

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 4249 of 2012 (O&M)

Date of decision: 28.08.2015

Bhag Singh and others

... Petitioners

versus

Harnek Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Deepak Sabharwal, Advocate and
Mr. Nitish Garg, Advocate for the petitioners.

Mr. Arun Jain, Advocate with
Mr. Amit Jain, Advocate,
for respondent Nos. 1 to 5 and 7 to 17.

K.Kannan, J.

In a suit for redemption of a mortgagee filed by the present petitioner, a pre-liminary decree was granted allowing for redemption on payment of Rs. 32,000/-.

In an appeal, the amount was modified and Rs. 42,700/- was determined as the additional sum directed to be paid and the correct sum payable was Rs. 74,700/-. I am informed that the said amount has been deposited by the plaintiff/decreed-holder. It would appear that the decreed-holder applied for delivery without obtaining a final decree and the Court dismissed it as not maintainable. Consequently, an application was filed for passing of final decree which was dismissed as barred by limitation.

When the Appellate Court rendered the judgment and determined the amount on 03.12.1990 and after the initial round of litigation where the decree-holder applied for delivery, he has modified the application for passing of final decree, Order 34 Rule 8 makes provision for passing of final decree. The application could be filed for passing of final decree any time before the plaintiff is barred to redeem the property or before a sale is held in pursuance to a final decree under sub Rule 3. There is already a pre-liminary decree passed determining the amount and ordering the defendant to deliver up possession and so long as the right is not lost by any transfer of interest or by order of Court, an application for final decree is always competent without being in any way fettered by way of limitation issues in the light of provision under order 34 Rule 8. The application for final decree could not have been, therefore, dismissed. I allow the civil revision and grant the final decree to be passed in favour of the plaintiff.

In the normal situation, the passing of final decree must be accompanied with the order for direction to deliver up the property and the documents to the plaintiff. The order for delivery shall remain, however, suspended in view of the order passed by the Hon'ble Supreme Court in a suit for specific performance of an alleged agreement of sale by the plaintiff in favour of the defendant-mortgagee in SLP No. 2620 of 2010. The Court has passed an order on 13.12.2010 that the parties will maintain status quo prevailing as on date. Admittedly, the property continues in the hands of the defendant. Status quo will, therefore, mean retention of such possession, and the petitioners' right to apply for

delivery will abide by the decision of Hon'ble Supreme Court in the above appeal instituted by the respondents.

The civil revision petition is allowed, but, with above directions.

28.08.2015

kv

**(K.KANNAN)
JUDGE**