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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1469-1989(O&M)
Date of decision : 08.08.2024

Chattar @ Chitru (now deceased) through his legal representatives
... Appellant

Versus

Raghu and others
... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sunil Panwar, Advocate
for the appellant.

Mr.Mani Ram Verma, Advocate
for the respondents.

VIKAS BAHL, J.(ORAL)

1. Defendant no.1 (presently through his LR's) is in appeal against the judgment and decree dated 21.04.1989 passed by the Ist Appellate Court vide which the appeal filed by the predecessor in interest of respondents no.1 to 3 (plaintiff) along with proforma defendants no.2 to 5, 8 to 10 and 23 to 25 has been allowed and the suit filed by the predecessor in interest of respondents no.1 to 3 (hereinafter referred to as the plaintiff) has been decreed. The present appeal has been filed under Section 41 of the Punjab Courts Act, 1918.
2. Brief facts of the case are that one Nanga son of Sheo Nath had mortgaged with possession the land measuring 5 bighas 14 biswas to deceased Ram Singh son of Moji for consideration of Rs.535/- on

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30.05.1933 and a registered mortgage deed was executed vide mutation no.295 dated 11.01.1934 and the same was sanctioned and reflected in the revenue record. The original mortgagee Ram Singh had died and the plaintiff (predecessor in interest of respondents no.1 to 3) as well as the proforma defendants no.2 to 31 were, as per the case of the plaintiff, legal representatives of Ram Singh. It is further the case of the plaintiff that even mortgagor Nanga Singh had died and present appellant (hereinafter referred to as defendant no.1) had inherited the estate of Nanga and that after consolidation had taken place, the new killa numbers were allotted in lieu of old numbers and the suit land measuring 32 kanals 0 marla in the revenue estate of village Ranila, Tehsil Charkhi Dadri, was allotted in lieu of the above said land measuring 5 bighas 14 biswas. It was further the case of the plaintiff that he was cultivating the land and after expiry of the period of limitation for redemption of the mortgage i.e., after 30.05.1970, defendant no.1 had lost his right to seek redemption and the plaintiff along with proforma defendants had become the owners of the land in question.

3. A written statement was filed on behalf of defendant no.1 (present appellant) in which a plea was taken that the land had been redeemed by defendant no.1 in the year 1960 and since then he was the owner in possession of the suit land. A written statement was also filed by defendants no.2 to 31 in support of the case of the plaintiff. The trial Court vide order dated 08.02.1985 had framed the following issues:-

“1. Whether the plaintiff is legal heir of Ram Singh deceased?OPP

2. If issue no.1 is proved, then whether the plaintiff is

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owner in possession of the suit land due to expiry of period of redemption?OPP

3. If issue no.1 is not proved, then whether the plaintiff has acquired the right of ownership by way of adverse possession?OPP

4. Whether the suit is not maintainable in the present form?OPD

5. Whether the suit has been properly valued for the purpose of court fee and jurisdiction?OPD

6. Whether the plaintiff has no locus standi to file the present suit?OPD

7. Relief.”

4. The learned trial Court had decided issues no.1 and 5 in favour of the plaintiff and decided issues no.2, 3, 4 and 6 against the plaintiff and in favour of defendant no.1 and accordingly, dismissed the suit of the plaintiff. Plaintiff along with proforma defendants had filed an appeal before the Ist Appellate Court and the Ist Appellate Court allowed the said appeal and decreed the suit of the plaintiff. While decreeing the suit of the plaintiff and allowing the appeal, it was observed that no redemption of the mortgage had taken place and that the money had not been returned by defendant no.1 to the plaintiff and that the period of limitation for seeking redemption of the land in dispute had expired and thus, the plaintiff and the proforma defendants had become owners in possession of the land in dispute. It is the said judgment of the Ist Appellate Court, which has been challenged by defendant no.1.

5. It would be relevant to note that a Coordinate Bench of this Court vide order dated 19.04.1991, on the request of learned counsel for the

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appellant had struck off the names of the respondents no.14 to 32 (who were proforma respondents) from the array of respondents.

6. Learned counsel for the appellant while challenging the judgment of the Ist Appellate Court has relied upon the law laid down by the Hon'ble Supreme Court in the case of ***Singh Ram (D) through L.Rs vs. Sheo Ram and others*** reported as ***(2014)9 SCC 185***, in which it has been held by the Hon'ble Supreme Court that in the case of usufructuary mortgage, the limitation to seek redemption by the mortgagor would start only in case the mortgage money had been paid to the mortgagee. It is submitted that even if the Court comes to the conclusion that the mortgage money has not been paid to the mortgagee, then also in view of the law laid down in the above said judgment, which has been delivered subsequent to the passing of the impugned judgment of the Ist Appellate court, the suit of the plaintiff is required to be dismissed.

