

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

**RSA No.4463 of 2016 (O&M)
Date of Order: 16.12.2017**

Roop Singh and others

..Appellants

Versus

Parsandi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jindal, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

Defendants are in regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiffs had filed a suit for possession by way of redemption of mortgage.

Both the courts after appreciating the evidence available on the file, decreed the suit and ordered relief of possession on redemption of the mortgage.

Learned counsel for the appellants has submitted that the learned trial court nowhere ordered refund of the mortgage amount.

In the considered opinion of this Court, once redemption of mortgage has been ordered that would obviously mean that the amount of mortgage has to be refunded. The amount of mortgage is Rs.16 only.

Next argument of learned counsel for the appellants is that the plaintiffs could not have filed a suit for possession by way of redemption of mortgage before the Civil Court without filing a petition under Section 4 of

the Redemption of Mortgages (Punjab) Act), 1913 as applicable to the State of Haryana (hereinafter referred to as 'the Act').

I have requested the learned counsel for the appellants to point out if such argument was ever pressed/raised before the courts below, learned counsel has admitted that such submission was not raised before the Courts below.

Still further a reading of the provisions of the Act would show that the jurisdiction of the civil court to entertain a petition for possession by way of redemption to mortgage is not barred. Rather it is clear from the reading of the provisions of the Act that proceedings under the Redemption of Mortgages (Punjab) Act, 1913 are summary in nature and Collector can relegate the parties to other proceedings if the Collector is of the view that some complicated questions are involved. In such circumstances, particularly when the appellants have not taken this objection before the courts below, this court does not find that the appellants can be permitted to raise this point for the first time in this Court.

Learned counsel for the appellants has further pointed out to the observations of the first appellate court which are extracted as under:-

“The defendants have not denied owners of the vendors of the plaintiffs.”

He has submitted that the defendants had denied the owners of the vendors.

The plaintiffs have proved their ownership by producing sale deed Ex.P4. Hence, even if these observations made by the first appellate court are not correct that would not improve the case of the plaintiffs.

Learned counsel has further referred to an order passed by this

Court issuing notice of motion on this ground.

In the considered opinion of this Court once the provisions of the Act are clear and jurisdiction of the civil court is not barred, this Court does not find any good ground to interfere with the concurrent findings of fact.

The regular second appeal is dismissed.

December 16, 2017
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(ANIL KSHETARPAL)
JUDGE

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