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

R.S.A No.3863 of 2015(O&M)
Date of decision :10.08.2016

Ghanshayam Dass

...... Appellant

Versus

Sant Lal (deceased) through his L.Rs.

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Dhirinder Chopra, Advocate
for the applicant-appellant.

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<u>DARSHAN SINGH,J</u>

<u>CM No. 9482-C of 2015</u>

This application has been filed under Order XXII Rules 3 and 11 read with Section 151 of the Code of Civil Procedure, 1908 for impleading the legal representatives of Sant Lal-plaintiff/respondent.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and persons mentioned in para no.3 of the application are hereby impleaded as legal representatives of Sant Lal-plaintiff.

<u>R.S.A No. 3863 of 2015(O&M)</u>

The present appeal has been preferred against the judgment and decree dated 17.12.2014 passed by learned Additional District Judge,

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Narnaul, whereby the appeal preferred by appellant-defendant against the judgment and decree dated 09.09.2011 passed by the learned Civil Judge (Jr. Division), Mahendergarh, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Deceased-plaintiff Sant Lal had filed the suit for possession by way of redemption of the mortgage with respect to the dilapidated residential site as detailed and described in the head note of the plaint situated in Mohalla Baluna, Mahendergarh, Tehsil and District Mahendergarh.

4. As per the averments in the plaint, the plaintiff was owner in possession of the aforesaid property. He mortgaged the suit property in favour of defendant for a total sum of Rs. 1000/- vide mortgage deed No. 1315 dated 01.01.1981. The possession of the suit property was delivered to the defendant at the time of the execution of the mortgage deed. Since then, he is in possession of the suit property as mortgagee. At the time of mortgage, it was agreed that mortgagee shall continue to remain in possession in lieu of interest on the mortgage money and plaintiff shall be entitled to get the mortgage redeemed at any time on making the payment of mortgage money i.e. Rs. 1000/- to the defendant. The plaintiff had issued the notice to the defendant through his counsel to handover the possession of the suit property on receipt of the mortgage money. But, of no response. Hence the suit.

5. Appellant-defendant contested the suit on the grounds *inter alia* that the suit property was mortgaged with possession for a period of

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30 years. Since the time of mortgage has not expired, so the question of payment of mortgage money and redemption of the mortgage does not arise. All other averments raised in the plaint were controverted.

6. Plaintiff also filed replication to the aforesaid written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

> 1. Whether the plaintiff is entitled for possession of the shop in dispute after redeeming the property in dispute as alleged in the plaint?OPP
> 2. Whether the plaintiff has no *locus standi* to file the suit?OPD
> 3. Whether the plaintiff has no cause of action to file the suit?OPD
> 4. Whether the suit is not maintainable in the present form?OPD
> 5. Whether the suit is not maintainable in the present form?OPD
> 6. Whether the suit is bad for want of proper court fees?OPD
> 7. Whether the plaintiff has not issued any notice? If so to what effect?OPD
> 8. Whether the suit is liable to be dismissed with special costs? OPD
> 9. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff. Plaintiff was directed to deposit the mortgage money within period of three months. On doing so, the mortgage shall stand redeemed and defendants shall deliver the original documents and handover the vacant possession of the suit property to the plaintiff.

8. Aggrieved with the aforesaid judgment and decree, the appellant-defendant preferred the appeal. The same has also been dismissed by the learned First Appellate Court vide impugned judgment and decree dated 17.12.2014. Hence, this Regular Second Appeal.

9. I have heard Mr. Dhirinder Chopra, Advocate, learned counsel for the appellant and have meticulously gone through the paper

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book.

10. Initiating the arguments, learned counsel for the appellant contended that the mortgage was for a period of 30 years. The suit filed by the plaintiff was premature as the period of 30 years has not yet expired. So, the suit filed by the plaintiff for redemption of mortgage was not maintainable.

11. I have duly considered the aforesaid contentions.

12. This fact is not disputed between the parties that the suit property was mortgaged with possession by the plaintiff-respondent with appellant-defendant vide registered mortgage deed dated 02.01.1981 Ex.P-1. The factum regarding the mortgage has been admitted in the written statement and also by the appellant when he stepped into the witness box as DW-1. There is also no dispute about the mortgage money. All the terms and conditions of the mortgage has been reduced into writing by way of execution of the mortgage dated 02.01.1981. The learned trial Court has rightly mentioned that in view of Sections 91 and 92 of the Indian Evidence Act, the oral evidence is not admissible to vary the terms incorporated in the registered mortgage deed executed between the parties. As per the mortgage deed Ex.P-1, the plaintiff had mortgaged the suit property with the defendant along with possession for a total consideration of Rs. 1000/-. The defendant shall remain in possession of the suit property in view of the interest on the sum. It was also specifically agreed in the mortgage deed that plaintiff shall at liberty to get the suit property redeemed at any time on making the payment of mortgage money i.e. Rs. 1000/- to the defendant. In the mortgage deed no

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specific period of mortgage has been mentioned. The plea raised by the appellant-defendant that the mortgage was for a period of 30 years is totally belied from the recitals of the mortgage deed dated 02.01.1981 which does not prescribed any time limit for redemption of the mortgage. It is usufructuary mortgage as the appellant-defendant has been allowed to enjoy the possession of the property in lieu of the interest on the mortgage amount. So, the plaintiff-respondent was legally entitled to redeem the suit property at any time on payment of the mortgage money and no clog can be put on his right of redemption. Thus, the contentions raised by learned counsel for the appellant are without any substance.

13. No other point was raised before this Court.

14. Thus, in view of my aforesaid discussion, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 10, 2016 **(DARSHAN SINGH)**
s.khan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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