

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

RSA No. 2026 of 2015 (O&M)

Decided on: 13.5.2015.

Dildar Khan

... Appellant

Versus

Surjit Kaur

... Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ashok Singla, Advocate with
Mr. Aakash Singla, Advocate,
for the appellant.

K.C.PURI.J.

This is an appeal directed by the defendant appellant against the judgment and decree dated 29.10.2014 passed by Sh. Harpal Singh, Additional District Judge, Barnala vide which the appeal preferred by the defendant appellant against the judgment and decree dated 5.4.2013 passed by Smt. Neetika Verma, PCS, Additional Civil Judge (Senior Division), Barnala was dismissed. However, the cross objections filed by the plaintiff were accepted. The suit for possession by way of redemption remained decreed but the order of payment of interest by the plaintiff on the mortgage amount was set aside by accepting cross objection.

The case of the plaintiff in brief is that the suit property was mortgaged on 17.10.2000 vide registered mortgage deed

on payment of Rs.70,000/- by defendant as mortgage money. Another sum of Rs.50,000/- was paid by the defendant to plaintiff and in this manner, Rs.1,20,000/- were paid by the defendant to the plaintiff as mortgage money. The possession of the property was handed over to the defendant and it was observed that plaintiff shall not redeem the land for three years i.e from 17.10.2000 to 16.10.2003. It was further pleaded that on 16.10.2003 the mortgage period has elapsed and the plaintiff is ready to pay the mortgage amount of Rs.1,20,000/-. The defendant was asked to redeem the land but he refused. Hence the suit.

The defendant appeared and filed written statement and the factum of mortgage deed was admitted. However, it was pleaded that in the second mortgage deed dated 3.11.2003, it was mutually settled that the plaintiff would sell the property in dispute to the defendant. On the verbal assurance of the plaintiff, a sum of Rs.3,50,000/- was fixed as the sale consideration in respect of the disputed property. The defendant paid another sum of Rs.2,30,000/- to the plaintiff besides the mortgage amount and in this manner, the whole amount was paid. The defendant further pleaded that on 7.5.2010 the plaintiff executed an agreement in favour of defendant in the presence of the witness that she will execute the sale deed in favour of the defendant in the year 2010 and she has also admitted that she had sold the property in dispute to the defendant verbally.

From the pleadings of the parties, following issues

were framed:-

1. Whether the plaintiff is entitled to possession of the in dispute house by way of redemption on payment of the mortgage amount as detailed in the plaint ?OPP

2. Whether the defendant has purchased the house in dispute after the execution of the mortgage deed dated 3.11.2003 for a consideration of Rs.3,50,000/- from the plaintiff and paid Rs.2,30,000/- as part payment of the sale consideration and on this account the plaintiff is not entitled to possession by way of redemption of the house in dispute ?OPD

2-A Whether the plaintiff executed a writing dated 7.5.2010 qua the suit property for a sum of Rs.3,50,000/-, if so, its effect ?OPD

3. Whether the plaintiff has locus-standi to file the present suit ?OPP

4. Whether the suit is within limitation ?OPD

5. Relief.

The plaintiff in order to prove her case stepped into the witness box as PW-1 and also examined PW-2 Dr. Inderjit Singh, Handwriting and Finger Prints Expert and closed the evidence.

In rebuttal, the defendant examined DW-1 Buta Singh and defendant appeared as his own witness as DW-2 and closed the evidence.

Learned trial Court after appraisal of the evidence returned finding on issue No.2 against defendant and in favour of the plaintiff. All other issues were also decided in favour of the plaintiff. Consequently, suit of the plaintiff for possession by way of redemption was decreed. However, the trial Court directed the plaintiff to pay interest on the mortgage amount as detailed in the judgment of the trial Court.

The defendant filed appeal whereas the cross objections were filed by the plaintiff against that part of the judgment vide which the plaintiff was directed to pay interest on the mortgage amount. The cross objections were accepted to that extent. However, the first appellate Court affirmed the decree regarding possession by way of redemption.

Feeling dis-satisfied with both the judgments and decrees dated 5.4.2013 and 29.10.2014, the defendant has preferred the present regular second appeal.

The appellant in paragraph No.13 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

- (i) Whether denying the appellant defendant vide order dated 6.10.2013 Annexure A-1, an opportunity to examine Finger Print Expert by way of additional evidence is justifiable in the eyes of law especially when the entire dispute revolved around signatures of

plaintiff over Ex.D-1 ?

(ii) Whether statement of DW-1 during his cross examination that no consideration has passed in his presence while scribing Ex.D-1 dated 7.5.2010 is fatal to the case of defendant specifically where the categorical stand of defendant is that consideration was paid way back in 2003 ?

(iii) Whether denial of signatures over Ex.D-1 by the plaintiff-respondent is of any consequence particularly when she has gone to the extent of denying her own signatures over her own documents like plaint, affidavit and replication ?

(iv) Whether the ld. Trial Court has erred in law in basing its judgment over all assumptions and supposition ?

(v) Whether the ld. Appellate Court has erred in denying interest in view of Order 34 Rule 11 CPC ?

(vi) Whether the approach of the Ld. Courts below in passing the impugned judgments and decrees is a result of mis-reading, non reading and mis-construing of the material evidence on the file and the pleadings ?

Learned counsel for the appellants has submitted that

an application for additional evidence was moved before the trial

Court. The said application was dismissed vide order dated 6.3.2013 (Annexure A-1) by the trial Court wrongly. The plaintiff has examined the expert to prove that the document in question was not executed by the plaintiff. The defendant appellant should have been allowed to examine the expert that the said writing bears the signatures of the plaintiff.

I have carefully considered the said submissions and have gone through the order dated 6.3.2013.

From the perusal of the said order, it is revealed that defendant has availed numerous opportunities to lead evidence and finally on 19.9.2011 the defendant gave an undertaking to the Court to complete the evidence by the next date, failing which the evidence would be deemed to have been closed. On 23.11.2011 the defendant has not produced evidence and as such the evidence of the defendant was closed and the case was fixed for arguments. The report of the expert will not improve the case of the defendant in any manner. The plaintiff has produced expert and the trial Court has observed that expert gives the opinion in favour of the party calling him. The onus lies very heavily upon the defendant to prove that the said writing was executed. There is concurrent finding recorded by both the Courts below that the defendant has failed to prove the fact that plaintiff has agreed to sell the land and has received Rs.2,30,000/-. That being a finding of fact cannot be re-agitated in the regular second appeal. There

misinterpreting the evidence on the record. The factum of mortgage has been admitted. It is also not disputed during the course of arguments that the period of mortgage has elapsed. The stand taken by the defendant that plaintiff has agreed to sell the property orally and has received the sale consideration did not find favour with both the Courts below. The reasoning given by both the Courts below is that even the statement of Buta Singh produced by the defendant does not prove the passing of consideration of Rs.2,30,000/-. The plaintiff has categorically denied the execution of the writing and has also produced the expert. The possession remains with the defendant and as such interest on the amount of mortgage has rightly been disallowed by the first appellate Court. None of the points raised in paragraph No.13 of the grounds of appeal is available, once it is proved that defendant remained in possession of the mortgaged property. So, in these circumstances, the defendant cannot claim interest.

The defendant has been able to linger the possession for years together. So, in these circumstances, I have no hesitation in holding that no question of law much less substantial question of law is involved in the present appeal. Consequently, the appeal stands dismissed being without any merit.

13.5.2015.
SN

(K.C.PURI)
JUDGE