

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7844-7845 OF 2012

MAJOR SINGH & ORS.

Appellant(s)

VERSUS

JASWINDER SINGH & ORS.

Respondent(s)

O R D E R

The present appeals by the Defendants are directed against the judgment dated 29.02.2012 passed by the High Court of Punjab and Haryana at Chandigarh, whereby an appeal by the mortgagor, against the judgment and decree passed by the learned First Appellate Court dismissing the suit for redemption of usufructuary mortgage, was allowed relying upon a Full Bench Judgment of that Court reported as Ram Kishan & Ors. Vs. Sheo Ram & Ors. [AIR 2008 Punjab & Haryana 77].

The learned senior counsel appearing for the appellants argued that the plaintiffs-respondents had earlier filed a suit for possession based on title *inter alia* on the ground that the mortgage stands redeemed on payment of the mortgage amount. The parties went to trial, including on an issue as to whether the plaintiffs have redeemed the mortgaged land. Such issue was decided against the plaintiffs on 19.04.1980 and the suit was dismissed. The

plaintiffs filed an appeal against the said judgment and decree and also filed a suit for redemption of mortgage of half share of the land measuring 212 Kanals 14 Marlas of the land mortgaged on 16.8.1951, subject to the payment of mortgage amount of Rs. 4800/-. The Trial Court decreed the subsequent suit for redemption; however, the first Appellate Court dismissed the suit on the ground that the second suit was barred on the principles of Order II Rule 2 of the Code of Civil Procedure, 1908 (CPC). It was thus contended that the High Court erred in law to hold that the second suit was not barred by the provisions of Order II Rule 2 of CPC. The argument of the learned counsel for the appellants is that the claim of redemption of land was an alternative plea available to the plaintiffs, therefore, they should have included such claim in the first suit.

We do not find any merit in the said argument.

The plaintiffs went to the court in the first suit with a plea that they have redeemed the suit land on payment of the mortgage amount. However, the issue relating to such assertion was negated by the learned Trial Court. It was during the pendency of an appeal against the judgment and decree of the Trial Court, the plaintiffs have filed the second suit for redemption. Order II Rule 2 of CPC mandates the plaintiffs to include the whole claim in one

suit. The plaintiffs had earlier filed the suit for possession on the basis of title, the relief of redemption at best could be said to be an alternative plea but such plea was not part of the same cause of action on the basis of which first suit for possession was filed. Therefore, the plea of Order II Rule 2 has been rightly negated by the High Court vide the impugned judgment.

Another argument raised by the learned counsel for the appellants is that they are in possession as the co-sharers of half share of the land and that there was no actual delivery of possession by the mortgagor to the mortgagee when the mortgage was executed. Therefore, the mortgage cannot be said to be usufructuary mortgage. The reliance is placed upon a Judgment of the Lahore High Court reported as AIR 1940 Lahore 401 - Lachman Singh Vs. Natha Singh wherein essential characteristics of usufructuary mortgage were delineated. It was also argued that the mortgage deed does not contemplate any payment of interest or benefit to the mortgagor. It is also argued that what the parties have agreed is that they would be bound by the terms of mortgage which would exclude the payment of any rent, interest or usufruct arising from the land in question. Thus, it is not a case of usufructuary mortgage. Therefore, suit filed in 1981 would be barred by limitation as the time to

seek redemption would expire in the year 1980, that is 30 years from the date of mortgage which was 19.6.1943 and an additional 7 years in terms of Section 30 of the Limitation Act, 1963.

We do not find any merit in the said arguments raised.

The Mortgage Deed dated 19.06.1943 is marked as Exhibit D1. The Mortgage Deed acknowledges payment of Rs. 1500/- in the presence of Sub-Registrar to the mortgagee who happens to be a co-sharer. Thereafter, some more amount was advanced to the mortgagor as loan. The second Mortgage Deed dated 16.8.1951 (Exhibit P13) records that there is a loan of Rs. 3000/- including Rs. 1500/- advanced as loan earlier. An additional loan of Rs.1800/- was granted to the mortgagor when the second mortgage deed was executed on 16.8.1951. Therefore, in terms of the mortgage, the possession of the co-sharer has changed to that of a mortgagee. The appellants were co-sharer and in possession of the land in question. The possession, in terms of the mortgage deed is that of a mortgagee over half share of the Mortgagor, whereas, even if they are in possession of the other half of land that would also be as a co-sharer only. Therefore, the usufruct arising from the mortgaged land is the compensation for the loan advanced as a right to enjoy the half share given to the mortgagee by virtue

of the mortgage.

Therefore, the Mortgage Deeds (Exhibit D1 and P13) are nothing but deeds for usufructuary mortgage. Being a usufructuary mortgage, there is no period of limitation as has been held by the Full Bench of the High Court in Ram Kishan (Supra), also affirmed by this Court in "Singh Ram (D) Through LRs Vs. Sheo Ram & Ors.", reported in (2014) 9 SCC 185.

Still further, we do not find any merit in the argument that the suit for redemption was barred by limitation under Article 61(a) read with Section 30 of the Limitation Act, 1963, even if it is not a case of usufructuary mortgage. The second mortgage on 16.8.1951 extended the period of limitation being an acknowledgement of the earlier mortgage in terms of Section 18 of the Limitation Act, 1963. The second suit was filed to redeem land mortgaged by such mortgage deed only. Thus, the suit filed on 15.4.1981 is within the period of limitation as the cause of action had arisen, where no period of redemption is stipulated, on the date of mortgage itself. Thus, in any case, the plaintiffs have been rightly granted decree for redemption of mortgage.

Consequently, we do not find any error in the impugned order passed by the High Court. The appeals are accordingly dismissed.

Pending interlocutory application(s), if any,
is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

New Delhi;
NOVEMBER 17, 2021.

ITEM NO.107

COURT NO.11

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7844-7845/2012

MAJOR SINGH & ORS.

Appellant(s)

VERSUS

JASWINDER SINGH & ORS.

Respondent(s)

Date : 17-11-2021 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s) Mr. Nidhesh Gupta, Sr. Adv.
Ms. Japneet Kaur, Adv.
Ms. Nidhi Gupta, Adv.
Ms. Pallavi Singh, Adv.
Ms. Vriti Gujral, Adv.
Mr. Tarun Gupta, AOR

For Respondent(s) Mr. Rajshekhar Rao, Sr. Adv.
Mr. Areeb Amanullah, Adv.
Mr. Abhinav Mukerji, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)