Fatehpuri, Tehsil Tohana,

District Hisar on the basis of Civil Court decree Ex.P1 dated 19.8.1972.

2. As per the case of the plaintiffs Raja Ram and Akhey Ram sons of Nathu along with one Tulsi Ram son of Udia were owners in possession of the suit land; they had mortgaged the said land for a sum of Rs.300/- with possession in favour of Kisna, predecessor in interest of the plaintiffs; Kisna had died and his estate devolved upon Gajan predecessor in interest of the plaintiffs; the mortgagors of the suit land had failed to get the suit land redeemed within stipulated period, therefore, Gajan had filed a Civil Suit No.137 of 1971 titled Gajan Versus Jiwni etc. in the Court at Hisar, which was decreed in his favour, therefore Gajan became owner in possession of the suit land; even otherwise the plaintiffs have become owners in possession of the suit land by way of adverse possession; Sh.Raje Ram has died, his share in the suit land was inherited by defendant No.2; similarly Akhey Ram has died and his share has devolved upon defendant No.3; Tulsi Ram has died, his share has been inherited by Kishna, Niku sons of Nihale, Akhey Ram son of Nathu, Jiwni, Raje Ram, Harnama and Shama sons of Dharma; Kishna has expired; defendants No.2 and 3 had suffered a decree in respect of their share in the suit land in favour of defendant No.1, which according to the plaintiffs has been so done wrongly and illegally and such decree passed in Civil Suit No.79 dated 20.1.1989 passed by Sub-Judge, Tohana was challenged by the plaintiffs contending that since father of the plaintiffs had become owner in possession of the suit land on the basis of decree Ex.P1, as such defendants No.2 and 3 had no right, title or interest in the suit land.

3. Notice of the suit was given to the defendants. Defendants No.1 to 3 and 5 to 8 had put in appearance. They had filed a joint written statement contesting the suit, *inter alia* raising various legal objections, on merits contending that Raje Ram and Akhey Ram sons of Nathu Ram, Shama son of Dharma, Gajan son of Kisna and Niku son of Nihala were owners in possession of ½ share of the suit land, whereas Tulsi Ram son of Udia was owner in possession of ½ share; the defendants feigned ignorance with regard to mortgage of the land contending that even otherwise the said land was got redeemed after payment of Rs.300 to the mortgagees in the year 1958 and the plaintiffs are not co-sharers in the suit land and decree Ex.P1 is wrong and illegal. According to the answering defendants since defendants No.2 and 3 were owners in the suit land, they were competent to transfer the land in dispute in favour of the defendant No.1. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

4. The plaintiffs had filed replication 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 plaintiffs have become owners in possession of the suit land by way of a decree dated 19.8.1972 and defendants have got no concern with the suit land? OPP.
2. If so whether decree No.79 dt.20.1.89 passed in favour of defendant No.1 is null and void? OPP.

3. If so whether mutation No.1584 dt. 6.2.89 passed on the basis of impugned decree dt. 20.1.89 is also illegal, null and void and not binding on the rights of the plaintiffs? OPP.
4. If so whether the plaintiffs are entitled to the injunction prayed for? OPP.
5. Whether the present suit being false, frivolous and vexatious, is liable to be dismissed for special cost to the tune of Rs.5,000/- OPD.
6. Whether the plaintiffs have no locus standi and cause of action to file this suit? OPD.
7. Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct? OPD.
8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
9. Whether the suit is properly valued for the purpose of Court fees and jurisdiction? OPD.
10. Whether the suit is not maintainable in the present form? OPD.
11. Whether the plaintiffs have not disclosed full particulars of fraud and mis-representatives etc., if so its effect? OPD.
12. Whether the suit is time barred? OPD.
13. Whether the suit for declaration is not maintainable and suit for possession is maintainable in view of possession alleged by defendants? OPD.
14. Relief.

6. Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1 and he has further examined PW2 Joginder Singh.

On the other hand, the defendants had examined DW1 Bhagat Singh, DW2 Nek Singh and DW3 Jiwni.

7. After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 4 in favour of defendants and against the plaintiffs, issues No.5 to 13 were decided in favour of the plaintiffs and against the defendants. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 22.3.1995

8. The plaintiffs were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Hisar, which was assigned to Additional District Judge, Hisar, who vide judgment and decree dated 31.5.1999 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs declaring the plaintiffs to be owners in possession of the suit land restraining the defendants from interfering in possession of the plaintiffs over such land.

9. Now it was turn of the defendants to feel dissatisfied and they had filed the present regular second appeal before this Court, notice of which was issued to the respondents/plaintiffs and respondents No.1 and 2 have put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record and I find that the appeal has got merit.

11. The Apex Court in a judgment **Ram Rattan (Dead) by LRs**

Versus Devi Ram & Others, Civil Appeal No.1541 of 2011 has approved the law laid down by Full Bench of this Court in case titled **Ram Kishan & Ors. Versus Sheo Ram & Ors.** holding that there is no limitation period in case of usufructuary mortgage applying the principle that once a mortgage is always a mortgage and this judgment had been upheld by the Apex Court in case titled **Singh Ram (D) through LRs Versus Sheo Ram & Ors., (2014) 9 SCC 185.** A close perusal of judgment **Ram Kishan & Others Versus Sheo Ram & Others** (supra) goes to show that Full Bench of this Court had observed therein that in case of usufructuary mortgage of land, no period of redemption is fixed and when land is not redeemed for 60 years, the mortgagees do not become owners by prescription. The mortgagor has a right to seek redemption at any time on payment of mortgage debt and further period of 30 years limitation for redemption under Limitation Act was not applicable. It was clarified that time of 30 years given in Limitation Act to seek redemption will not begin to run from the date of mortgage itself but will arise when mortgagor pays for tenders to mortgagee or deposits in Court the mortgage money.

12. Even otherwise, the judgment and decree passed by the trial Court is on much better footing. The evidence adduced by the parties has been very minutely examined in a analytical manner in light of the facts and circumstances of the case. The trial Court considering the decree obtained by predecessor-in-interest of the plaintiffs against predecessor-in-interest of the defendant Ex.P1 on the basis of which the plaintiffs are claiming themselves to be the owners, has observed that as submitted by learned counsel for the defendants that in para No.8 of the plaint, it has

specifically been pleaded by the plaintiffs that Tulsi Ram mortgagor has died that that his share in the suit property was inherited by Kisna and Niku sons of Nihala, Akhey Ram son of Sehsi, Jiwni, Raje Ram and Harnama and Shama sons of Dharma. However, in judgment Ex.P5, it is mentioned that Tulsi son of Udia had died in the year 1937 without leaving any heir and his share in the suit land was mutated in the name of Jiwni daughter of Raje Ram and Akhey Ram, therefore that document falsifies the case of the plaintiffs and as per own case of the plaintiffs share of Tulsi Ram was inherited by the abovesaid persons and further decree Ex.P1 shows that Gajan Singh had filed suit No.137 of 1972 against Jiwni and Sehnsi defendants No.2 and 3 and other co-sharers in the suit land i.e. heirs of Tulsi were not impleaded, therefore the decree Ex.P1 is not binding upon heirs of Tulsi and further the revenue documents available on record show that Jiwni, Sehnsi, Shama and Gajan were recorded as mortgagors/owners of the suit property; Jiwni and Sehnsi having one share, Shama two shares and Gajan has got one share, in that way, Gajan father of the plaintiffs are also mortgagor and mortgagee in respect of the suit land, therefore decree Ex.P1 was not binding on Shama etc.; since the heirs of Tulsi were not parties in the suit, his heirs are not bound by the decree in question; though defendants NO.2 and 3, who had not challenged the decree are bound by the same observing that a co-sharer has got interest in whole joint property and the suit property is still joint. The plea taken by the plaintiffs that they have become owners in possession of the suit land by adverse possession was not tenable. In view of the discussion, the trial Court concluded that since

defendants No.2 and 3 had got share in the suit land, therefore, they were competent to transfer their shares in favour of defendant No.1, as such suit had been rightly dismissed by the trial Court.

13. The First Appellate Court of Additional District Judge, Hisar by total misappraisal of evidence and wrong interpretation of law had upset the judgment passed by the trial Court. That judgment and decree passed by the First Appellate Court cannot stand judicial scrutiny and are liable to be set aside. That wrong is being undone by acceptance of the present appeal.

14. Resultantly the judgment and decree passed by Additional District Judge, Hisar are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiffs are restored.

The appeal stands allowed accordingly with costs.

Since the main appeal stands allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

27.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No