

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1239 of 2014 (O&M)
Date of Decision:- 03.07.2015.

Muni Lal

.....Appellant

Versus

Financial Commissioner (Appeals), Punjab, Chandigarh and ors.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Dheeraj Mahajan, Advocate for the appellant.

Mr. Aman Bahri, Additional A.G. Punjab.

Mr. Atul Yadav, Advocate for respondent Nos.3 and 6.

Mr. Satinder Khanna, Advocate for respondent No.13.

SURYA KANT, J. (ORAL)

1.) This Letters Patent Appeal is directed against the order dated 25.03.2014 passed by learned Single Judge in a dispute regarding payment of mortgage money and consequential redemption of the mortgage.

2.) Land measuring 40 kanals in village Dutt, Tehsil and

District Gurdaspur was mortgaged in the year 1934. The appellant was one of the co-mortgagee along with respondent No.8 Smt. Shakuntla Devi (since deceased). The finding returned by the Authorities is that the mortgagors paid the mortgage amount on 06.09.1988 to Smt. Shakuntla Devi who delivered the possession of land to the mortgagors. Mutation No.929 was duly sanctioned to this effect by the Assistant Collector, IInd Grade vide order dated 08.03.1990.

3.) The appellant challenged the above stated order of the Assistant Collector and his appeal was allowed by Collector, Gurdaspur with a finding that no payment of mortgage money was made to Smt. Shakuntla Devi. The aggrieved mortgagors went in appeal before the Commissioner, Jalandhar and then before the Financial Commissioner but having lost there, approached this Court. Learned Single Judge has allowed their writ petition and set aside the orders of Collector, Commissioner and Financial Commissioner, respectively. Resultantly, the order of the Assistant Collector Ist Grade sanctioning mutation in favour of the mortgagors has been restored.

4.) Three questions arise for consideration. Firstly, as to whether the mortgage amount was paid or not? Smt. Shakuntla Devi was admittedly a co-mortgagee. She admitted the receipt of mortgage amount and delivered the possession of mortgage property to the mortgagors. That is a conclusive acknowledgment of tender of

the mortgage amount. The finding of fact to this effect calls for no interference.

5.) The second question pertains to the right of a co-mortgagee. Learned Single Judge has held and rightly so that the mortgage was not a piecemeal transaction and once the mortgagor Smt. Shakuntla Devi accepted the mortgage amount and delivered the whole property to mortgagors, she did so for and on behalf of all the mortgagors. If the appellant did not receive the mortgage amount of his share, his remedy lies against the co-mortgagee (Smt. Shakuntla Devi).

6.) Further, the delivery of possession of entire mortgage property including the part statedly in possession of the appellant is sufficient to infer that there was implied consent, if not express of other co-mortgagees as well.

7.) Thirdly, even if the order of redemption of mortgage was illegal or erroneous, could it be challenged by the appellant in collateral proceedings like the sanction of mutation? In our considered view, the remedy for the appellant was to institute a suit under Section 12 of the Redemption of Mortgages (Punjab) Act, 1913, in absence whereof the redemption order is liable to be treated as conclusive. No such remedy was admittedly availed by the appellant.

8.) For the reasons aforestated, we do not find any merit in this appeal and the same is dismissed.

9.) Needless to say that if any remedy is still available to the appellant, he may avail the same in accordance with law.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

July 03, 2015.

sandeep sethi