



122

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-825-2020 (O&M)

Date of decision : 13.01.2025

MUKANDI (DECEASED) THROUGH HER LR

....Petitioner

Versus

KHAJAN SINGH DECEASED THROUGH LRS AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Devender Kumar, Advocate
for the petitioner.

Mr. Karan Singh, Advocate
for respondents No.1(i) to (iii)

PANKAJ JAIN, J. (ORAL)

Instant revision petition is directed against order dated 08.01.2020 (Annexures P-8 and P-9) passed by Executing Court whereby warrants of possession stands issued against the petitioner and his application filed for staying the execution of the order dated 09.12.2019 against him and for withdrawal of warrants of possession, stand dismissed.

2. Petitioner was arraigned as defendant No.13 in a suit filed by the decree-holder/respondents No.1(i) to (iii) seeking decree of declaration along with decree of redemption, impleading mortgagees including the present petitioner as respondents. On 16.11.2011, Trial Court dismissed the



suit filed by the plaintiff *qua* defendants No.12, 13, 17 to 22 under Order 9 Rule 2 CPC. after the plaintiff failed to serve them despite having availed numerous opportunities. Suit finally culminated in the judgment and decree dated 01.05.2014. Plaintiff was granted decree of declaration to the effect that he along with proforma defendant are lawful owners in possession of the suit land mentioned in Para No.1 of the plaint and the suit land stood redeemed on account of excess amount of usufruct already extracted by the defendants from the land under mortgage. Decree of redemption was granted in favour of the plaintiff and against the defendants holding that he is entitled for redemption of land on payment of mortgaged amount of Rs.12/-.

3. The plaintiff/decreed-holder filed execution of the decree in which warrants of possession were issued against all the defendants including the petitioner. LR of the petitioner filed application objecting to the issuance of warrants of possession and prayed that the suit having been dismissed *qua* him, under Order 9 Rule 2 CPC vide order dated 16.11.2011 warrants of possession cannot be executed against him and prayed for withdrawal thereof. The aforesaid application also stands dismissed vide order dated 08.01.2020 (Annexure P-9).

4. Counsel for the petitioner while assailing the impugned orders submits that the suit having already been dismissed against the petitioner, he



cannot be proceeded against in execution and thus, the impugned orders cannot be sustained.

5. Per contra, counsel for respondent No.1(i) to (iii) has brought attention of the Court to the observations made by Executing Court in order dated 08.01.2020 to submit that the petitioner being a mortgagee cannot be held exception to the rule 'once a mortgagee, always a mortgagee'. Plaintiff is thus entitled for redemption of land.

6. I have heard counsel for the parties and have carefully gone through records of the case.

7. Facts are not much in dispute. The issue relates to effect of order dated 16.11.2011 whereby the suit filed by the plaintiff *qua* petitioner and defendants No.12, 17 to 22 was dismissed under Order 9 Rule 2 CPC.

8. Counsel for plaintiff/decreed-holder is not in position to dispute that after suffering order dated 16.11.2011 neither any application was filed seeking restoration of suit *qua* the petitioner and other defendants nor fresh suit was instituted.

9. In the considered opinion of this Court, the aforesaid being the factual situation, decree in a suit which already stands dismissed *qua* the petitioner though under Order 9 Rule 2 CPC, cannot be executed until and unless the suit is restored or fresh suit is filed..



10. Right of mortgagor to redeem is governed by Section 60 of the Transfer of Property Act, 1882. The same reads as under :

“60. Right of mortgagor to redeem.—At any time after the principal money has become 9 [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage - money, to require the mortgagee (a) to deliver 10 [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by 11[decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except 1 [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgager.”



11. The right to redeem land is thus subject to having been extinguished either by act of parties or by decree of court. As on date, suit *qua* petitioners stands dismissed under Order 9 Rule 2 CPC. Still plaintiff exercising right of redemption can bring fresh suit.

12. In order to redeem the situation, I may hastenly add here that so far as decree of declaration granted in favour of the plaintiff is concerned, the same is deemed to be a decree *qua* word at large including the petitioner. Thus, it will be open to the plaintiff/respondents No.1(i) to (iii) to seek redemption *qua* petitioners by moving appropriate application under Redemption of Mortgages (Punjab) Act, 1913 which prescribes the summary proceedings.

13. With the aforesaid observations, the present revision petition is disposed off.

12. Pending application(s), if any, shall also stand disposed off.

January 13, 2025

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No