(2003) 12 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2117 of 1982

Rattan Chand APPELLANT

Vs

Inder Singh RESPONDENT

Date of Decision : 20-12-2003

Acts Referred:

Citation : (2004) 137 PLR 543 : (2004) 2 RCR(Civil) 827

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : K.G. Chaudhary and Manjit Singh, for the Appellant; Manmohan Singh, Senior Advocate and M.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Narang, J.—The plaintiff-respondent Inder Singh son of Nanak Chand son of Kaushal Chand filed the suit for possession by way of redemption of the land measuring 18 Kanals 16-1/2 marlas, i.e., half share in the total land measuring 37 kanals 13 marlas comprised in the rectangle numbers and khasra spelt out in the heading of the plaint, as shown in the jamabandi for the year 1972-73 situated in village Ramdas, Tehsil Ajnala, Distt. Amritsar.

2. The relationship between the plaintiff-respondent and the defendant-appellant can be well understood in noticing the pedgree table which has been culled out by the trial court in its judgment which, reads as under;-

Common Ancestor |-------------------|--------------------| Khushal Chand Nihal Chand |--------------| |-------------| Nanak Chand Munshi Ram Inder Singh Rattan Chand (Plaintiff) (Defendant)

3. Father of the plaintiff i.e. Nanak Chand, being the owner of the half share as aforesaid, was in cultivating possession of the land measuring 23 kanals 13 marlas and that this land was mortgaged prior to the partition in favour of Mohmmad Kharidin son of Qutabdar resident of village Ramdas. During the partition of the country, the aforesaid mortgagee migrated to Pakistan in 1947.

The mortgagee rights came to be controllable by the competent authority by virtue of the requisite statute. Nanak Chand and other defendants submitted their claim of redemption of the land which had been mortgaged and that in pursuance thereto they had been allowed to deposit the mortgage amount amounting to Rs. 1400/- by virtue of the order dated April 3, 1957. The amount was required to be deposited on or before May 14, 1957. It had been observed in the order that in case Nanak Chand fails to deposit the amount, Rattan Chand, the co-sharer can deposit the said amount by May 30, 1957 and in case none of hem deposits the amount, the land would be put to sale. It is the admitted case that Nanak Chand could not deposit the mortgage amount and that in pursuant to the order, the amount was deposited by Rattan Chand defendant-appellant. As a sequel thereto, the land stood redeemed accordingly, however, name of Nanak Chand had been removed from the revenue record. Subsequently, Nanak Chand died in the year 1961 and that the right developed upon the plaintiff respondent for seeking possession of the land by way of redemption on payment of Rs. 1400/-. It has been averred that the khasra numbers etc. of the land in question stood changed on account of the consolidation proceedings.

4. The claim of the plaintiff-respondent has been contested by the defendant-appellant and the stand taken in that the suit for possession by way of redemption is not maintainable in the present form as the relationship of mortgager and mortgagee does not exist between the parties and that the plaintiff has neither the locus standi or any cause of action for filing the present suit as no cause of action has arisen in favour against the plaintiff. It is further the stand that in compliance of the order of the competent authority, the amount had been deposited by the defendant-appellant and that the land stood redeemed in his favour. It is further averred that upon depositing the amount, he acquired the absolute ownership of the land. It is also the plea that the suit is barred by time. Upon the pleadings of the parties, the issues had been framed and that the documentary as well as ocular evidence has been led by both the parties in support of their pleas and also to prove the issues, the onus of which had been casted upon them, before the trial Court. Upon the findings of the respective issues, the suit filed by the plaintiff-respondent had been dismissed by the trial Court vide judgment and decree dated February 12, 1980.

