

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.113

Case No. : RSA No.1105 of 2021

Date of Decision : March 15, 2024

Mahavir Appellant
vs.
Umapati and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Adarsh Jain, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. Challenge in the present appeal is to the order dated 28.02.2020, passed by learned Additional District Judge, Palwal (for brevity – the Lower Appellate Court), thereby upholding the judgment and decree dated 30.05.2016, passed by learned Civil Judge (Junior Division), Hodal (for brevity – the Trial Court), whereby suit filed by the plaintiff/appellant (hereinafter referred to as – the plaintiff) against the defendants/respondents (hereinafter referred to as – the defendants) has been dismissed.

2. The brief facts of the case, as culled out from the paper book, are that the plaintiff filed suit for declaration and permanent injunction claiming his ownership and possession over 13 kanals of agricultural land in Village Khambi, Tehsil Hodal, District Palwal (hereinafter referred to as – the suit land), wherein it was pleaded that predecessor of plaintiff and defendants no.2 to 6 had mortgaged the suit land with defendant no.1, who further

Defendant no.1 could not get the suit land redeemed within period of limitation, as a result of which, his right of redemption got extinguished. Plaintiff requested the defendants for getting the records corrected in his name but defendants threatened to take possession forcibly. So, plaintiff filed the present suit seeking declaration of ownership and injunction against defendants from dispossessing him from the suit land and creating third party interest in the suit land.

3. On notice, defendant no.1 failed to appear and hence, was proceeded against ex-parte. Defendant no.2 and defendants no.3 to 6 contested the suit by filing separate written statements, submitting therein that the plaintiff and defendant no.2 were having equal rights in the suit land and plaintiff wanted to grab the share of defendant no.2. Another suit for redemption of the suit land was decreed. Preliminary objections of maintainability, locus standi, cause of action and concealment of material facts by the plaintiff etc. were also taken.

4. After framing the issues, both the parties led their respective evidence. Since the plaintiff failed to prove his case, suit of the plaintiff was dismissed by the learned Trial Court.

5. Aggrieved against the aforesaid judgment and decree, plaintiff preferred appeal before the learned Lower Appellate Court, wherein the Court specifically held that it has come in evidence of the defendants that defendant no.1 was mortgagee in possession of the suit land. He, along with his brother, filed suit for redemption, which was decreed on 19.10.2013.

Defendant no.2 also stepped into witness box as DW-2 and stated he, along with plaintiff, is owner in possession of the suit land being mortgaged with

possession on 04.06.1964 vide mutation no.3278. So, the learned Lower Appellate Court came to the conclusion that the plaintiff has concealed material facts regarding share of his brother (defendant no.2) and factum of filing suit for redemption, decreed on 19.10.2013. So, the plea of plaintiff, that he is owner in possession of the suit land being mortgagee because defendants no.1 and 3 to 6 failed to get the same redeemed within a period of 30 years, stood untenable. The learned Lower Appellate Court based these observations on judgment of Hon'ble Supreme Court in case of **Singh Ram (D) through LRs vs. Sheo Ram and others** reported as **2014(4) R.C.R.(Civil) 179**.

6. In the circumstances described above, learned Lower Appellate Court has held that there is nothing to differ with the findings of the learned Trial Court. So, affirming the findings of learned Trial Court, appeal of the plaintiff was dismissed by learned Lower Appellate Court vide judgment and decree dated 28.02.2020.

7. Learned counsel for the appellant has contended that both the Courts below have acted manifestly and ignored the evidence available on record. The findings recorded by both the Courts are result of misappreciation and misreading of evidence and therefore, the judgments and decrees passed by both the Courts below are liable to be set aside. It has been contended that a bare perusal of the record would show that both the Courts below have dismissed the suit on the ground that defendants no.3 to 6 had filed a suit for redemption and the same was decreed on 19.10.2013 and this fact was not revealed by the plaintiff whereas it is a matter of fact that the plaintiff had already instituted the present suit on 01.09.2012. It has

further been contended that the suit property had been mortgaged more than 50 years ago as the mortgage was created in the year 1964. The revenue record produced by the plaintiff has not been considered. Rather, his suit was erroneously dismissed observing that claim made by the plaintiff was similar to that of defendant no.2. Since declaration was claimed that defendants have no right to redeem the land and no declaration was claimed in favour of defendant no.2, it is presumed that plaintiff has not come to the Court with clean hands. It was not taken into consideration by the Courts below that anyone of several mortgagees can individually file a suit for foreclosure or declaration and he does not have to implead other mortgagees either as plaintiff or defendants.

8. I have heard learned counsel for the appellant and perused the case file.

9. A bare perusal of the record would show that the plaintiff claims declaration for ownership as mortgagee from 1964 as the property has not been redeemed by defendants no.1 and 3 to 6 and they have lost the right of redemption after the period of limitation of 30 years. On the other hand, plaintiff himself averred in the petition that defendant no.1 has mortgaged the suit land with possession, which means that the suit land was mortgaged in the form of usufructuary mortgage. Hon'ble Apex Court, in the case of **Singh Ram (D) through LRs (supra)**, has held that in the case of usufructuary mortgage, mere expiry of period of 30 years from the date of creation of such mortgage, does not extinguish the right of redemption under Section 62 of the Transfer of Property Act.

10. In view of the foregoing discussion, this Court is of the view that

mere efflux of time i.e. period of more than 50 years would not be taken as a base to declare the plaintiff as owner of the suit property. Rather, mortgagor(s) shall have the right of redemption of the suit land, subject to payment of mortgage money to the plaintiff.

11. Nothing has been shown that the findings recorded by both the courts below suffer from any infirmity or are contrary to the record. No question of law, much less any substantial question of law, arises in the present appeal, which is accordingly dismissed in limine.

12. Pending applications, if any, shall stand disposed of along with this judgment.

March 15, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.