(1992) 03 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2335 of 1990 and Cross Objection No. 3/C of 1991

Singh Ram and Another — APPELLANT

Vs

Jagir Singh and Others — RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:
Haryana Ceiling on Land Holdings Act, 1972 — Section 12(1)
Transfer of Property Act, 1882 — Section 60

Citation : (1993) 104 PLR 520

Hon'ble Judges : A.S. Nehra, J

Bench : Single Bench

Advocate : Raj Mohan Singh, for the Appellant; Sanjay Majithia and J.D.S. Sarin, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Nehra, J.—The defendants-appellants have filed this appeal against the judgment and decree dated 1-8-1990 passed by the Additional District Judge, Faridabad; by which their appeal was dismissed and the appeal filed by the plaintiffs-respondents was partly allowed.

2. Briefly stated, the facts of the case are as follows :-

Ganeshi, plaintiff respondent No. 5 son of Pran Sukh was the owner in possession of agricultural land measuring 1/0 Kanals 9 Marias, comprised in Khewat/ Khatautti No. 42/55 and 06 and 180/240 to 242, as detailed in paragraph 1 of the plaint and shown in the jamabandi for the year 1982-83. He mortgaged the aforesaid land to defendant-appellant No. 1 for a consideration of Rs. 5000/-. Plaintiff-respondent No. 5 was subsequently declared as a big landowner and his land measuring 91 Kanals 15 Marias, comprised in Khewat/Khatami No. 180/240 to 242 , as detailed in paragraph No. 3 of the plaint, was declared surplus and. later on, vested in the Haryana State Government by operation of law Thereafter, he was left with no right, title or interest of any sort in this land. The remaining agricultural land measuring 28 Kanals 14 Marias, comprised in Khewat/Khatauni No. 42/ 55 and 56, as detailed in paragraph 4 of the plaint, remained with him as his reserved/permissible area. This land was subsequently transferred by the plaintiff respondent No, 5 to plaintiffs-respondents Nos. 1 to 4 by way of family settlement arrived at between them. Plaintiffs-respondents Nos. 1 to 4 thus were the mortgagors of this land measuring 28 Kanals 14 Marias, as mentioned above, and the Haryana State Government was recorded as mortgagor of the remaining land measuring 91 Kanals 15 Marias Defendant-appellant No I was in possession of the whole of land measuring 120 Kanals 9 Marias. Defendant-appellant No. 2 being the son of defendant-appellant No. 1, has been shown in cultivating possession of some land out of this land and, in the same way, Kaluta (defendant No. 3) has also been shown in cultivating possession of some land out of this land, in dispute, and when defendants Nos. 2 and 3 got the possession of this land from defendant-appellant No. 1, certainly they were bound to go with defendant-appellant No. 1 (mortgagee) as and when the land, in dispute, was redeemed. The plaintiffs-respondents Nos. 1 to 5 filed a suit for possession by way of redemption of the mortgage on payment of Rs. 5000/-. In the alternative, the plaintiffs claimed a decree for possession of land measuring 28 Kanals 14 Marias out of the suit land, on payment of proportionate mortgage money of Rs. 1192/-.

3. The defendants Nos. 1 to 3 filed a joint written statement admitting therein the mortgage of the whole land measuring 120 Kanals 9 Marias in favour of defendant-appellant No. 1. They further averred that the suit of the plaintiffs for redemption of land measuring 91 Kanals 15 Marias was not maintainable, because this land has vested in the State Government They also admitted that 28 Kanals 14 Marias of land was owned by plaintiffs-respondents No. 1 to 4.

5. On the pleadings of the parties the following issues were framed : -

1. Whether the plaintiffs are entitled to redeem the suit land on payment of Rs: 5000/-?.

2. Whether the plaintiffs are entitled to redeem the land measuring 28 Kanls 14 Marias on payment of Rs. 1192/-, if issue No. 1 is not proved 1

3. Whether the suit is barred by limitation ?

4. Whether the Haryana State is not a necessary party ?

5. Whether the defendants Nos. 2 and 3 are not liable to be dispossessed, as alleged ?

6. Relief.

4. The trial Court came to the conclusion that, since 91 Kanals 15 Marlas of land has vested in the Stale Government, therefore, the right of the plaintiffs-respondents stood extinguished in that area The trial Court held that land measuring 28 Kanals 14 Marlas was redeemable and that it could be redeemed

on payment of Rs. 5000/- as mortgage money. Issue Nos. 1 and 2 were answered accordingly by the trial Court The trial Court on 2-11-1987 passed a decree for redemption of land measuring 28 Kanals 14 Marlas on payment of Rs. 5000/- as mortgage debt.

5. Aggrieved by the judgment and decree dated 2-11-1987 passed by the trial Court, the plaintiffs-respondents and the defendants-appellants filed their respective appeals before the Additional District Judge, Faridabad The appeal filed by the plaintiffs-respondents was partly allowed and the judgment and decree of the trial Court was modified and the plaintiffs-respondents Nos. 1 to 4 were held entitled to the redemption of area measuring 28 Kanals 14 Marlas on payment of proportionate price of Rs. 1192/-. The appeal filed by the defendant-appellants was dismissed.

6. The learned counsel for the appellants has argued that the order of redemption of part of land could not be made as the entirety of the mortgage has to be preserved.

7. The learned counsel for the plaintiffs-respondents has argued that piece-meal redemption is permissible under the exceptional circumstances and, in support of his argument, he has relied upon Ganpatia v. Smt Chhoti A. I. R. 1974 Raj. 77, this is a authority for the proposition that piecemeal redemption is not permissible unless there are exceptional circumstances and that a mortgage has to be redeemed in its entirety There is no dispute between the parties that u/s 12(1) of the Haryana Ceiling of Land Holdings Act, 1972 (hereinafter referred to as the Act), an area declared surplus of a landowner vests in the State and the rights of the landowner in such area stands extinguished on such vesting. Section 12(1) of the Act is as follows : -

"12. Vesting of Surplus Area-(1) The surplus area of a landowner shall, from the date on which it is declared as such, shall be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any recognized by any law, custom or usage for the time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumberance.

PROVIDED that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it."

8. In view of the above provisions of law, the original mortgagor cannot redeem the area which has vested in the State and, therefore, the mortgagors-plaintiffs-respondents have rightly sought in the alternative, a decree for redemption of 28 Kanals 14 Marlas of land on payment of proportionate price

9. After hearing the learned counsel for the parties, I hold that redemption of

part of area is permissible in this case as there are exceptional circumstances.

10. In view of the above-mentioned discussion, there is no merit in this appeal and the same is dismissed. Cross-Objection No. 3-C of 1991 is disposed of accordingly.

