

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

**RSA No.678 of 1991 (O&M)
Date of Decision.05.08.2016**

Partap Singh and othersAppellants
Vs.
Tej Kaur and othersRespondents

Present: Mr. Arvinder Singh, Advocate
for the appellants.

Mr. H.S. Gill, Senior Advocate with
Ms. Meenu, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

C.M. No.13973-C of 2015

For the reasons stated in the application, order passed by this Court on 28.10.2015 is recalled and the appeal is restored to its original number.

Application is allowed.

RSA No.678 of 1991

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by the lower Appellate Court whereby the suit for possession by way of redemption of the mortgage deed dated 09.06.1961 Ex.P1 has been dismissed, owing to the fact that there was a clog on the redemption for a period of 59 years.

Mr. Arvinder Singh, learned counsel appearing on behalf of the appellants submits that vide mortgage deed dated 09.06.1961, Ex.P1, Santa

Singh mortgaged the land measuring 80 kanals for a sum of ₹23,000/- to the

defendants. Vide sale deed dated 26.07.1967, Ex.PW3/A, he sold the land measuring 55 kanals for a sum of ₹34,000/- and a sum of ₹7,000/- was adjusted in respect of the mortgage deed, aforementioned, in respect of land 9 kanals 6 marlas. Since the integrity of the mortgage had broken, the cause of action accrued to file the suit which was filed on 08.01.1985. The trial Court decreed the suit but the lower Appellate Court after examining the oral and documentary evidence reversed the finding by misreading and misconstrued the oral and documentary evidence, particularly, the aforementioned sale deed and mortgaged deed relied upon by the defendants i.e. Ex.D9 dated 11.06.1964, thus, urges this Court for setting aside the judgment and decree passed by the lower Appellate Court by formulating the following substantial questions of law:-

(i) Whether the clog of redemption would be pressed into service by the defendants in view of the integrity of the mortgage having been broken?

(ii) Whether the judgment and decree passed by the lower Appellate Court suffered from illegality and perversity?

Mr. H.S. Gill, Senior Advocate assisted by Ms. Meenu learned counsel for the respondents submits that the lower Appellate Court being the last court of fact and law examined the khasra numbers of the mortgage deed viz-a-viz the sale deed and found that khasra numbers mentioned in the sale deed were not part of the mortgage deed but were of another mortgage deed dated 11.06.1964, Ex.D9 and therefore, the integrity had not broken and in view of the clog, the suit was premature and thus, urges this Court for confirming the finding rendered by the lower Appellate Court by dismissing the appeal.

paper book. As per the contents of mortgage deed dated 09.06.1961, Ex.P1, in respect of land measuring 80 kanals, these are the khasra numbers.

“Khasra Nos.1729, 1730, 1734, 1735, 1736, 1753, 1754, 1755, 1756 and 1757”

Whereas as per the sale deed dated PW3/A, following are the khasra number:-

“Khasra Nos.1736/2, 1736/1”

In the mortgage deed dated 11.06.1964, Ex.D9, following are the khasra numbers:-

“Khasra Nos.1736/1, 1742”

Thus, in the sale deed dated 26.07.1967 vide which ₹7000/- was adjusted, khasra Nos.1736/2 and 1736/1 are mentioned whereas in the mortgage deed dated 11.06.1964, Ex.D9, the khasra numbers mentioned are 1736/1 and 1742 and therefore, the integrity of the mortgage had not broken. The clog on redemption is 59 years and still four years are left and therefore, the suit was premature and plaintiff could not have sought redemption of the mortgage deed.

For the foregoing reasons, I am of the view that that suit was rightly dismissed being premature as integrity of the mortgage deed had not broken. I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court, much less, there is no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 05, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No