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DAULAT RAM  
v.  
SAROOP RAM AND ANR.

MAY 10, 1996

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[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Transfer of Property Act, 1882 :*

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*Mortgage—Redemption by co-owners—Effect of—Plaintiff-appellant filing suit for declaration and possession of suit property pleading that it had fallen to his share through a private partition—Courts below dismissing the suit—Plaintiff-appellant contending before High Court and Supreme Court that he redeemed the mortgage and by subrogation he became the mortgagee and until redemption by the co-owners, his possession cannot be disturbed—Held, there is no such specific pleadings nor such issue was raised before trial court—Even otherwise, it is established that co-owners have jointly redeemed the property and thereafter it became joint property of the brothers—Plaintiff no longer a mortgagee—Courts below rightly dismissed the suit.*

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9102 of 1996.

From the Judgment and Order dated 25.8.93 of the Punjab & Haryana High Court in R.S.A. No. 2311 of 1992.

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Ujagar Singh and Naresh Bakshi for the Appellants.

Chander Shekher Ashri for the Respondents.

The following Order of the Court was delivered :

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Leave granted.

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This appeal by special leave arises from the judgment and order dated August 25, 1993 made in Regular Second Appeal No. 2311/92 by the Punjab & Haryana High Court. The appellant laid this suit on April 8, 1986 for declaration and possession of the plaint suit property on the plea that it had fallen to his share through private partition and thereafter he has

become the absolute owner thereof. The trial Court as well as the appellate court disbelieved the evidence which held that the appellant is not in exclusive possession. It was contended in the appeal before the High Court and repeated in the special leave petition that he had redeemed the property by himself. Therefore, by subrogation he became the mortgagee unless some other co-owner redeemed the mortgage from him he remained as mortgagee and the suit should have been decreed on that basis. A B

The respondents have filed counter affidavit in that behalf. They are denying the allegation that the appellant alone had redeemed the mortgage of one of the items of property. It was joint redemption by co-owners. It was also pointed out that the trial Court and the appellate Court had gone into the question and negated the contention of the appellant. It was contended for the appellant that in view of the admitted position of the appellant's payment of the mortgage amount to the Commissioner of Custodian of Evacuee Property and in view of entries for one of the years in the mutation that he was in self-cultivation, it must be construed that the appellant alone had redeemed the mortgage thereof. After subrogation he became the mortgagee until redemption by the co-owners, his possession as a mortgagee cannot be disturbed. We find no force in the contention. Firstly, there is no such specific pleadings. Secondly, no such issue was raised. Even then in view of the evidence on record recorded by courts below, they have gone into the question, observing thus: C D E

"Even if the minor contradictions in their evidence are ignored the documentary evidence available on the record is sufficient to show that the application for redemption was moved by all the three brothers i.e. the plaintiff and defendants, and it was granted in their favour on 9.2.60. In pursuance of this order of redemption the mutation was sanctioned in favour of all the brothers, who went on being recorded joint owners and in joint possession of the suit land from 1961 towards and in joint possession of the suit land from 1961 onwards till the date of the filing of the suit. F G

So, the documentary evidence shows that the suit land was got redeemed by all the brothers jointly and they are continuing in joint possession and joint ownership of this land since the time of H

A its redemption. This land was mortgaged only for Rs. 494 and was redeemed for a total sum of Rs. 506. So the evidence of the plaintiff to the effect that he spent Rs. 4000 on getting the land redeemed is also untrue.

B Appellate Court held that the trial Court has thus rightly concluded after carefully screening of the evidence that the land described in the head-note (d) of the plaint was got redeemed by all three brothers and they are owners in possession of the land in equal shares.

C So far as the statement of PW 4 Kailash Chand is concerned, it is true that from his statement it is proved that the plaintiff deposited the amount of Rs. 506, but on whose behalf he had deposited this amount, is not clear, because this fact can be proved only by the Treasury Voucher which has not been placed on record, nor PW 4 Kailash Chand has brought the treasury voucher.

D Exhibit P-10 is the order of redemption which shows that the suit land was redeemed by Sarup Ram, Daulat Ram and Room Singh, sons of Prem Singh collectively.

E Ex.P-4 is Khasra Girdawari for the period Swani 1961 to Rabi 1985 and this khasra Girdawari is in the name of plaintiff as co-sharer. Ex. P-5 is the Jamabandi for the year 1962-63 which shows the possession of Daulat Ram as Co-sharer over the aforesaid land and all the three brothers are shown as co-owners. In the column No. 12 of this document mutation No. 701 of redemption of mortgage is mentioned. In Ex. P-6 Jamabandi for the year 1969-70 all the three brothers are shown as owners and plaintiff is shown as in cultivating possession.

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G As a result of my foregoing discussion it is not proved that the plaintiff alone got the aforesaid land redeemed and that he (plaintiff) is in continuous cultivating possession over the said land. Of course, the plaintiff had been in cultivating possession exclusively from 1961 to 1970, but that is too as a co-sharer."

H In view of this evidence and findings it must be concluded that all the co-sharers have jointly redeemed the property and thereafter it became

a joint property of the brothers. The appellant no longer a mortgagee. A  
The concurrent findings are that there was no private partition in which  
the property claimed to have been allotted to him was specifically negated  
by the courts below, we do not think that there is any ground warranting  
our interference into the matter. The appeal is accordingly dismissed. No  
costs.

R.P.

Appeal dismissed. B