

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

RSA No. 4700 of 2012 (O&M)
DATE OF DECISION:18.11.2016

Krishan Kumar

...Appellant

Vs.

Hari Chand and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gurpreet Singh, Advocate
for the appellant.

Mr. Arun Kumar Singal, Advocate
for respondents No.1 to 20.

AMIT RAWAL, J.(ORAL)

The appellant-plaintiff is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit seeking declaration that he has become owner by efflux of time in respect of oral mortgage, has been dismissed.

Mr. Gurpreet Singh, learned counsel appearing on behalf the appellant-plaintiff submits that there is categoric admission of the defendants qua the mortgage therefore trial Court rightly decreed the suit granting declaration to the extent of 60%, however, lower appellate court dismissed the suit in toto and the cross-objection of the defendant in appeal has been accepted. He submits that the oral mortgage cannot be looked into and, therefore, the status of the appellant-plaintiff would be of a trespassers, therefore, the trial Court rightly granted the declaration on the basis of long and uninterrupted possession.

Mr. Arun Kumar Singal, learned counsel appearing for the

respondent(s)-defendant(s) submits that in view of ratio decidendi culled out by the Hon'ble Supreme Court in **Singh Ram (D) through L.Rs. Vs. Sheo Ram and others, 2014(4) R.C.R(Civil) 179**, upholding the ratio decidendi culled out by the Full Bench of this Court, no suit of such nature seeking declaration of having becoming owner by way of efflux of time is maintainable.

I have heard learned counsel for the parties, and appraised the paper book and also gone through the record very carefully.

I am in agreement with the submissions of Mr. Arun Kumar Singal, that such type of suits as per the ratio decidendi culled out in **Singh Ram's case (Supra)** are not maintainable.

Even the alternative argument cannot be accepted as such plea can be only taken in defence and not in affirmation. The Lower Appellate Court had rightly dismissed the appeal and I also do not intend to differ with the the findings rendered by the Lower Appellate Court.

In view of the observations given here-in-above, no ground for interference is made out.

Accordingly, present appeal is dismissed.

18.11.2016
rimpal/smriti

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No