

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

RSA 2688 of 2016 (O&M)

Date of Decision: July 13, 2017

Mohd. Yunus (deceased) th. his LR and others

.....Appellants

Vs.

Subhan Khan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Harkesh Manuja, Advocate for the appellants.

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M.M.S. BEDI, J. (ORAL)

Suit of the plaintiff- respondents for redemption of mortgage dated May 20, 1980 has been decreed by the Courts below.

Counsel for the defendant/ appellants has vehemently contended that the plaintiff- respondents had earlier filed a similar suit which was decided on the basis of compromise Ex. D1, by Sub Judge Ist Class, Palwal on December 17, 1995. The issue of redemption could not have been re-opened by the plaintiff- respondents. The remedy available to the plaintiff/ respondents was to execute the compromise decree or to seek the revival of the suit which was disposed of on the basis of the compromise. The said contention of the defendant- appellants has been considered and a decision has been arrived at that the suit of the plaintiff- respondents was not

barred by principle of res judicata as a suit decided on the basis of compromise cannot be said to have been decided on merits and that the essential ingredients of the principle of res-judicata have not been established by the defendant- appellants. Besides this the admission of defendant DW1 Mohd. Sadiq was taken into consideration as he had stated in his cross-examination that the property in dispute has already been redeemed in favour of the plaintiff- respondents and the possession stands already delivered.

In view of the above said circumstances, the findings of fact arrived at by the trial Court pertaining to the legal issue regarding res judicata holding that the suit of the plaintiff-respondents was not barred by principle of res-judicata do not appear to suffer from any perversity. I am of the considered opinion that once suit had been decreed on the basis of compromise and in case of not honouring the compromise, it was open to the plaintiff- respondents either to revive the earlier suit or to execute the compromise decree or to get the matter adjudicated upon by filing a suit for redemption afresh.

In view of the above discussion, there does not appear to be any ground to interfere in the judgments and decree passed by the Courts below on re-appreciation of evidence.

At this stage, counsel for the appellants places reliance on the judgments of **Dharam Singh Vs. Gurdev Singh and others**, 2009 (4) PLR 689 and **Rajender and others Vs. Smt. Badama and others**, 2010 (6) RCR (Civil) 1023, wherein it has been held that the party seeking to challenge the

compromise decree is not to file a separate suit but the remedy to challenge the same would be to move the same Court.

There is no dispute regarding the legal proposition discussed in the above said judgments. But in the present case it is not the compromise decree which was challenged by the plaintiff- respondents, but on account of compromise having not been honoured by the defendant- petitioners, the plaintiff- respondents had opted to file a fresh suit specifically mentioning the compromise which had been arrived at between the parties.

In view of the above circumstances, no ground is made out to interfere in the well reasoned judgments passed by the Courts below.

Dismissed.

July 13, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.