

“1) Whether the Plaintiffs Are Joint Owners in Possession of Vs. Smt. Premo Devi and Others

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Court : Punjab and Haryana

Decided On : Aug-12-2014

Appellant : “1) Whether the Plaintiffs Are Joint Owners in Possession of

Respondent : Smt. Premo Devi and Others

Judgement :

Rs.No.5071 of 2011 (O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Rs.No.5071 of 2011 (O&M) Date of Decision:12.08.2014 Bhagwana and others ..Appellants versus Smt.

Premo Devi and others ..Respondents CORAM : HON'BLE Mr.JUSTICE RAMESHWAR SINGH MALIK Present : Mr.Lokesh Sinhal, Advocate for the appellants.

Mr.Bhoop Singh, Advocate for respondents No.1 to 8.

**** 1.

To be referred to the Reporters or not?.

2.

Whether the judgment should be reported in the Digest?.

RAMESHWAR SINGH MALIK J.

Present appeal, at the hands of plaintiffs, is directed against the judgment of reversal, whereby learned Additional District Judge allowed the fiRs.appeal of the defendants, setting aside the judgement and decree passed by the learned trial Court, vide which suit for declaration and permanent injunction filed by the plaintiffs-appellants, was decreed.

Briefly stated, facts of the case as noticed by the learned fiRs.appellate court in paras 2 and 3 of the impugned judgment, are that the agricultural land comprised in KhaSr.No.5964 measuring 2 Bigha 1 Biswa, situated within the revenue estate of village Mundlana, was orally mortgaged with possession by the predecessor-in-interest of the defendants on 8.6.1905 in favour of predecessor-in-interest of plaintiffs for a sum of Rs.15 and 10 Annas and its mutation No.53 was also sanctioned.

After consolidation, new numbers of the suit land were allotted and the same were described in para No.3 of the plaint.

After creation of aforesaid Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -2- usufructuary mortgage, plaintiffs being mortgagees have been continuing in possession of the suit land and as such after expiry of 30 years from the date of creation of usufructuary mortgage, the predecessor-in-interest of plaintiffs had become owners in possession of the mortgaged land.

Though, plaintiffs have become owners in possession of suit land but defendants who are successors in interest of Harnam, Devi Ram, Chandgi, Jawahra, Sarupa and Barhma filed an application for getting the suit land redeemed before the Collector at Gohana and the Collector ordered the redemption of the suit land in terms of order dated 28.3.2007.

Plaintiffs have challenged the redemption order of the Collector dated 28.3.2007 on the grounds detailed in para No.6(A) to 6(H) of the plaint.

Plaintiffs have made several requests to the defendants to get the impugned order dated 28.3.2007 set aside and not to take possession of the suit land forcibly but they refused to do so.

It is the prayer of the plaintiffs that they be declared joint owners in possession, being the predecessor in interest of Nahna and Jogi Ram share each of the suit land comprised in Khewat No.522/503, Khatoni No.569, KhaSr.No.23//16/2, measuring 7 K2Marlas, situated within the revenue estate of Mundlana, Tehsil Gohana, District Sonipat with consequential relief of permanent injunction.

On notice, defendants put in appearance and filed a joint written statement, wherein preliminary objections inter-se maintainability, cause of action and locus standi were taken.

On merit, it was admitted that there was an usufructuary mortgage of the suit land used for the produce of the suit land.

The suit land has already been got redeemed by the defendants from Collector, Gohana and the suit land was owned and possessed by the defendants.

The order dated 28.3.2007 passed by Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -3- Collector, Gohana was pleaded to be legal and binding on the rights of the parties as there was no limitation for redemption as per the provisions of law, therefore, the order of Collector, Gohana is quite legal.

Consequently, dismissal of suit together with costs was prayed for.

On completion of pleadings of the parties, learned trial court framed the following issues:- 1) Whether the plaintiffs are joint owners in possession of the suit property detailed in Para No.1 of the plaint?.

OPP2 Whether the plaintiff is entitled to the relief sought for?.

OPP3 Whether the suit is not maintainable in the present form?.

OPD4 Whether the plaintiff has no locus-standi and cause of action to file the present suit?.