5. Dissatisfied with the aforesaid judgment and decree, the plaintiff-respondent filed an appeal before the lower appellant court. After hearing the arguments of the respective counsel for the parties and also upon a re-appraisal of the evidence led before the trial count, the appeal has been allowed and as a sequal thereto, the suit filed by the plaintiff-respondent has been decreed vide judgment and decree dated September 22, 1982 with the stipulation that the plaintiff shall deposit the sum of Rs. 1400/- before the appellate court by October 9, 1982 which was to be paid to the defendant-appellant.

6. Being dissatisfied with the judgment and decree of the lower appellate court, the present appeal has been filed by the defendant-appellant. It has been

averred that the lower appellate court has erred in law and facts of the case as the suit deserved to be dismissed being barred by time as the same having been filed beyond the prescribed period of limitation under the Limitation Act. It has been pleaded that mortgage having been redeemed and the possession having been taken by the defendant-appellant in exclusion of Nanak Chand, father of the plaintiff-respondent, the present suit could only be filed within the prescribed period of limitation. Admittedly, the same has been filed beyond the said period and, therefore, the suit deserved to be dismissed on this ground apart from other pleas set up by the defendant-appellant. Alternatively, the plea has been taken that the defendant-appellant acquired ownership by way of adverse possession after the expiry of the period prescribed under law. Admittedly, the said period had expired long back. Thus, under no count the plaintiff-respondent is entitled to disturb the title of the defendant-appellant. It is also the case set up by the defendant-appellant that where a property is subject to usufructory-mortgage and is redeemed by a total stranger and he gets into possession of the said property, his possession would be termed as adverse to the mortgager and, therefore, the possession has to be filed against such a person, the limitation prescribed is 12 years and admittedly, the present suit has been filed beyond the said period because upon redemption, the defendant-appellant came into absolute possession and acquired ownership on all counts.

7. It has been argued that the lower appellate court has erred in holding that the defendant-appellant, upon redemption of the land, stepped into the shoes of the mortgager and that the possession of such person, i.e., defendant-appellant could not be termed adverse to the title of the mortgager. However, it is the admitted case between the parties that the share falling to the lot of Nanak Chand had been mortgaged by him in favour of Mohammad Khairdin and that there was a stipulation that the right to redeem the land would become available after the expiry of 10 years from the date of execution of the mortgage.

8. It is further the case of the defendant-appellant that the defendant-appellant acquired the right upon redemption of the land from competent authority and that he became the absolute owner as he had performed the act which was required to be performed by the mortgager in pursuant to the order passed by the competent authority. Thus, the, right acquired by the defendant-appellant could not be disturbed by terming and holding that he had acquired only the mortgagee rights and not the right of the mortgagor as the mortgage money had been paid by him to the competent authority in which the mortgagee right had come and vested in him after the partition. It is absolutely incorrect to hold that the defendant-appellant had acquired the mortgagee rights and not the rights of the mortgager upon redemption.

9. Learned counsel for the appellant has laid great emphasis upon the plea that the defendant-appellant could be and should have been treated at par with a stranger who sought the redemption of the land and in pursuant thereto get the possession as well, and that such possession cannot be allowed to be disturbed

especially if the suit has not been filed within the prescribed period of limitation. In support of this plea, he has placed reliance upon Jiwan Singh and Anr. v. Des Raj and Ors. AIR 1982 P&H 306 .

