

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3897 of 2014(O&M)
Date of decision : September 14, 2015

Birja Nand and others

..... Appellants

Versus

Hari Ram

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Robin Singh Hooda, Advocate
for the appellants.

Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate
for the respondent.

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?

Amit Rawal, J (oral).

The challenge in the present appeal, is to the impugned judgment and decree of both the courts below whereby the suit for possession by way of redemption of residential plot measuring 100 sq.yards (30'x30') situated in Harijan Shamlat Basti, Sham Nagar, Bhiwani Road, Jind has been decreed and against the aforementioned judgment and decree the lower appellate court modified the decree of the trial court by holding that the respondent-plaintiff is the owner of the property but would not be able to seek possession on the basis of title as mortgage deed was not registered. Therefore, both the courts below have committed

illegality and perversity. It has been proved on record that there was no oral, much less documentary evidence. Even otherwise the finding rendered by the appellate court has affected the rights of the appellant as they had become owner by efflux of time, in the absence of seeking redemption, within the period of limitation.

Mr. Amarjit Markan and Mr. Kanwal Goyal, learned counsels appearing on behalf of the respondent submits that the trial court had decreed the suit for redemption of the property in dispute , whereas, the appellate court modified the decree by observing that on the basis of title the plaintiff can seek the possession, but not on the basis of mortgage.

In support of his contentions he has relied upon the judgment of Hon'ble Supreme Court in **Kolathoor Variath and another Vs. Pairaprakottoh Cheriya Kumhahammad Haji 1974 AIR (SC) 689** to contend that the relief of possession cannot be denied for want of registration of mortgage deed and in the absence of registration of mortgage, in case title is proved, would be maintainable.

I have heard learned counsel for the parties and appraised the paper book.

The lower appellate court in my view has not committed any illegality and perversity in modifying the decree, entitling the plaintiff to seek possession by way of title, for, even if mortgage deed was not registered. The aforementioned reasoning of mine is supported by the ratio decidendi culled out in **Kolathoor Variath and another's case (supra)**. Paragraph 3 of the judgment is extracted hereinbelow:-

“Where a plaintiff cannot regain possession on the basis of an oral mortgage as it cannot be proved in a court of law for want of registration, it is open to him to recover possession on the strength of his title. (See Ma Kyi V. Maung Thon, AIR 1935 Rangoon 230 at p.232 (FB) and Hansia v. Bakhtawarmal, AIR 1958 Rajasthan 102 at p.106) Luckily for them the appellants did not base their suit solely on the oral mortgage. They also founded their claim on their title. Notice the relief A (1) in the plaint:

“That in case the Court is of opinion that the plaintiffs are not entitle to sue on the strength of mortgage as there is no mortgage deed in respect of the properties the plaintiffs are entitled to sue on the strength of the title of their Tavazhi and hence the Court may be pleased to decree the suit ordering the defendant to surrender the properties to the 1st plaintiff, with the past and future mesne profits relinquishing all the rights of the defendant.

In paragraph 1 of the plaint they set up their title to the disputed land. In paragraph 4 of his written statement the respondent says that he is not a mortgagee but a tenant and has Kudiyama rights in the land. So far from denying their title, he has impliedly admitted that they are the owners of the land. Again, he has not claimed ownership of the land by virtue of adverse possession. He simply claims permissive possession as a tenant under them. In the result, they are entitled to regain possession on the strength of their title unless he is held to be or to have become under any Kerala land reform measure a tenant.”

The appellant-defendant could not rebut the aforesaid ratio decidendi. In view of such observations and settled law, that for want of registration of mortgage deed still the respondent-plaintiff would be held entitled to seek possession on the basis of title.

I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 14, 2015
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