

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3960/2012

RAM SWAROOP

APPELLANT

VERSUS

DEEP RAM & ORS.

RESPONDENT(S)

O R D E R

The challenge in the present appeal is to a judgment rendered by the High Court of Himachal Pradesh on 19th May, 2010, whereby the defendant's second appeal against the judgment and decree passed by the learned District Judge (Forest), Shimla on 30th August, 1997 was dismissed.

2. The plaintiffs-respondents had filed a suit for declaration and permanent injunction on the ground that they were in exclusive possession of the land admeasuring 54 Bighas 10 Biswas as per the Jamabandi 1976-1977 and in possession of half share of land admeasuring 6 Bighas 9 Biswas situated at village Rangel, Pargana Satrol, Tehsil and District Shimla. The plaintiffs had filed the suit claiming with the following averments: -

"2. That the total land as mentioned in para 1 is in exclusive possession of the plaintiff No.1. He is possessing these plots since long.

...

4. That subsequently the original mortgager Sh. Paras Ram sold his ownership rights in the total mortgaged land to Sh. Ranjeet Singh through a registered sale deed. The mortgage of the

aforesaid land was affected through a registered mortgage deed on 17.2.48 in the office of the Sub Registrar Kandaghat. As matter of fact, it was settled finally between the parties in the year, 1947 and regarding which a mutation was also entered but with a view to be on the safe side, it was got registered. The mortgager had delivered possession to the then mortgagee in the year, 1947.

.....

7. That the time for redemption of the land in suit became barred by time in February, 1978 and thus the mortgagees have become exclusive owner thereof. It will not be out of place to submit here that the original mortgagees have been succeeded by the following persons: -

i) Devi Ram. He has died and succeeded by his brothers Het Ram, Narainu, Chet Ram, Jiwane and Lachhmi Singh.

ii) Jiwane has been succeeded by his sons Deep Ram and Keshav Ram and his widow Smt. Purnee. His daughters Smt. Batu and Smt. Mahantu.

iii) Sh. Narainu has died and he has been succeeded by his son Ram Dass, his daughter Satu and Godavari and his widon Smt. Maitee.

iv) Sh. Het Ram has died and he was succeeded by his only son Sh. Ranjeet Singh."

3. The basis of the filing of the said suit was that the mortgage deed was registered on 17th February, 1948 by the predecessor of the present defendants in favour of the predecessor of the present plaintiffs. The said mortgage deed is exhibited as Exhibit P-1. A perusal of the said mortgage deed does not reflect the delivery of possession or any other term of payment of interest in lieu of the

amount of loan advanced. The pleaded case of the plaintiff in the plaint itself is that the possession of the plaintiff is under the mortgage alone.

4. We need not go into the evidence led by the parties in view of categorical assertion made by the plaintiff regarding possession in the plaint. In terms of principles of Section 58(d) of the Transfer of Property Act, 1882, usufructuary mortgage is when mortgagor delivers possession expressly or by implication binds himself to deliver possession. It may be stated here that Transfer of Property Act, 1882 is not applicable to the State of Himachal Pradesh, it being a successor to the State of Punjab where only Sections 54, 107 and 123 were extended to all municipalities in the State of Punjab on 6th May 1925. None of the parties were able to show that the Transfer of Property Act has been extended to the State at any stage subsequently. Since the plaintiff claims to be in possession only on the basis of mortgage, the possession of the plaintiff is nothing but only as usufructuary mortgagee. Thus, the plaintiff is proved to be a usufructuary mortgagee as there was no other term of payment of interest and the possession is claimed even before the mortgage as a mortgagee.

5. In view of the judgment of this Court in *Singh Ram (D) Thr. Lrs. vs Sheo Ram & Ors.*, 2014 (9) SCC 185, the mortgagor retains the right to redeem the property mortgaged on the principle that once a mortgage, always a mortgage. In view of the said fact, we find that findings recorded by the First Appellate Court and by the High Court in respect of the mortgage are not sustainable. It is held that the plaintiff is a usufructuary mortgagee on having

advanced loan of Rs. 2,200/-. Since the defendants have not filed a counter claim, no effective relief can be granted to them in the present proceedings.

6. However, the findings of the First Appellate Court and the High Court in respect of injunction does not warrant any interference in the present appeal.

7. The defendant as a mortgagor would be entitled to seek the remedy of redemption in accordance with law.

8. This appeal is thus allowed in the abovementioned terms.

. J.
HEMANT GUPTA

. J.
V. RAMASUBRAMANIAN

1st December, 2021
New Delhi;

ITEM NO.105

COURT NO.11

SECTION XIV-A

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. 3960/2012

RAM SWAROOP

Appellant(s)

VERSUS

DEEP RAM & ORS.

Respondent(s)

Date : 01-12-2021 This appeal was called on for hearing today.

CORAM :

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

For Appellant(s) Mr. Siddharth Bhatnagar, Sr. Adv.
Mr. Pawan Kr. Bansal, Adv.
Ms. Prachetakar, Adv.
Mr. Aditya Sidhra, Adv.
Mr. Nadeem Afroz
Mr. T. Mahipal, AOR

For Respondent(s)
Mr. E. C. Agrawala, AOR

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

This appeal is allowed in terms of the singed order.

Pending application(s), if any, stand disposed of.

(TUSHAR BISHT)
COURT MASTER (SH)(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(Signed order is placed on the file)