IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.4081 of 2016 (O&M)
Date of Decision: 11.10.2017

Satpal now deceased through his LRs.

... Appellants

Versus

Harbans

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ram Kumar Chauhan, Advocate, for the Appellants.

ANIL KSHETARPAL, J. (ORAL).

CM 12302-C of 2017

The application is allowed. The date of hearing is preponed to today.

CM 10518-C of 2017

The application is allowed, subject to all just exceptions. Legal heirs mentioned in para 2 of the application are brought on record for the purpose of prosecuting the present appeal only.

CM 10519-C of 2017

For the reasons stated in the application, delay of 434 days' in refiling the present appeal is condoned.

Main Case.

The defendant/appellants are is in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff had filed a suit for recovery of the mortgage amount alongwith interest, by sale of the mortgaged property. It was pleaded that the defendant had mortgaged 7 Kanal and 5 Marla of land in favour of the plaintiff on 04.06.1998. It was provided in the mortgage deed that the defendant would keep paying interest/profit @ 3% per month for a period of five years.

The defendant contested the suit. It was pleaded that the plaintiff is an unlicensed and unauthorised moneylender. It was further pleaded that the defendant had taken a loan of Rs.2,00,000/- from the plaintiff and mortgage deed was registered by misrepresentation.

Both the Courts after appreciating the evidence available on the file decreed the suit filed by the plaintiff. Learned trial Court directed that the plaintiff would be entitled to recover principal amount along with interest @ of 6% on the principal amount from the date of execution of the mortgage deed till the filing of the suit and thereafter @ 8% per annum on the principal amount till the passing of the decree and 6% per annum future interest on the principal amount only.

I have heard the learned counsel for the appellants at length and with his able assistance gone through the judgements passed by the Courts below.

Learned counsel for the appellants has produced before me a copy of the mortgage deed dated 04.06.1998. The mortgage deed is duly registered. Photographs of the parties have been pasted on the mortgage deed. Both the parties have signed the mortgage deed. Sat Pal/appellant had even signed the mortgage deed at the place where endorsement was written by the Sub Registrar in token of having registered the document.

Learned counsel for the appellants has vehemently argued that the plaintiff had claimed interest only for a period of three years and, therefore, the Court was wrong in awarding interest from the date of mortgage deed. The plaintiff had claimed interest @ 2% per month, which comes to 24% per annum. The money was paid to the appellant on the date mortgage deed was executed i.e. 04.06.1998. The Court has already reduced the amount of interest substantially and only 6% per annum simple interest has been awarded.

Learned counsel for the appellants has further argued that there is misreading of evidence as it was the case of the defendant that he had borrowed a sum of Rs.2,00,000/-.

I have examined the argument. However, in the presence of a registered document, which clearly records that Rs.3,92,000/- has been paid, the argument of the learned counsel for the appellants cannot be accepted.

For the reasons recorded above and for the reasons given by the Courts below, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
11.10.2017 **JUDGE**
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No