

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

RSA No.4979 of 2011 (O&M)

Date of decision:19.08.2016

Smt. Urmila Bhargava and others

... Appellants

Vs.

Rajat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.K.Jindal, Senior Advocate with
Ms. Tanya Sirohi, Advocate
for the appellants.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for respondents No.52 to 56, 59, 62, 65, 66, 109 and
111 to 113.

Mr. Ajay Jain, Advocate
for respondents No.96 to 99.

AMIT RAWAL J.

C.M.No.14523-C-2011

For the reasons stated in the application, duly supported by an
affidavit, delay of 32 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

C.M.No.14524-C-2011

Deficiency of the Court fees, has been made good.

C.M. stands disposed of.

RSA No.4979 of 2011 (O&M)

Appellant-plaintiffs are in Regular Second Appeal against the
concurrent findings of facts and law, whereby, the claim in the suit seeking
redemption of the registered mortgaged deed dated 16.09.1922, has been

declined by both the Courts below.

Mr.V.K.Jindal, learned Senior Counsel assisted by Ms.Tanya Sirohi, Advocate appearing on behalf of the appellants submitted that appellant-plaintiffs along with their father Ram Chander had mortgaged the suit property, vide registered mortgaged deed dated 16.09.1922 (Ex.PW7/5). Vide registered sale deed dated 5/6.06.1924, he sold the entire property to Kushal Kishor, who bequeathed the property, vide Will dated 06.05.1952 to his daughter Vidhyawati, who further bequeathed the same, vide Will dated 29.03.1970 to Umesh and Basanti. The mortgagees were respondents, i.e., Makhan Lal, Bihari Lal, Janak Parsad, Banwari Lal, Girdari Lal and Sunder Lal. The factum of the mortgage was not denied by the defendants in the pleadings. The recital in the registered mortgage deed provided that appellant-plaintiffs along with Ram Chander were owners of the property, whereas, on the contrary, the defendants had taken a stand that it was a co-parcenary property and Ram Chander being *Karta*, had sold it for legal necessity. There was no need of challenging the aforementioned sale deed. The suit also reveals that plaintiffs were in dire need of money and therefore, the property was mortgaged. He further submitted that Ram Chander could not have sold the share of the appellant-plaintiffs, in view of the recital, *ibid*. The alleged sale deed/transfer was not for a consideration, much less, never acted upon. The mortgagees had been using the property for their personal use and releasing the huge amount of rent and on being asked deliberately failed to render the accounts of income. He further submitted that both the Courts below have heavily relied upon the judgment and decree dated 22.04.1975 (Ex.DW16/1) titled as Smt. Basant Devi and

others vs. Girdhari Lal and others. The suit was for redemption of the mortgage. It was further submitted that the aforementioned persons did not have any right and title in the property, for, on the basis of the Will dated 29.03.1970 executed by Vidyawati. Umesh and Basanti Devi had sold the land to the tenants, vide sale deeds dated 29.09.1982 (Ex.D1) and 30.09.1982 (Ex.DW4/1). The rights of the co-shares cannot be taken away in the manner and mode as has been done by Ram Chander and thus, urges this Court for setting aside the concurrent findings of facts, for, the Courts below have not taken into consideration the aforementioned aspect, in essence, title of the appellants was never denied by the defendants.

Per contra, Mr. Sumeet Mahajan, learned Senior Counsel assisted by Mr. Amit Kohar, Advocate appearing on behalf of respondents No.52 to 56, 59, 62, 65, 66, 109 and 111 to 113 and Mr. Ajay Jain, learned counsel for respondent-defendants No.96 to 99 submitted that the appellant-plaintiffs have failed to prove any document of title preceding to the year 1922. In fact, it was ancestral property and Ram Chander was Karta, who sold it for necessity as the factum of dire need of money is reflected from the plaint. It is settled law that karta can always sell the ancestral property/land for legal necessity. They further submitted that suit *ex facie* was not maintainable as the sale deed dated 5-6/6.1924 has not been challenged owing to the rigours of Article 59 of Limitation Act as the suit was filed on 01.01.1969. As per the case set up by the plaintiffs, Murari Lal and Raja Ram, sons of Ram Chander were minors. If at all, they had a grievance, they attained the majority in the year 1940 and no explanation has come forth in not challenging the sale deed till 1969. Whereas, on the

contrary, even the judgment and decree dated 22.04.1975 the amendment has also not been sought for, wherein, the suit for redemption titled as Smt. Basant Devi and others vs. Girdhari Lal and others, had been decreed and on the basis of the decree, the sale deeds have been executed. PW7- plaintiff No.7 had admitted in cross examination with regard to factum that Ram Chander was *Karta* and all the other four mortgagors had not purchased any property from anyone. They further submitted that the minors did not have any income and thus, urge this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr.Jindal, for, in the aforementioned civil suit, resulting into passing of the judgment and decree, appellant-plaintiffs had moved an application under Order 1 Rule 10 of Code of Civil Procedure (hereinafter referred to as “CPC”) for impleading as party in the aforementioned suit. The said application was dismissed. There is no force in the submission of Mr. Jindal that there was no need of challenging the sale deed as ownership is reflected or proved as per the recital in the mortgage deed. The question posed is as to whether by giving a recital of ownership in the mortgage deed, can the plaintiffs be prevented or said to have discharged such onus for claiming the redemption, the answer is in negative, for, they were to prove on record by proving any revenue record/title preceding to year 1922 to show that they were owners of the property. By merely branding oneself as a co-owner or owner in the mortgage deed, would not clothe the person status of the ownership as this

proposition also applies vis-a-vis relationship of landlord and tenant as landlord may not be owner. The onus was upon the plaintiffs to prove their ownership to succeed in a suit for redemption *vis-a-vis* their share against the mortgagees. As noticed above, the registered sale deed dated 5-6/6.1924 carries a presumption of truth as the same has not been rebutted. The property has exchanged in many hands, by virtue of the facts/Will, noticed above. Even PW7-plaintiff No.7 also admitted that Ram Chander was *Karta* of the property and alleged mortgaged property had not been purchased from anyone. On going through para no.5 of the plaint, there is a specific pleading qua the sale deed yet no explanation has come forth in not challenging the same as late as till 1969, the suit aforementioned, was filed. The onus always lies upon the plaintiffs, who cannot take the benefit of the pleadings in the written statement. PW7-plaintiff No.7 also admitted in cross-examination, that firm M/s Gopal Sahai Jagan Nath was being run by Ram Chander. There is already a judgment and decree in favour of Umesh and Basanti Devi, who had got the ownership of the property by virtue of Will dated 29.03.1970 and further sold it, vide sale deeds dated 29.09.1982 (Ex.D1) and 30.09.1982 (Ex.DW4/1). The suit kept on pending from 1969 till 2006 and no amendment has been sought. Even no explanation has come forth on behalf of Raja Ram and Murari Lal in not filing the suit after attaining the age of majority in the year 1940.

There is another aspect of the matter. The plaintiffs had moved an application under Order 1 Rule 10 CPC for impleading as party in the suit aforementioned which was dismissed but the said order also attained finality.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 19th, 2016
savita

Whether Speaking/Non-Speaking	Yes/No
Whether Reportable	Yes/No