OPD5 Relief.

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With a view to substantiate their respective stands taken, both the parties led their documentary as well as oral evidence.

After hearing both the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have proved their case.

Accordingly, suit was decreed vide judgment and decree dated 4.5.2010.

Feeling aggrieved, defendants filed their fiRs.appeal which came to be allowed by learned Additional District Judge, vide impugned judgment and decree dated 29.09.2011.

Hence, this second appeal at the hands of plaintiffs.

Learned counsel for the appellants submits that the learned trial Court rightly decreed the suit of the plaintiffs.

However, learned fiRs.appellate court fell in serious error of law, while setting aside the cogent findings recorded by the learned trial Court.

He places strong reliance on the Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -4- mutation Ex.P10 (Urdu) and Ex.P-11 (Hindi Translation).to contend that since there was a specific period of redemption recorded i.e.15 yeaRs.Collector had no authority to order redemption of the suit land.

He further submits that although it was a usufructuary mortgage but once a time limit was prescribed, defendants had been left with no right to get the suit land redeemed after expiry of period of 30 yeaRs.He prays for setting aside the impugned judgment and decree passed by the learned fiRs.appellate court, by

allowing the present appeal.

On the other hand, learned counsel for the respondents- defendants submits that mortgage was an oral mortgage.

It was not a registered mortgage.

The revenue authorities could not have recorded any time limit for redemption.

He further submits that since the mortgage in question was usufructuary mortgage, no time limit would be applicable and the Collector rightly passed the order for redemption of the suit land.

He further submits that since the learned trial Court misdirected itself, while completely misreading the evidence available on record, learned fiRs.appellate court was well within its jurisdiction to allow the fiRs.appeal of the defendants-respondents.

He prays for dismissal of the appeal.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, no interference is warranted at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure ('CPC' for short).To say so, reasons are more than one, which are being recorded hereinafter.

Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -5- It is undisputed between the parties and also a matter of record that mutation No.53 was the fiRs.and basic document.

The entire case of both the parties was based on this document.

Case of the plaintiffs- appellants was, as argued by the learned counsel for the appellants, that there was specific time limit fixed i.e.15 years for getting the suit

land redeemed and after expiry of the said period, the suit land could not have been redeemed.

On the other hand, case of the respondents-defendants was that since there was no time limit fixed and since the mortgage was a usufructuary mortgage, no time limit would be applicable for getting the suit land redeemed.

A careful perusal of the mutation sanctioned by Assistant Collector IIInd Grade would show that he has not recorded any time limit of 15 years or any other duration, while sanctioning mutation No.53.

When this pointed question was put to the learned counsel for the appellants that since there was no time limit recorded by the competent authority, in the order sanctioning the mutation, how the time limit of 15 years could have been read into it, he had no answer and rightly so because it was a matter of record.

Further, a combined reading of column No.13 and 15 of the mutation Ex.P-11 will make it crystal clear that the oral mortgage was coming from preceding 15 years and it was not for 15 years. Except this mutation, there was no other contrary evidence available on the record so as to indicate that the time limit of alleged 15 years was agreed between the parties qua this oral mortgage.

Having said that, this Court feels no hesitation to conclude that the learned fiRs.appellate court committed no error of law, while passing the impugned judgment and the same deserves to be upheld.

Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -6- Once a mortgage always a mortgage and nothing but a mortgage, therefore, always redeemable.

Law of Mortgage.- by Dr.

Rashbehary Ghose, 8th Edition, has the following reference, at page 281 and reads thus: In 1681 Lord Nottingham in the leading case of Harris v.

Harris, (1681) 1 Vern 33 firmly laid down the principle: 'Once a mortgage, always a mortgage.- This is a doctrine to protect the mortgagor's right of redemption: it renders all agreements in a mortgage for forfeiture of the right to redeem and also encumbrances of or dealings with the property by the mortgagee as against a mortgagor coming to redeem .

In 1902, the well known maxim, once a mortgage, always a mortgage was supplemented by the words 'and nothing but a mortgage added by Lord Davey in the leading case of Noakes v.

Rice, 1902 AC24(HL).1900-3 All England Reporter Rep 34, in which the maxim was explained to mean 'that a mortgage cannot be made irredeemable and a provision to that effect is void.

