

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4281 of 2017 (O&M)

Date of decision: 08.09.2017

Sohan Lal

..... Appellant

Versus

Nahar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anil Kumar Garg, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-11113-C-2017

Application is allowed. Deficiency in the Court fee has been made good. Delay if any is condoned.

RSA No.4281 of 2017

Defendant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit for possession by way of redemption of one shop situated near Government school Jabbo Majra, Tehsil, Malerkotla.

It was the case of the plaintiff that he is owner of the property and he had agreed to mortgage the shop in favour of the defendant vide agreement dated 13.09.2002. Defendant contested the suit and did not dispute the ownership of the plaintiff. However, he claimed that the suit is barred under Order 2 Rule 2, CPC. He further claimed that the plaintiff is estopped from filing the present suit.

Both the Courts after examining the evidence available on the file recorded a concurrent finding of fact that the plaintiff being owner of the property is entitled to possession.

Learned counsel for the appellant has submitted that earlier plaintiff had filed a suit challenging the agreement to mortgage dated 13.09.2002 and therefore, the plaintiff is debarred from claiming the possession of the property under the aforesaid agreement to mortgage. He has further submitted that once the plaintiff had filed a suit challenging the aforesaid document, therefore, the plaintiff is estopped from claiming possession of the property under that very agreement.

Learned counsel for the appellant has further submitted that sons of the plaintiff had also filed a suit against the defendant-appellant on the ground that defendant-appellant is a tenant. That suit was also dismissed on the ground that defendant-appellant is not proved to be a tenant.

I have considered the submissions of learned counsel for the appellant. The earlier suit filed by the plaintiff was for challenging the agreement to mortgage dated 13.09.2002. The cause of action for filing the aforesaid suit was entirely different. In the present case, the cause of action accrued in favour of the plaintiff when the plaintiff offered to redeem the mortgage on receipt of mortgage money but defendant refused. Therefore, the cause of action for filing the present suit is different. Hence, the present suit is not barred under Order 2 Rule 2.

Similarly, the argument of learned counsel is that the plaintiff is estopped from claiming possession of the property on the basis of agreement of mortgage because the plaintiff did file the suit challenging the

validity of the document has no substance because plaintiff did not succeed in the same. In these circumstances, plaintiff being owner of the property is entitled to seek possession of the property.

Learned counsel for the appellant has further submitted that the suit filed by the plaintiff should fail as defendant-appellant is not proved to be a tenant. Even, there is no force in the submission of learned counsel for the appellant because once the defendant-appellant does not claim the tenancy in the property and plaintiff is owner of the property, he is entitled to seek possession of the property.

In last, learned counsel for the appellant has submitted that the mortgage deed is required to be registered and since the agreement dated 13.09.2002 is not registered, therefore, the plaintiff could not have filed a suit for redemption of the mortgage.

I have considered the submission. There is some substance in the argument of learned counsel for the appellant. However, one should not forget that the present suit is a suit for possession. Even if the suit is treated as an ordinary suit for possession, still the plaintiff being owner is entitled to seek the possession.

In view of what has been observed earlier, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

08.09.2017
Dinesh Bansal

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No