IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121 **RSA No.1466 of 2017 (O&M)**
Date of decision: 17.04.2017

Amarjit Singh ....Appellant

Versus

Kulwant Singh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.C.L.Sharma, Advocate, for the appellant.

G.S. SANDHAWALIA, J. (Oral)

The present appeal has been filed against the concurrent findings recorded by the Courts below, whereby the suit of the appellant had been dismissed and one of the grounds was that there is concealment regarding the relief which was sought from interfering and taking forcible possession of the land by the respondent-Bank.

The plea of the plaintiff-appellant was that the private defendant-respondent, who are the nephew/brother, had obtained some loan by mortgaging the land owned by the plaintiff and therefore, the Bank-respondent No.3 wanted to grab the land.

The Bank, in its written statement, had taken the plea that respondent No.1, who is the nephew of the plaintiff, had taken the loan of Rs.98,000/- for dairy farming and the plaintiff had mortgaged the land measuring 4 kanals 4 marlas, vide mortgage deed dated 22.04.2003. The loan was to be paid in 5 years but the said loanee failed to repay the loan amount and an amount of Rs.1,23,050/- had fallen due. Mutation of the mortgaged property had been entered and sanctioned in favour of the Bank in the revenue record and the Bank had every right to sell the property.

Keeping in view the above pleadings, it was noticed that the appellant was a co-sharer and the mortgage deed was a registered document. The property was still joint and not partitioned and therefore, on account of the concealment of facts, the suit was dismissed by the Civil Judge (Jr.Divn.), Kapurthala on 07.07.2014. The appeal was also dismissed on 15.12.2016, by noticing that the loan has not been paid and the mortgage deed (Ex.DW3/B), mutation (Ex.DW3/C), the loan ledger (Ex.DW3/F) and the balance certificate (Ex.DW3/G), which had been brought on record, were taken into consideration. The plea taken that respondent No.3, in connivance with the Halqa Patwari, had cheated the appellant, was, accordingly, held not to be sustainable as the mortgage deed showed the thumb impression of the appellant and it was held that the appellant was now evading the liability, as such.

The argument raised by the counsel that the amount should be recovered firstly from the loanee, is without any basis as there was no such pleading on that aspect and neither any argument had been raised before the Courts below. It is settled principle that in regular second appeal, a new argument cannot be raised which has neither been pleaded or proved.

Keeping in view the above factual finding having been recorded that the loan had been taken by the close relations of the appellant and he himself had stood as a guarantor and mortgaged the joint property, the suit for permanent injunction, in such circumstances, restraining the Bank from recovering its dues and proceeding in accordance with law, has rightly been dismissed.

The Courts below have found that there is a concealment, as such, regarding the necessary facts. No question of law, as such, arises in the present appeal which would warrant consideration by this Court, in view of the factual findings recorded by the Courts below. Accordingly, finding no merit in the present appeal, the same is, hereby dismissed in limine.

17.04.2017 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No