7. Learned counsel appearing for the respondents has submitted that in the present case, the most relevant document is the mortgage deed Ex.P4, the original of which is in Urdu. It is submitted that a closer perusal of the said mortgage deed would show that there is a specified time limit mentioned in the same to seek redemption and thus, the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant would not further the case of the appellant. In support of his arguments, learned counsel for the respondent has relied upon the judgments of the Coordinate Bench of this Court in the case of ***Manjit Kaur and others vs. Kaushalya Devi and others, RSA-903-2011 decided on 23.02.2011*** and in



the case of *Mahender and others vs. Ram Niwas and others*, RSA-5070-2016 decided on 16.08.2022. It is further submitted that in case the said mortgage deed along with other documents and evidence is taken into consideration, then also in the light of the above said judgments, the suit of the plaintiff would be liable to be decreed.

8. Learned counsel appearing for the appellant in rebuttal has submitted that the learned counsel for the respondent is misreading the mortgage deed Ex.P4 and a careful reading of the said mortgage deed Ex.P4 would further the case of the appellant and would show that there is no time limit specified in the same and thus, the judgments cited by the learned counsel for the respondent would not be applicable. It is submitted that the Ist Appellate Court had not considered the said mortgage deed Ex.P4 muchless the terms of the said document, nor had considered the evidence of the parties in the right context as at the relevant time, the judgments which have been referred to on behalf of the appellant as well as the respondents, which have been noticed hereinabove, had not been delivered. It is submitted that the law with respect to usufructuary mortgage which was prevalent at the time of passing of the impugned judgment has subsequently undergone substantial change on account of an authoritative pronouncement of the Hon'ble Supreme Court in the case of *Singh Ram (d) through L.Rs (supra)*. It is submitted that at any rate, the judgment of the Ist Appellate Court deserves to be set aside and the appeal deserves to be reheard in view of the above said facts and circumstances. It is submitted that the Ist Appellate Court has not even considered the said argument and thus on the

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said point also, the judgment of the Ist Appellate Court deserves to be set aside.

9. This Court has heard the learned counsel for the parties and has perused the paper book.

10. A perusal of the judgment of the Ist Appellate Court would show that apparently the document Ex.P4 which is the mortgage deed dated 30.05.1933 has not even been referred to, much less interpreted by the Ist Appellate Court. It seems that no argument was raised with respect to the said document by either of the two parties. Even the other documents and the evidence had not been considered in the right perspective. It would be relevant to note that after the passing of the impugned judgment of the Ist Appellate Court, much water has flown down the bridge, on the law governing “usufructuary mortgage”. In view of the same, it has become incumbent to arrive at a finding of fact with respect to the interpretation of the mortgage deed Ex.P4 by taking into consideration the terms and conditions of the said mortgage deed along with the evidence on record. The same has not been done by the Ist Appellate Court. The Ist Appellate Court has simply decided the case on the premise that the mortgage money has not been returned by defendant no.1 to the plaintiff and that the limitation for redemption had elapsed and has thus, decreed the suit of the plaintiff. Due interpretation of the mortgage deed Ex.P4 after considering its terms and conditions and also the other evidence on record, has not been done, which has rendered the judgment of the Ist Appellate Court contrary to law, as the said aspect was necessary before finally adjudicating the



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matter.

11. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of **Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters** reported as **(2016) 6 Supreme Court Cases 157**, it was observed that Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law. In the present case, as has been observed hereinabove, the judgment of the Ist Appellate Court is contrary to law.

12. Keeping in view the above said peculiar facts and circumstances of the present case, the present appeal is partly allowed and the judgment of the Ist Appellate Court dated 21.04.1989 is set aside and the case is remanded back to the Ist Appellate Court to take into consideration the document Ex.P4 dated 30.05.1933, the other evidence on record, as also the latest law on the point and accordingly re-adjudicate the matter, in accordance with law.



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13. It is brought to the notice of this Court that learned counsel for the appellant is in touch with his clients whereas learned counsel for the respondent is not in touch with his clients. Accordingly, the appellant is directed to move an appropriate application before the concerned District Judge within a period of one month from the date of receipt of the certified copy of the present order. On the appellant doing so, the concerned District Judge would either adjudicate the case himself or assign it to any other appropriate Court and thereafter the concerned Court would issue notice to the non-appearing parties and after due service, would thereafter decide the case, in accordance with law, as expeditiously as possible.

14. It is made clear that this Court has not given any opinion on the merits of the case and the Ist Appellate court would decide the case independently, after taking into consideration the arguments raised from both the sides, in accordance with law.

(VIKAS BAHL)
JUDGE

August 08, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No