

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

RSA No.2415 of 2015 (O&M)

Date of Decision: November 16, 2015

Piara Singh and others

.... Appellants

vs.

Kirpal Singh (deceased) through LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Atul Gaur, Advocate for the appellants.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 03.03.2015 passed by learned Addl. District Judge, Kaithal, affirming the judgment and decree dated 30.01.2012 passed by learned Addl. Civil Judge (Sr. Divn.), Guhla, vide which the suit of the plaintiff was decreed and a preliminary decree was passed to the effect that the plaintiffs are entitled for redemption of the mortgage of the suit land. The plaintiffs were directed to deposit the mortgage money as assessed by the Court within a period of two months. The defendants were also directed to hand over the vacant possession of the suit land to the plaintiff within two months of deposit of the mortgage money and were also directed to get their names deleted from the revenue record and incorporate

the names of the plaintiffs in the revenue record. The counter claim filed by the defendants was dismissed.

Brief facts of the case are that according to the claim of the plaintiffs, their predecessors had mortgaged the suit land with possession with the predecessor of the defendants. They claimed that their predecessors had paid the mortgaged money to the predecessor of the defendants and the possession was delivered back to them after receiving the mortgaged money. Since then, they are in possession of the suit land. However, the names of the defendants still stand in the revenue record as mortgagee. Therefore, a decree for redemption of mortgage of land along with declaration for deleting the names of the defendants from the revenue record as mortgagee was sought.

Before the lower court, the defendants had taken the plea that they have become the owner in possession of the suit land by prescription as the suit land was not redeemed within the prescribed period i.e. within the limitation and counter claim was also filed by the defendants seeking declaration to the effect that they have become the owners in possession of the land in dispute on the said basis.

The lower court came to the conclusion that the suit land was not redeemed and the possession is with the defendants. The lower court took into consideration the sale deed Ex.D1 produced by the defendants to assess the mortgaged money and accordingly, passed the preliminary decree. The findings were affirmed in appeal.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

The contention of learned counsel for the appellants is that the land was purchased from the predecessor of the plaintiffs, vide sale deed Ex.D1. However, the said sale deed was never pleaded in the written statement to claim the title over the suit land nor pleaded in the counter claim. Although, the lower court took into consideration the sale deed EX.D1 to evaluate the value of the suit land and the mortgaged money. Therefore, on this basis, the defendants could not claim that the said sale deed should be taken to be the basis for allowing their counter claim.

Learned counsel for the appellants has further argued that according to the plaintiffs, the mortgaged money was paid by their predecessors to the predecessor of the defendants and the suit land was redeemed and possession was also taken. However, the lower court has found that the possession is with the defendants. Therefore, the limitation started when the mortgaged money was paid.

A perusal of the impugned judgments shows that the lower court has held that the land was not redeemed; mortgaged money was not paid and the possession is with the defendants. Therefore, the authority of Hon'ble the Supreme Court delivered in ***“Singh Ram (D) through L.Rs. vs Sheo Ram and others” 2014 AIR (SC) 3447***, will not come to the rescue of the defendants. There are concurrent findings of both the courts below. The findings of the

facts have been recorded. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

November 16, 2015
sarita

(KULDIP SINGH)
JUDGE