

231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19064-2018

Decided on 18.10.2023

Surinder Kaur and others

... Petitioners

Versus

Sub Divisional Magistrate-cum-Collector, Kharar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rahul Bhargava, Advocate, for the petitioners.

Mr. Arun Willian, Assistant Advocate General, Punjab.

Mr. Parvinder Singh, Advocate, for respondents No.3 and 4.

RAJESH BHARDWAJ, J.

Petitioners have approached this Court praying for quashing of impugned order dated 30.05.2016 (Annexure P-6) passed by respondent No.1 vide which the redemption application filed by respondents No.3 and 4 was allowed, which is against the provisions of law, illegal and arbitrary.

It has been submitted by learned counsel for the petitioners that Harinder Singh @ Harinder Pal Singh was original owner of property i.e. Khewat No.333, Khatouni No.298/356, Khasra No.35//27 (0-13). He has submitted that Harinder Singh died on 18.08.2007. It is submitted that Harinder Singh who was the original owner of the suit land mortgaged the land with Niranjana Singh son of Cheta Singh vide mortgage deed dated 15.01.1972 and possession was also delivered. He further submits that Harinder Singh sold 8/13 share to one Mohinder Kaur without possession on 26.11.1976 for a sum of Rs.2,500/- and also sold 2/13 share to Kamaljit Kaur wife of Ram Singh on 17.07.1979 without possession and received Rs.200/- out of Rs.1,500/- and

Rs.1,300/- were kept by Kamaljit Kaur to pay the same to Niranjn Singh mortgagee to get the land redeemed. He has submitted that thereafter, Mohinder Kaur sold her share without possession to Kamaljit Kaur and thus Kamaljit Kaur became, become owner without possession of 10/13 share. Thereafter, on 18.03.1985, Harinder Singh got the entire land redeemed by paying the mortgage money to Niranjn Singh and hence, he came to be in possession of 10/13 share as mortgagee and 3/13 share as an owner. He has submitted that Kamaljit Kaur died on 02.11.2002 and she executed a Will in favour of Harjit Pal Singh-respondent No.2 and mutation was entered on 03.02.2005. He has submitted that Harinder Pal Singh during his life time filed a suit No.120 dated 08.04.1997 for declaration and injunction against Kamaljit Kaur and respondent No.2 but the said suit was dismissed by the trial Court on 19.03.2007. He has submitted that respondent No.2, who was the GPA of Kamaljit Kaur contested the suit. He has submitted that Harinder Pal Singh filed an appeal before the learned District Judge, Rupnagar against judgment/decreed dated 19.03.2007 passed by Civil Judge (Jr. Divn.) Kharar and the said appeal was allowed by learned Additional District Judge on 08.10.2008 in favour of Harinder Singh i.e. predecessor of the petitioners, wherein it was held that the appellant had proved beyond reasonable doubt that he was in possession of the suit property. He has submitted that respondent No.2 disputed the status of Harinder Pal Singh in the suit property and respondent No.2 i.e. Harjit Pal Singh was restrained from interfering in the peaceful possession of Harjinder Pal Singh over the suit property illegally and forcibly. It is submitted that respondent No.2 filed an application for redemption against the petitioners before the Civil Court. It is further submitted that the application filed for redemption was not maintainable and hence, the

