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

RSA No. 4798 of 2013 (O&M)

Date of decision: 17.11.2017

Bhagat Singh and others

.....Appellants

versus

Yad Ram and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Jagdish Manchanda, Advocate
for the appellants.

Rajbir Sehrawat, J.(Oral)

C.M. No. 12926-C of 2013

This is an application for condonation of delay of 251 days in re-filing the appeal.

For the reasons mentioned in the application, the delay of 251 days in re-filing the appeal is condoned.

Civil Misc. application stands allowed.

C.M. No. 12927-C of 2013

This is an application for permitting to make the deficiency of the court fees good.

Learned counsel for the appellants states that the requisite court fees has since been affixed.

For the reasons mentioned in the application, the same is allowed and the necessary permission to affix the court fees is granted.

C.M. No. 12928-C of 2013

This is an application for producing additional evidence in this

appeal.

Since the appeal itself is being dismissed as hereunder, the application for additional evidence in this appeal also stands dismissed.

Main appeal

1. This is the second appeal filed by the plaintiffs against the concurrent judgments and decree passed by the Courts below; whereby the suit of the plaintiffs seeking declaration to the effect that they are mortgagees-in-possession of the suit land; was dismissed by both the Courts below.
2. For convenience, the parties would be referred herein as the plaintiffs and defendants as they were described in the original suit.
3. The brief facts of the case are that the plaintiffs filed a suit claiming that the suit land belongs to Shamlat Patti Thakuran in the village. The total suit land measuring 39 Kanals 2 marlas, as described in the plaint, was with one Bhawar Singh; who was one of the proprietors in the Shamlat Patti. He mortgaged the suit property in favour of Karan Singh and Chandan Singh about 100 years ago. The plaintiffs claimed the descent from these ancestors and claimed that they are now the mortgagee in possession of the suit land, having succeeded the original mortgagee. It was claimed that the plaintiffs have been in continuing physical possession of the suit property; as is reflected in the revenue record, i.e., Jamabandi for the year 1943-44; showing above said Karan Singh and Chandan Singh as mortgagees in possession of the suit property. The plaintiffs further pleaded that subsequently, the fathers of the defendants namely Hirdey Ram, Amilal and Yadram had got changed the entries in the revenue records in collusion with the revenue authorities, therefore, since the jamabandi for the year 1959-60, defendants have been wrongly shown to be in possession of the suit property. The plaintiffs further

claimed that the suit property has never been redeemed by the Shamlat Phatti Thakuran and the possession has never been relinquished by the plaintiffs.

4. On notice, the defendants appeared and filed their written statement.

Besides taking routine preliminary objections, the defendants have straightway denied the possession of the plaintiffs over the suit property; as well as the status of the plaintiffs as mortgagees. They have specifically denied that the proprietor, Banwara Singh ever mortgaged the suit property to the ancestors of the plaintiffs. It was claimed by the defendants that the fathers of the defendants have been in possession of the suit property as *gair marusi* tenants. Therefore, the present respondents are recorded as continuous *gair marusi* tenants in the revenue records and they are in actual possession over the suit property.

5. Parties led their respective evidence.

6. After hearing the parties, the trial Court dismissed the suit filed by the plaintiffs. The trial Court recorded a finding that the plaintiffs have failed to prove any transaction of mortgage by proving any mortgage deed or by examining any member of Patti Thakuran to substantiate the transaction of the mortgage. The trial Court further held that one of the plaintiffs, who appeared as witness, has also denied to have visited the suit property from the past 5-6 years. Therefore, it was held by the trial Court that the mortgage in favour of the plaintiffs has not been proved. So far as the possession is concerned, even on this point, the trial Court held that the defendants have been recorded in continuous possession of the suit property; as *gair marusi* tenants. Therefore, the trial Court recorded that neither the plaintiffs have proved their status as mortgagee nor have they

proved their possession. Hence, the suit was dismissed.

7. Aggrieved against the judgment and decree of trial Court, the plaintiffs filed an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the plaintiffs. While dismissing the appeal filed by the plaintiffs, the lower Appellate Court also recorded that no document/transaction of mortgage has been proved by the plaintiffs. The lower Appellate Court also held that no member of Phatti Thakuran has been examined to prove the mortgage in favour of the predecessor-in-interest of the plaintiffs. Still further, it was recorded by the lower Appellate Court that the possession of the suit property is also reflected to be in favour of the defendants right from 1959 till 1999. Hence, the lower Appellate Court also held that plaintiffs failed to prove; either their status as mortgagee or their possession. Still further, the lower Appellate Court held that otherwise also, the claim of the plaintiffs is barred by limitation. The Court held that since 1959 the revenue entries are showing that the defendants are in possession of the suit property as *gair marusi*. These were required to be challenged by the plaintiffs within limitation. However, no proceedings were ever taken to challenge the proceedings. Therefore, the appeal was dismissed by upholding the findings of the trial Court.

8. Having heard learned counsel for the appellants, this Court also does not find any illegality or perversity in the findings recorded by the Courts below. The suit filed by the plaintiffs was for declaring them as mortgagee in possession of the suit property. Therefore, the plaintiffs were required to prove the transaction of mortgage by leading positive evidence; may be the documentary or the oral evidence. However, neither any document of mortgage has been proved on record nor any oral evidence has been led by them by examining any mortgager or successor-

- in-interest of mortgager as a witness. Hence, the plaintiffs have failed to prove the transaction of mortgage in their favour.
9. So far as, the possession is concerned; even that has not been proved to be in favour of the plaintiffs. The Courts below have rightly recorded a finding that the plaintiffs themselves have admitted to be not in possession by admitting that the plaintiffs have not visited the suit property for the past 5-6 years. On the other hand, DW1- Jailal and DW2-Kishori Lal; who stepped into the witness box on behalf of the defendants, have categorically stated that they are in possession of the suit property as *gair marusi* tenants. Their deposition are also supported by the revenue records which shows that right from 1959, the defendants or their predecessor-in-interest have been in possession of the suit property.
10. In view of the above, this Court does not find any perversity in the findings recorded by the Courts below. The present appeal is dismissed, being devoid of any merits.

17th November, 2017

shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes