

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

RSA No. 2912 of 2014 (O&M)

Date of decision: November 17, 2015

Kiran Lata

...Appellant

Versus

Ramesh Kumar and others

...Respondents

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

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. DK Bhatti, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The plaintiff's suit for declaration that she was the owner and that the order of eviction obtained against her were a nullity and a further relief of injunction against dispossession was dismissed. It is a matter of fact that pending the suit pursuant to the order of eviction, the defendants took possession of the property. The plaintiff's suit was against a person claiming to be a successor in interest of to Maya Dhari, who was admittedly the original owner of the property. The plaintiff's contention was that Maya Dhari had mortgaged the property in the year 1950 to one Maharaj Krishan and created a puisne mortgage in respect of the same property in the year 1953. The mortgagee rented the property to one Kanta Rani and subsequently sold the property describing himself to be the owner to Kanta Rani herself in the year 1988. Kanta Rani, in turn, had sold the property to

the plaintiff's husband Daljit Singh, who after purchase, was reported to have constructed a wall around the shop premises which had been originally mortgaged. The plaintiff's husband died in the year 1993 and municipal entry for the property was said to have been mutated in the name of the plaintiff.

2. A person claiming to be Maya Dhari's successor filed a case through power of a attorney for eviction against the present plaintiff as if she was a tenant and suppressing the fact of the earlier transaction of mortgage and order of eviction had been passed ex-parte in which the plaintiff and her own tenant were parties. Instead of preferring an appeal or taking steps to have the order of eviction set aside, the instant suit was filed. Both the trial court and the appellate court have dismissed the suit.

3. The plaintiff's action was unsupportable. A sale by Maharaj Krishan ought to be construed only as an assignment of mortgagee's interest, for mortgage, so long it was not redeemed, cannot be altered and the status of the mortgagee could not be enlarged as that of a owner. The sale by Maharaj Krishan to Kanta Rani could operate, therefore, as merely an assignment of mortgage and, if at all, the action for ejectment could have been resisted only on the ground that there was no jural relationship of landlord and tenant between Maya Dhari's successor and herself. If the plaintiff had allowed a decree for ejectment to be passed, there was no scope for assailing the decree as null and void. The plaintiff having suffered the decree without contest was barred by estoppel in raising a plea of title or right to hold back possession on a plea which ought to have been taken in defence to defeat a claim for ejectment brought at the instance of a person

claiming to be a successor in interest of Maya Dhari. Even a plea that the person who filed a case through a power of attorney could not have prosecuted the case after the death of the power of attorney cannot avail to the plaintiff on a plea that she was the owner of the property. The resistance to possession was possible only conceding to the right of Maya Dhari as the owner and making a plea that as a mortgagee, she was entitled to hold back possession. The plaintiff failed to take a valid defence that was possible and having suffered the ejectment order, could not have brought an independent suit for declaration.

4. Learned counsel would argue that since Maharaj Krishan had sold the property to the plaintiff's predecessor Kanta Rani, the purchase must be taken as adverse to the interest of the mortgagors and the property had been described adversely to the benefit of the plaintiff by virtue of Article 65 of the Limitation Act. This contention is erroneous and against the law laid down in Singh Ram Versus Sheo Ram 2014 (9) SCC 185 where the Court held that till the mortgage is redeemed or where there is no period prescribed for redemption, the right to redeem itself would not be extinguished. A mortgagee's possession for however long cannot be held adversely to the mortgagors' interest. The suit for declaration that the plaintiff was the owner was incompetent in the light of the law laid down by the Supreme Court in Singh Ram's case (supra).

5. The substantial question of law that arises is against the plaintiff. There is no merit in the appeal and it is dismissed.

November 17, 2015
prem

(K.KANNAN)
JUDGE