same was dismissed on 05.07.2014. Learned counsel further submits that after sanctioning the mutation in favour of respondent No.2 on the basis of Will executed by Kamaljit Kaur, respondent No.2 further sold this land to respondents No.3 and 4 vide registered sale deed dated 16.01.2015 and mutation No.35865 was also sanctioned on the basis of the alleged sale deed. He submits that after execution of the sale deed, respondents No.3 and 4 filed redemption application before respondent No.1 on 13.05.2015 against Harinder Singh @ Harinder Pal Singh, i.e. the husband of petitioner No.1 and father of petitioners No.2 and 3. It is submitted that redemption application filed was allowed by the SDM-cum-Collector, Kharar vide order dated 30.05.2016. It is submitted that pursuant to this *ex parte* order, warrants of possession dated 12.04.2017 were issued. Learned counsel for the petitioners has vehemently submitted that as is evident from the facts and circumstances of the case, the petitioners before this Court are the legal heirs of Harinder Singh @ Harinder Pal Singh, who was the original owner of the suit land. It is submitted that application under Section 83 of the Transfer of Property Act was filed by Harjit Pal Singh against the petitioners (mortgagee) to receive the mortgage money of Rs.1,300/- and to redeem the mortgaged property i.e. 10/13 share of the land including construction thereon comprised in Khasra No.35//27 (0-13). It is submitted that thereafter, an application was filed for dismissing the application of the applicants under Section 83 of the Transfer of Property Act and after hearing both the sides, the application filed by the petitioners (mortgagee) was allowed by the Civil Judge and thus, dismissed the application for redemption of the mortgaged property filed by the mortgagors, being not maintainable and it was directed that appropriate remedy of filing suit should be availed for redemption of the property vide order dated 05.07.2014. He submits that it is

apparent that the order dated 05.07.2014 was passed on the application filed under Section 83 of the Transfer of Property Act filed by Harjit Pal Singh against the petitioners. He submits that after the dismissal of the application, the property in dispute as submitted earlier was sold to respondents No.3 and 4. He has submitted that respondents No.3 and 4 clandestinely filed an application for redemption of the land measuring 0 K 13 M against the predecessor-in-interest of the petitioners i.e. Harinder Singh @ Harinder Pal Singh, who already died on 29.08.2007. It is submitted that earlier order dated 05.07.2014 was passed on the application filed where the petitioners were party, however, in the subsequent application filed by respondents No.3 and 4, the petitioners were intentionally not impleaded as party but their predecessor-in-interest was impleaded as respondent and thus, the impugned order dated 30.05.2016 was passed *ex parte* qua the petitioners. He has submitted that as the petitioners were not impleaded as party, the impugned order which is *ex parte*, being totally against the principle of *audi alteram partem*, deserves to be set aside.

Per contra, learned counsel for respondents No.3 and 4 has vehemently opposed the submissions made by learned counsel for the petitioner and has submitted that the petitioners have concealed the material facts. He has submitted that after passing of the impugned order, warrants of possession were also issued. He has further submitted that the petitioners also filed a petition for reviewing the impugned order. He has submitted that the petition filed by the petitioners is not maintainable in view of Section 12 of Redemption of Mortgages (Punjab) Act, 1913. He has submitted that as per Section 12 of the Redemption of Mortgages (Punjab) Act, 1913, if the petitioners are aggrieved by the same, they have alternative remedy, to which

they did not avail and hence, the present petition being not maintainable, deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioners before this Court are the legal heirs of Harinder Singh @ Harinder Pal Singh who died in the year 2007. Harinder Pal Singh became the mortgagee of the property in 1985 after redemption of the land from the original mortgagee Niranjana Singh. Harjit Pal filed an application under Section 83 of the Transfer of Property Act for redemption of the property against all the three petitioners. On filing of the application by the petitioners regarding maintainability, the main application under Section 83 of Transfer of the Property Act was dismissed by the Civil Judge (Jr. Divn.) vide order dated 05.07.2014. However, thereafter, respondents No.3 and 4 who purchased the property filed an application for redemption by impleading Harinder Singh @ Harinder Pal Singh, predecessor-in-interest of the petitioners, as respondent and thus, the petitioners were not impleaded as party. As Harinder Singh @ Harinder Pal Singh had already died in the year 2007, the same was decided *ex parte* and thus, the impugned order dated 30.05.2016 was passed. There is no gainsaying that the impugned order dated 30.05.2016 was passed by impleading the person who was no more, and thus, in the considered opinion of this Court the impugned order dated 30.05.2016 (Annexure P-6) is totally unsustainable in the eyes of law and the same is set aside. The parties are relegated to file the petition afresh before the Court of competent jurisdiction by impleading the petitioners as necessary party. The concerned Court would decide the same after hearing both the sides expeditiously in accordance with law.

The petition is allowed in above mentioned terms.

(RAJESH BHARDWAJ)
JUDGE

18.10.2023
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No