

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

RSA No.5908 of 2014 (O&M)

Date of Decision: 25.07.2017

Nirmaljit Singh

.....Appellant

Vs.

Kartar Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Vishal Sodhi, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

CM No.14047-C of 2014

For the reasons stated in the application, delay of 75 days in
refiling the appeal is condoned.

Application stands disposed of.

RSA No.5908 of 2014

The appellant/defendant has come up in second appeal against
the judgment of the learned appellate Court dated 17.04.2014 whereby, the
judgment of learned trial Court decreed the suit of the plaintiff with costs
for possession of redemption of the land measuring 4 Kanals 6 Marlas on
depositing of Rs.18,000/- in favour of appellant-Nirmaljit Singh.

The brief facts of the case are that plaintiff/respondent Kartar
Singh was the owner of land measuring 4 Kanals 6 Marlas fully described in
the plaint as he had purchased the suit property on 25.11.1991 from one
Jarnail Singh son of Atma Singh. The defendant had got no right, title or
interest in the suit land measuring 3 Kanals 8 Marlas as per the findings of
the Civil Court decree dated 05.05.1998 passed by Civil Judge (Jr.Divn.),

Gurdaspur dated 10.06.1999 and further the findings of this Court dated 25.10.2001. The sale deed dated 25.11.1991 was held to be valid declaring the plaintiff as true owner and refused the claim of Gurbax Singh another purchaser of the suit property.

The defendant-Nirmaljit Singh was the mortgagee of the suit land for Rs.18,000/- as per the sale deed dated 25.11.1991 and bound to pay Rs.18,000/- as Amanat to defendant. The case of the defendant was that he stepped into the shoes of said Gurbax Singh who allegedly became owner on the basis of the sale deed which has been held invalid and illegal. As per judgments Ex.P-6 and Ex-P-7, sale deed in favour of Gurbax Singh was not held valid by the said learned Courts. So, it was held that plaintiff-Kartar Singh was owner of the suit land by virtue of sale deed Ex.P-8 and the defendant was mortgagee of the suit land for Rs.18,000/- as per mortgage deed Ex.P-2 and the plaintiff was entitled to the possession by redemption of the suit land. Keeping in view the above facts, both the Court had decreed the suit in favour of the plaintiff-Kartar Singh.

The arguments of the counsel for the appellant is that the trial Court has failed to consider that the alleged mortgaged deed had not been proved by the plaintiff as the plaintiff had failed to examine the attesting witness of the same.

In response to this query, plaintiff had examined PW-2 Narinder Dev, Registration Clerk, Sub-Registrar Office, Batala, who claimed that he had brought the summoned record pertaining to the mortgage deed executed by Jarnail Singh for the land measuring 11 Kanals 8 marlas in favour of Nirmaljit Singh on 14.06.1979 and he adduced into evidence certified copy of mortgaged deed as Ex.P-2. He further examined PW-3 Ram Chander,

Wasika Nawis who claimed that he scribed the mortgage deed dated 14.06.1979 executed by Jarnail Singh in favour of Nirmaljit Singh and had brought the summoned record pertaining to the said mortgage deed. He further claimed that he read over the contents of mortgage deed to the parties as well as to the witnesses and thereafter Jarnail Singh thumb marked it and Hardip Singh appended his signatures on behalf of Nirmaljit Singh. The Swaran Singh and Joga Singh also signed the mortgaged deed copy of which was Ex.P-2. He further deposed that he entered the contents of mortgage deed in his register and adduced into evidence photocopy of the extract of relevant entry of his register bearing No.343 dated 14.05.1979 as Ex.P-3. A perusal of the judgments Ex-6 and Ex.P-7 also reveals that plaintiff-Kartar Singh was owner of the suit land by virtue of sale deed Ex.P-8 and the defendant was mortgagee of the suit land for Rs.18,000/- as per mortgage deed Ex.P-2.

Learned counsel for the appellant had contended that the case of the plaintiff was not proved as the plaintiff had not appeared in the witness box in support of his pleadings to make statement on oath.

In order to prove its case, the evidence led by the plaintiff, it had been established on record that plaintiff was working in USA, so he instituted the suit through his power of attorney Didar Singh who was his brother-in-law. Lateron, the plaintiff executed another power of attorney in favour of his father Gurbachan Singh and the plaintiff had the right to change his power of attorney for the proper pursuing his case. Gurbachan Singh attorney of the plaintiff himself stepped into the witness box as PW-1 and repeated his entire case on solemn affirmation taking it in verbatim from

power of attorney as Ex.P-1.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference and the appeal of the defendant was rightly dismissed by the appellate Court. Hence the present second appeal stands dismissed.

(RITU BAHRI)
JUDGE

25.07.2017
anil

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