

RSA-726-1993

2024 PHHC 075082

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-726-1993

Reserved on 1.5.2024

Date of Decision : May 27, 2024

Pat Ram (deceased) through his LRs

.....Appellants

VERSUS

Partap Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. M.S.Rana, Advocate for
Mr. Ashish Kapoor, Advocate
for the appellants.

Mr. Ravi Verma, Advocate
for the respondents.

KULDEEP TIWARI, J.

1. This is decree of reversal and the instant regular second appeal has been filed by the plaintiffs. Both the parties hereinafter referred to with their respective status before the learned lower Court concerned for the sake of convenience.

2. The brief facts of the case are that the plaintiffs, filed a suit seeking decree for declaration to the effect that they have become owners of the half share, in the land measuring 165 kanals 4 marlas comprised in khewat No.126, khatoni No.31, situated within the revenue estate of village Dalwanwas. It was pleaded that the plaintiffs have become owners of half share of the suit land, as mentioned in the plaint and half share of the property in dispute, was mortgaged with possession by the

ancestors of the defendants about 100 years ago with the ancestors of the plaintiffs for Rs.10/- and the suit land has not been redeemed within the stipulated period, therefore, the plaintiffs have become owners by way of prescription.

3. The defendants contested the suit by filing the written statement and took a defence that they are owners in possession of the suit land and the ancestors of the defendants did not mortgage the suit land with the plaintiffs or their ancestors. In alternate, it was pleaded that if the land was mortgaged, the same had been redeemed. It was further pleaded that some part of the land have been acquired by the State of Haryana, so they are entitled to receive the compensation for the said acquired land from the State Government. Apart from other legal issues raised by the defendants i.e. maintainability of the suit itself and the *locus standi* of the plaintiffs was also challenged.

4. Upon replication filed by the plaintiffs, the learned lower Court concerned framed the following issues:-

- (i) Whether the plaintiffs have become owners of the said land exclusively on account of foreclosure of redemption as alleged ? OPP.
- (ii) Whether the plaintiff had been acknowledging the mortgage in question from time to time as alleged? If so to what effect? OPD.
- (iii) Whether the plaintiffs have no *locus standi* to file the present suit? OPD
- (iv) Whether the suit is maintainable? OPD
- (v) Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD

- (vi) Whether the suit is barred by limitation ? OPD
- (vii) Whether the defendants are entitled to special compensatory costs? OPD.
- (viii) Relief.”

5. The learned lower Court concerned decreed the suit in *toto* and held that the plaintiffs are in possession as mortgagee on the half share since the times of their fore-fathers i.e. more than 30 years and, therefore, the redemption after 30 years is barred by the provision of the Limitation Act and concluded that the plaintiffs have become owners of the suit land exclusively on account of the foreclosure of the redemption and against the defendants.

6. Having aggrieved with the judgment and decree passed by the learned lower Court concerned, the defendants filed an appeal and the learned Appellate Court reversed the findings of the learned lower Court and held that the plaintiffs have not been able to prove their case beyond doubt, that when and on which land, the mortgage took place. It was also held that the suit land was ever mortgaged with the ancestors or the plaintiffs, therefore, there is no question to hold that the plaintiffs have become the owners of the suit land on account of foreclosure of redemption, as alleged and decided issues No.1 and 2 in favour of the defendants and accordingly reversed the findings of the learned lower Court on the said issues.

7. Having aggrieved with the judgment of reversal, the instant regular second appeal has been preferred by the plaintiffs.

8. It is not in dispute that in the plaint, the plaintiffs have

categorically claimed that the suit land was mortgaged with possession and usage rights of property was given to the plaintiffs, therefore, as per the pleadings of the plaintiffs, the instant mortgage falls within the definition of *usufructuary mortgage*.

9. The sole issue which arises now for consideration before this Court is whether, the usufructuary mortgagee is not entitled to file a suit for declaration, that he had become the owner only on expiry of 30 years from the date of mortgage.

10. This issue is no more *res-integra* as this issue has already been answered by the Hon'ble Supreme Court in **Singh Ram (D) Thr. L.Rs. Vs. Sheo Ram & Ors., Civil Appeal No.5198 of 2008**, wherein, the following issues were considered by the Hon'ble Supreme Court, whether, there is any time limit for usufructuary mortgagee to seek redemption and the question was answered as under:-

“14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.

15. 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.”

11. Since it is a case of usufructuary mortgagee, therefore, the mortgagee is not entitled to file a suit for declaration, to seek declaration that he has become owner merely on the expiry of 30 years.
12. In view of the settled proposition of law, the suit preferred by the plaintiffs is held to be not maintainable.
13. Therefore, the instant regular second appeal is, therefore, devoid of any merit and is **dismissed** accordingly.

	(KULDEEP TIWARI)
	JUDGE
May 27, 2024	
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Whether speaking/reasoned.	: Yes/No
Whether Reportable.	: Yes/No