

(2012) 10 P&H CK 0168

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 19878 of 2012

Jagdeep Singh and Others

APPELLANT

Vs

The Collector-Cum-Sub Divisional
Magistrate, Barnala and Others

RESPONDENT

Date of Decision: Oct. 5, 2012

Acts Referred:

- Redemption of Mortgages (Punjab) Act, 1913 - Section 4, 5, 9

Citation: (2012) 168 PLR 795

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: Amit Rawal, with Mr. Sapan Dhira, for the Appellant;

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

Swaran Singh, who was owner of 374 kanals 7 marlas land in Village Dharamkot is alleged to have mortgaged the said land with possession with the predecessors-in-interest of the petitioners by different mortgage deeds on different occasions. Said Swaran Singh was unmarried and issueless. Dates of these mortgage deeds are not disclosed in the writ petition. What is disclosed is that one Jeon Kaur and Inder Singh daughter and son of Sham Kaur had filed civil suit on 9.8.1969 against the predecessors-in-interest of the petitioners, claiming that they be declared as owners of the above land owned by Swaran Singh, being his only heir. These persons were the daughter and son of sister of Swaran Singh. Further prayer was that they be declared entitled to redeem the above land from the predecessors-in-interest of the petitioners. The civil suit was dismissed but Jeon Kaur and Inder Singh were declared legal heirs of Swaran Singh. However, their right to redeem the mortgage property was declined being barred by time. Against this judgment, appeal was filed before Additional District Judge, Barnala, who also dismissed the same on 8.4.1975. Thereafter, Regular Second Appeal No. 904 of 1995

was filed before this Court and this Court viewed that the suit for redemption is not barred by time and these persons can file suit for redemption. This order was challenged by the petitioners by filing SLP before the Hon"ble Supreme Court. While the SLP was pending, the respondents herein filed a suit for redemption on the basis of judgment passed by this Court before Civil Court, Barnala. This suit, however, was got stayed by the respondents themselves by moving an application for stay. The said suit is still pending.

2. On 30.3.1987, the Hon"ble Supreme Court set-aside the judgment passed by this Court and remanded the case back to the High Court. This Court again considered the said Regular Second Appeal and allowed the same on 5.5.2008. The petitioners again approached the Supreme Court by way of Special Leave Petition, and the Court has stayed dis-possession of the petitioners. Civil appeal is, thus, pending before the Hon"ble Supreme Court.

3. Now, the respondents herein have filed separate petition for redemption of the land against the petitioners and have filed an application for deposit of mortgage money. The Collector has summoned the petitioners. The petitioners would plead that the Collector has summoned the petitioners without complying with Sections 4 and 5 of the Redemption of Mortgages (Punjab) Act, 1913 (for short, "the Act"). The petitioners had moved an application before the Collector on 18.7.2011 for staying further proceedings as the appeal is pending before the Supreme Court. On 18.6.2012, the petitioners moved some applications before the Collector for dismissal of the petition for redemption on the same ground.

4. Now the grievance of the petitioners is that the Collector, without deciding these applications, has permitted respondent Nos. 2 to 48 to deposit the mortgage money for redemption vide his order dated 5.9.2012. Alleging this to be in violation of Sections 4, 5 and 9 of the Act and that this is to circumvent the order passed by the Hon"ble Supreme Court, the petitioners have approached this Court. The petitioners would also allege that the respondents have resorted to Forum Shopping and have adopted an approach which is contemptuous to the Supreme Court order. Hence, they have filed the present writ petition.

5. I have perused the order passed by the Hon"ble Supreme Court. As on date, the petitioner is held entitled to seek redemption of this property as per the order of the High Court passed in Regular Second Appeal. The respondents have already been declared legal heirs even in the suit, which they had filed and their right to redeem this property was declined only on the ground that it is barred by limitation. There is no eclipse on the right of the respondents to claim title of this property, they having been declared the legal heirs of Swaran Singh, who had mortgaged the land. Their rights are only under some dispute because of passage of time. That right, as on date, stands adjudicated in favour of the respondents. The Hon"ble Supreme Court has not stayed the operation of the judgment passed by this Court but has only protected the possession of the petitioners. The order of the Collector as passed

does not in any manner would effect the possession of the petitioners as the respondents have only been permitted to deposit the mortgage amount at their own responsibility with the treasury. The respondents, thus, have only been granted permission to deposit this amount and that too at their own responsibility. What objection the petitioners can have against this order really can not be understood and appreciated.

6. The grievance of the petitioners that their applications have not been decided is also not of much consequence. The Collector has still not decided the application of the respondents for redemption of this land and this order is only passed, permitting the respondents to deposit this amount. The application of redemption is still under consideration and the orders, if any, are yet to be passed. Obviously, while deciding this application, the Collector would consider and decide the two applications filed by the petitioners as well.

7. The prayer made by the petitioners that this order has been passed in violation of the provisions of Sections 4, 5 and 9 of the Act is also not made out. Section 4 only talks of entitlement of a mortgager or any other person to institute a suit for redemption at any time after the principal money becomes payable and before the suit is barred by presenting a petition to the Collector applying for an order that this mortgage be redeemed. Where the mortgage is with possession, then mortgager can also pray for being put in possession of the mortgage property. Remaining part of the Section only talks of the petition, which is to be duly verified in the manner prescribed by law and is required to state the sum, which the petitioner declares to be due under the mortgage to the best of their belief. The petitioner is to seek time to deposit the sum with the Collector.

8. Section 5 thereafter provides that when the petition has been duly presented and the deposit made, the Collector shall issue to the mortgagee, a summon to appear on the date to be specified. Such summon is to be accompanied by copy of the petition with the date of deposit endorsed thereon. As per Section 9, if mortgagee raises an objection on any ground other than the amount of deposit or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either for the reasons to be recorded, dismiss the petition or make a summary enquiry regarding the objections raised by the mortgagee or regarding the sum due. Thus, Section 4 talks of entitlement to institute a suit for redemption. Section 5 would regulate the stage only when the deposit has been made whereafter the Collector is to issue summons to the mortgagee and Section 9 would appear to govern the field, when the mortgagee after appearance has raised objection on any ground other than the amount of deposit, then there are options available with the Collector to deal with the petition, seeking redemption of the mortgaged property.

9. The situation in the present case at this juncture is that the respondents have filed a petition for redemption and they have been granted permission to deposit the amount. The further action is to follow only after deposit of amount and resultant

consequence u/s 9 may come into play. I do not notice any violation of any of these provisions in the manner in which the Collector has proceeded. Since as on date, the right of the respondents to seek redemption of this land is not under any doubt and they have already been declared and recognized as legal heirs of the mortgagor, I do not see any infirmity on the rights of the said respondents to move this application for redemption of this property. However, they may not be able to seek possession of the property due to the interim order passed by the Hon"ble Supreme Court, which prayer the respondents can make in terms of Section 4 of the Act. Incidentally, it may need a notice that the petitioners, who are just mortgagees, are striving to become the owners thereof by raising all these pleas and are wanting to take away the rights of legal heirs of the actual owners of land, who have been held entitled to redeem the same. It is a big chunk of land measuring nearly 375 kanals. Accordingly, I do not see any merit in the pleas raised by the petitioners either in law or equity and, therefore, would dismiss the writ petition in limine.