

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-2219-1994
Date of decision: 02.05.2024

STATE OF HARYANA

..Appellant

Versus

DEVAK RAM (DECEASED) THROUGH LRS AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

Mr. Yashwinder Singh, Advocate
for Mr. Brijender Kaushik, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. The State of Haryana (defendant) assails the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Birbal was the owner of the property. He mortgaged with possession the land in dispute in favour of plaintiff on 11.07.1962. There was stipulation in the mortgage deed that redemption of the mortgage shall be sought by Sh. Birbal within a period of six months failing which, the mortgage deed shall be deemed to have been sale deed. It was also provided that if for any reason, the mortgagee does not become owner, then the redemption of mortgage shall only be after a period of 100 years. Sh. Birbal

died issueless, however, he never got the land redeemed. The plaintiffs also did not apply under the Bengal Regulation for declaring them owner.

4. The Assistant Collector, Ist Grade vide order dated 28.02.1985, ordered redemption of the suit land in favour of the State of Haryana, which was challenged by the plaintiffs (respondents) in a suit for declaration. The State of Haryana filed the written statement claiming that the plaintiff filed an appeal against the order dated 28.02.1985. The execution of the mortgage deed was admitted. The trial Court dismissed the suit on the ground that the order dated 28.02.1985 was passed on an application filed by the plaintiff.

5. Upon reappreciation of evidence, the First Appellate Court identified the following additional issue:-

“2-A Whether the terms and conditions as incorporated in the impugned mortgage deed does not amount to a clog on the equity of redemption? OPP”

6. A report was sought from the trial Court, which was submitted. Thereafter, the First Appellate Court proceeded to hear the appeal. The First Appellate Court has held that there was no estoppel against the plaintiffs as the stipulation in the admitted mortgage deed debars redemption for a period of 100 years. The First Appellate Court also recast issue No.1 in the following manner:-

“Whether the order of redemption dated 28.2.1985 passed by the Assistant Collector Ist Grade, Sonapat is illegal, void, contrary to the terms of the mortgage deed and not binding on the rights of the plaintiffs?”

7. Ultimately, the First Appellate Court accepted the appeal filed by the plaintiffs on the ground that the period of 100 years does not result in clog of equity of redemption.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.
9. The learned counsel representing the appellant submits that the plaintiffs themselves applied to the Assistant Collector. Hence, the First Appellate Court has erred in reversing the judgment of the trial Court.
10. This Court has considered the submissions of the learned counsel representing the parties.
11. The order passed by the Assistant Collector, Ist Grade, under the Punjab Redemption of Mortgage Act, 1913, can be challenged before the Civil Court. Moreover, once there was a specific stipulation in the mortgage deed debarring redemption for a period of 100 years particularly when the mortgager fails to get the land redeemed and there was stipulation that the failure to get the land redeemed within a period of six months would result in deemed sale, this Court does not find it appropriate to interfere with the findings of fact arrived at by the First Appellate Court particularly when now 62 years have elapsed out of a total period of 100 years.
12. With these observations, the appeal is dismissed.
13. All the pending miscellaneous applications, if any, are also disposed of.

May 02nd, 2024

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(ANIL KSHETARPAL)
JUDGE

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