IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.451 of 1993(O&M)
Reserved on: 11.12.2024
Date of Order:14.01.2025

Jagum Hussain and another

...Appellants

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Dinesh Singh Rawat, Advocate, for the appellants.

Mr. Naveen S. Bhardwaj, Addl.A.G., Haryana
Mr. Karan Sharma, DAG, Haryana.

Mr. Parminder Singh, Advocate for the applicant/proposed respondent no.3(in CM-518-C-2023)

ANIL KSHETARPAL, JUDGE.

1. FACTUAL BACKGROUND

1.1 In this Regular Second Appeal, the plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while dismissing his suit for grant of decree of declaration that they have become owner of the property by lapse of time as the mortgage has never been redeemed for the more than last 100 years.

1.2 While filing the suit, the plaintiffs claim that their father Sh. Sultan Hussain was a mortgagee in possession of land measuring 15 kanals and 2 marlas which was owned by Muslim proprietors who migrated to Pakistan in 1947, however, the plaintiffs and their father never migrated to Pakistan and continued to live in village Wayyad Chhapra. They claim that

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the property has wrongly been auctioned in favour of Mai Chand on 09.10.1985 by Tehsildar (Sales), Karnal.

1.3 The defendants contested the suit and claimed that as per Section 9(2) of Evacuee Interest (Separation) Act, 1951 (hereinafter referred to as 'the 1951 Act'), the mortgage extinguished after 20 years on the date the deed of mortgage was executed.

1.4. The trial court upon appreciation of pleadings culled out the following issues:-

> *"1. Whether the plaintiffs are owner in possession of the suit land as the suit land was not redeemed for the last 30 years?OPP*
>
> *2. Whether this court has no jurisdiction to try this suit?OPD*
>
> *3. Whether notice u/s 80 CPC served on the defendants, is not so, to what effect?OPP*
>
> *4. Whether the auction dated 6.10.85 is liable to be set aside for the reasons taken in the plaint?OPP*
>
> *5. Relief."*

1.5. Both the courts upon appreciation of the evidence dismissed the suit.

2. ***ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING the PARTIES:-***

2.1 This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paper book along with the requisitioned trial court record and his written arguments.

2.2. The learned counsel representing the appellants has contended

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that the redemption of mortgage in terms of Section 9(2) of the 1951 Act is a complex process and requires careful handling. He submitted that the process of separating the interest of evacuees and non-evacuees cannot be completed without addressing the existing mortgagees or encumbrances on the property. He contended that the State Government is claiming that the suit land is evacuee property only on the basis of revenue entries without showing due process of law to declare the suit property as evacuee property and principles of natural justice were not followed before auctioning the property. He also relies upon the judgment passed in ***Kanwar Kamaljit Singh vs. Custodian Evacuee Property, Punjab, 1992 AIR (Punjab and Haryana) 72*** and ***Dr. Rajendra Prakash Sharma vs. Gyan Chandra and others, 1980 AIR (Supreme Court) 1206.***

2.3. Per contra, the learned counsel representing the State has defended the judgments passed by the courts below.

3. ***ANALYSIS AND DISCUSSION:-***

3.1 At this stage, it would be appropriate to extract Section 9 of the 1951 Act.

> ***"9. Certain reliefs in respect of mortgaged property of evacuees.***
>
> *(1) Notwithstanding anything to the contrary in any law or contract or any decree or order of a Civil Court or other authority, where the claim is made by a mortgagee, no mortgaged property of an evacuee shall, subject to the provisions of sub- section (2), be liable for the payment of interest at a rate exceeding five per cent.*

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per annum simple on the principal money advanced or deemed to have been advanced.

(2) Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period."

3.2. It is evident that the statute provides that the mortgage shall stand extinguished either with lapse of time of period of mortgage or 20 years whichever is less. Moreover, the property is recorded as 'Evacuee' property in the jamabandies for the year 1955-56, 1965-66 and 1980-81. The statutory provision is categoric. Moreover, the judgments relied upon the learned counsel representing the appellant are not applicable because those judgments are not related to deemed redemption of mortgage of the property.

3.3. In this case, no further evidence was required to be discussed particularly in view of the statutory provision. There was presumption of

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correctness in favour of the revenue entries which were consistent for the last 30 years.

4. ***DECISION:***

4.1. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere.

4.2. Hence, the appeal is dismissed.

4.3. All the pending miscellaneous applications, if any, are also stand disposed of.

14th **January, 2025** **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/non-speaking **YES/No**
Whether reportable **YES/No**

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