The maxim has been supplemented in the Indian context by the words' and therefore always redeemable', added by Justice Sarkar of the Supreme Court in the case of Seth Ganga Dhar v.

Shankarial, (1959 SCR509(513) :AIR 1958 SC770.

Reverting back to the facts in hand, it is not in dispute here that mortgage was an oral one.

It was a usufructuary mortgage.

As noticed above, no time limit was recorded by the competent revenue authority, while sanctioning the mutation.

Thus, in these peculiar facts and circumstances of the present case, no limitation will apply in getting the suit land redeemed and it was rightly redeemed.

The view taken by this Court also finds support from Full Bench judgment of this Court in Ram Kishan and others v.

Sheo Ram and otheRs.2008(1) R.C.R.(Civil) 334.

Thakral Rajeev 2014.08.22 10:36 Before arriving at a judicious conclusion, the learned fiRs.I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -7- appellate court rightly re-appreciated the true facts of the case as well as the evidence available on record, so as to record his own cogent findings in para 9 of the impugned judgment and the same reads as under:- At the very out set, pertinent to mention that neither in the plaint nor in the adduced evidence, respondent/plaintiffs ever formally stated that mortgage of the suit land was fixed for period of 15 years from the date of sanction of mutation dated 20.6.1905 (Ex.P-11).There is no dispute of the fact that mortgage was oral in the nature of usufructuary i.e.possession of the suit land was given to respondent/plaintiffs at the time of mortgage.

It shall equally be meaningful to mention that while defending redemption proceedings before the Collector, respondent/plaintiffs never raised plea of aforesaid fixed term of 15 years of mortgage and thus they are now debarred from raising this plea solely at the time of arguments in appeal before this court.

In Ram Kishan and otheRs.case (supra).Full Bench of our Hon'bleHigh Court held that no limitation period of 30 years is enforceable for redemption of usufructuary mortgage and, therefore, it was ruled that where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pay or tender to the mortgagee or deposits in court the mortgage money or the balance thereof.

In Harbans's case (supra) Hon'ble Supreme Court held that mortgagor has right to get redeemed usufructuary mortgage even after expiry of 100 years if no time was fixed for redemption.

Similar observations were made previously by our Hon'ble High Court in Harbans' case (supra).Whereas Hon'ble Supreme Court in Manganlal and another's case (supra) earlier held right of redemption will be extinguished 91) by the act of the parties or (2) by the decree of a court.

In harbhajan Singh versus Naranjan Singh (deceased) and otheRs.200893) LJR268(P&H).Hon'ble Punjab and High Court also ruled that in case of Thakral

Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document
High Court Chandigarh Rs.No.5071 of 2011 (O&M) -8- usufructuary mortgage, where no time limit is fixed for redemption, the property can be redeemed at any time as the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pay or tender to the mortgagor or deposits in the court the mortgage money or the balance thereof, therefore, the mortgagee will not acquire the ownership rights by efflux of time but shall remain mortgagee on the principle that once a mortgage on the principle that once a mortgage always a mortgage and it always redeemable.

In this view of the matter, the impugned order Ex.P1 of Collector is found to be perfectly in conformity with law.

Hence, no ground is made out on behalf of respondent/plaintiffs to set aside the same.

During the couRs.of hearing, learned counsel for the appellants could not point out any jurisdictional error or patent illegality apparent on the record of the case in the impugned judgment passed by the learned fiRs.appellate court.

He also failed to put into service any substantive argument so as to convince this Court to take a different view than the one taken by the learned fiRs.appellate court.

Further, no question of law much less substantial question of law has been found involved in the present case, which is sine quo non for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC.

Thus, it is unhesitatingly held that the impugned judgement and decree passed by the learned fiRs.appellate court deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that

the present appeal is misconceived, bereft of merit and without any substance, thus, it must fail.

No case for interference has been Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh Rs.No.5071 of 2011 (O&M) -9- made out.

Resultantly, instant appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK) JUDGE1208.2014 rajeev Thakral Rajeev 2014.08.22 10:36 I attest to the accuracy and integrity of this document High Court Chandigarh

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