

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

2024:PHHC:038249

RSA-550-1994 (O&M)
Date of decision: 18.03.2024

PARBHU RAM

..Appellant

Versus

SHAMO DEVI & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Jaswal, Advocate
for the appellant.

Mr. Bhavyadeep Walia, Advocate
for respondent No.1, 2 and 12 to 18.

ANIL KSHETARPAL, J(Oral)

1. This is plaintiff's regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing his suit for pre-emption by way of mortgage with respect to the land measuring 1 bigha 14 biswas out of 3 bigha land.

2. The learned counsel representing the parties are *ad idem* that the mortgage created on 13.08.1959 against payment of Rs.271.43/- was a usufructuary mortgage. It has also been brought to the notice of the Court that the suit filed by the plaintiff has been dismissed on the ground that the period for redemption has lapsed.

3. The learned counsel representing the appellant submits that in view of the judgment passed by the Larger Bench of the Supreme Court in **Singh Ram (deceased) through LRs Vs. Sheo Ram and others, AIR 2014 SC 344**, the period for redemption of mortgage will not begin to run from the date of mortgage and therefore, both the Courts have erred in dismissing the plaintiff's suit.

4. Per contra, the learned counsel representing the respondents submits that the appellant has died and no one has come forward to bring his legal representative on record. He submits that the appellant has not left behind any legal representative.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. As per Order XXII Rule 3(2) of the Code of Civil Procedure, 1908, as substituted by the States of Punjab, Haryana and Union Territory, Chandigarh, where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death, which shall have same effect as if it is pronounced before the death took place and the contract between the deceased and his pleader in that event shall continue to subsist. This amendment was incorporated, with effect from 21.02.1992.

7. Keeping in view the undisputed facts, the appeal deserves to be allowed.

8. The suit filed by the plaintiff shall stand decreed. He shall be entitled to redeem the mortgage within the time prescribed under the schedule attached to the Limitation Act, 1963.

9. All the pending miscellaneous applications, if any, are also disposed of.

March 18th, 2024

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(ANIL KSHETARPAL)
JUDGE

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