IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4759 of 2013 (O&M)
Date of decision: September 17, 2015

Dhanpati and others

...Appellants

Versus

Gurprit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Rajkapoor Malik, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

CM No. 11 C of 2015

For the reasons stated in the application, the appeal is restored to its original number.

RSA No. 4759 of 2013

1. The plaintiff's suit for redeeming the mortgage which is said to have been executed in the year 1854 came to be decreed by the two courts below. The representatives of the mortgagee are in appeal before this court to contend that the civil suit is not competent to grant any decree since the mortgage executed before 1901 comes under the provision of the Punjab Restitution of Mortgaged Lands act, 1938 (for short '**the Act**'). The Act provides for a provision for appeal against the order of a Collector before a

Commissioner and a further right of revision to the Financial Commissioner. It is contended that the suit is incompetent and the remedy of action shall be only under the Act. I reject this argument as untenable, for, the only ground on which the suit seeking for redemption of mortgage could be dismissed, is when the mortgage is extinguished by operation of law or by specific order passed under the Act that the mortgage extinguished. Section 12 of the Act is the governing provision for the jurisdiction of the Civil Court. Section 12 of the Act reads as under:-

> "12. No Civil court shall have jurisdiction to entertain any claim to enforce any right under a mortgage declared extinguished under this Act, or to question the validity of any proceedings under this Act."

This provision constitute a bar only to enforce a mortgage right which is declared as extinguished. The Collector in whom the jurisdiction vests could grant an order for a mortgagor for restitution of possession by resort to Section 8 of the Act: One, he shall declare the right of mortgagee as having extinguished and require the mortgagee to deliver possession of the land to mortgagor. Two, under Section 9 of the Act, he has a right to direct the rights of the mortgagee to be extinguished and eject the mortgagee and order delivery of possession. The appeal and the revision which is contemplated shall be for order directing discharge of mortgage and for restitution of possession. The Collector's power includes also the power under Section 7 of the Act to grant compensation to mortgagee in certain cases. Under none of these provisions, is there a scope for Collector to rule that the mortgagee can continue in possession. His power extends only to examine whether the mortgage exists or not and if it exists to provide for compensation for mortgagee and/or direct the mortgagee to deliver up document and possession to the mortgagor.

2. If the defendant would admit to the existence of a mortgage, then there is no escape from an action brought by the successor of the mortgagor seeking for right of possession at the hands of the defendant to defeat that right. We have already extracted Section 12 of the Act and that does not bar the institution of a suit for redemption of a mortgage. The bar will operate if the mortgage had been declared as extinguished in which case there will be nothing for the plaintiff to sue for redemption. The suit for redemption of a subsisting mortgage is indefensible. A point of law raised is against the appellants and it is without any merit. The second appeal is dismissed.

September 17, 2015 **(K.KANNAN)**
prem **JUDGE**