

2024:PHHC:097643



[207] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2980-2013 (O&M)
Date of Decision : 31.07.2024

Ronki @ Ronki Ram and others ...Appellants
versus
Puran Singh @ Mehru and othersRespondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Kanwaljit Singh, Senior Advocate with
Ms. Navyuggeet Brar, Advocate
for the appellants.

Mr. Rakesh Gupta, Advocate for respondent Nos.1 to 4.

Mr. Rahul Verma, Advocate for respondent Nos.5 to 7.

PANKAJ JAIN, J. (ORAL)

[1] Defendants are in the regular second appeal. For the convenience, the parties hereinafter are referred to by their original position as before the trial Court i.e. the appellants as defendants and the respondents as plaintiffs.

[2] Plaintiffs filed suit for possession by way of redemption, claiming that their predecessors had mortgaged the land with the predecessors of defendant Nos.1 to 4 at the time of *Bando Basat* in 1854 for an amount of Rs.20/-, Rs.19/- and Rs.21/-. It was a mortgage with possession.

[3] Both the Courts below held that the mortgage stands proved and decreed the suit, directing the mortgagor-plaintiffs to deposit mortgage money of Rs.60/-.



[4] Learned Senior counsel for the appellants is not in position to dispute that so far as the right of the plaintiffs to redeem the mortgage is concerned, the same stands settled in '**Singh Ram (deceased) through LRs. versus Sheo Ram and others**', 2014 (9) SCC 185.

[5] He, however, submits that in order to get the land redeemed, the plaintiffs ought to have filed petition under Section 4 of the Redemption of Mortgages (Punjab) Act, 1913.

[6] He further submits that at the time of mortgage, the land was described in the revenue record is *Banjar Kadim* and in order to make the same cultivable, the defendants have made improvements by investing money and they are entitled to recover the same from the plaintiffs.

[7] *Per contra*, counsel for respondent Nos.1 to 4 submits that there is no plea raised in the written statement by the appellants with respect to the improvements made and the consequential entitlement to recover the amount. He further submits that provisions of the Act of 1913 do not bar suit for redemption.

[8] I have heard counsel for the parties and with their assistance have carefully gone through records of the case.

[9] The Redemption of Mortgages (Punjab) Act, 1913 was enacted to provide a summary procedure for the redemption of certain class of mortgages of land in Punjab. The same was never enacted *in derogation* of the jurisdiction vested with Civil Courts but only in addition to the remedy



1913 makes it clear as under Section 12 any person aggrieved by an order made under Sections 6, 7, 8, 9, 10 or 11 of the Act is entitled to institute suit to establish his rights in respect of the mortgage. Section 12 reads as under:-

*“12. **Saving of suits to establish rights:-** Any party aggrieved by an order made under Sections 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage, but subject to the result of such suit, if any, the order shall be conclusive.*

***Setting aside ex parte order or orders of dismissal -** Notwithstanding anything in this section a mortgagee against whom an ex parte order under section 7 has been made or a petitioner, whose petition has been dismissed in default under section 6 may apply to the Collector to have such order or dismissal set aside, and the Collector may in his discretion set aside, such order or dismissal on such terms as to costs or otherwise as he may deem fit; provided that the order or dismissal shall not be set aside unless notice of the application has been served on the opposite party. ”*

[10] Thus, the contention raised by counsel for the appellants that it is only petition under Section 4 of the Act of 1913, which could have been filed by the mortgagor to seek redemption of land cannot be accepted and is without merit. He does not dispute that the plea raised with respect to recovery of amount spent by mortgagee for improvement of the land to make the same cultivable was never raised before the Courts below. Thus, the appellants cannot be allowed to raise the claim of recovery in the absence of pleadings for the first time before this Court in the regular second appeal.



[11] In the considered opinion of this Court, provisions as contained under 1913 Act are in addition to the remedy of civil suit available to the mortgagor. Jurisdiction of the Civil Court to entertain suit for redemption is not barred. Even, under 1913 Act, the aggrieved party has a remedy to challenge the order passed by the Collector by filing civil suit. Object of 1913 Act was to provide simple and less cumbersome remedy for lands, which are less than 50 acres and where the principle money secured under mortgage did not exceed Rs.5000/-. Meaning thereby, for small mortgages, an additional remedy was provided by the Enactment of 1913 Act.

[12] In view of the above, the present appeal is dismissed.

[13] Needless to say, observations made herein do not preclude defendants-appellants from raising independent action with respect to recovery of the amount on account of improvements.

(PANKAJ JAIN)
JUDGE

31.07.2024
'R. Sharma'

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