10. On the other hand, learned counsel for the appellant-respondent has argued that the lower appellate court has taken a conscious decision and has given absolutely correct finding in respect of the limitation and it has been correctly held that the suit is not hit by the rigour of limitation. Resultantly, the suit has been filed within the prescribed period of limitation. It has been argued that Nanak Chand and Rattan Chand were the co-sharers/co-owners, the land had never been partitioned and, therefore, the possession was joint. It is only the share falling to the lot of Nanak Chand, which had been mortgaged to Mohammad Khairdin, and upon partition, the mortgagee having left India, the competent authority acquired the mortgagee right and the same could be redeemed by Nanak Chand who was also the co-sharer/co-owner along with Rattan Chand. The application had been filed by both and the requisite order had been passed by giving right to both the co-sharers in elimination of each other. It is the admitted case that Rattan Chand paid the mortgage money to the competent authority and the share stood redeemed but this redemption would not mean that Rattan Chand became the owner of the half share of Nanak Chand. It is absolutely incorrect that he had redeemed the land as a stranger, it is apparent from the record that he was a co-sharer, and not a stranger. Further, the plea of adverse possession is also not maintainable against the other co-sharer. It is further admitted that the plaintiff-respondent stepped into the shoes of the mortgagor by virtue of the successor right of inheritance in accordance with law and that he is entitled to seek possession by way of redemption as the defendant-appellant by paying the mortgage money stepped into the shoes of the mortgagee and nothing beyond it. It has never been the case of the defendant-appellant that the right of fore-closure floated in his favour and it is upon foreclosure that he acquired the right of ownership, all along with the plea set up is that upon redemption of the mortgage, he became the owner of the share belonging to Nanak Chand, and alternatively he has taken the plea of ownership by way of adverse possession and particularly he has taken the plea that the mortgage was redeemed by him as a stranger, therefore, his possession could not be disturbed after the prescribed period of limitation.

11. After hearing learned counsel for the parties and perusal of the evidence brought on record, I am of the considered view that the lower appellate court has correctly decreed the suit filed by the plaintiff-respondent. The plea that the defendant-appellant exercised the right of redemption and came into possession as equal thereto as a stranger, is not at all sustainable. It is the admitted case that the application for redemption had been filed by Nanak Chand and Rattan Chand claiming their rights as co-owners of the property and it is in pursuant to this right the competent authority gave the right of redemption in exclusion to each other as spelt out in the order. It is further the admitted case that Nanak Chand was the mortgagor of his half share and the right to redeem could only

vest in him and that the stranger could come into picture only if right to redeem had been lost by him but this right was not lost but redemption was asked for by the other co-sharer. In this situation, the co-sharer could not defeat the right of the other co-sharer, at best, he could step into the shoes of the mortgagee qua the right of the other co-sharer i.e. Nanak Chand. Thus, the plaintiff-respondent was well within his rights to seek possession by way of redemption against the other co-sharer i.e. Rattan Chand. Tae other plea that upon redemption Rattan Chand acquired ownership qua the share of Nanak Chand, is not at all tenable. Upon this act, the rigour of mortgage stood removed qua the land with the limitation that Rattan Chand stepped into the shoes of the mortgagee. It would be different situation if after acquiring the right of the mortgagee he had claimed the right of foreclosure but that is not the plea set up by Rattan Chand.

12. So far as the plea of adverse possession is concerned, again the same is not available to Rattan Chand qua Nanak Chand and/or his successors as the possession of Rattan Chand as a co-sharer qua the other co-sharers cannot be termed adverse under any provisions of law. Thus, this plea is not at all sustainable.

13. Further, the plea has been set up that he had exercised the right of redemption in pursuant to the order passed by the competent authority as a stranger qua the mortgagor right of Nanak Chand, this is again not at all tenable on the premises of the admitted facts that Nanak Chand and Rattan Chand were both co-sharers/co-owners of the land in question though half share of both has been accepted qua each other but the land had never been partitioned amongst themselves. Thus, the right of ownership was never ever defined separately in the revenue records. Thus, it cannot be inferred that Rattan Chand could ever exercise the right of redemption as a stranger qua Nanak Chand and/or his successors. It has been correctly held that Rattan Chand could only step into the shoes of the mortgagee and resultantly, the plaintiff-respondent has correctly exercised the right by way of filing suit for possession by way of redemption. The precedents relied upon by the learned counsel for the appellant are not at all applicable as the question involved in the present facts, culled out in the plaint and the written statement, are entirely different.

14. In view of the above, I find no merit in the appeal. The same is accordingly dismissed. No order as to costs.

