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

RSA No.4396 of 2017 (O&M)

Date of Decision: 14.11.2017

Amrik Singh

. . . Appellant

Versus

Dara Singh

. . . Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant.

Mr. Parveen Chauhan, Advocate
for the respondent-Caveator.

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Rajbir Sehrawat, J. (Oral)

This is the second appeal filed by the plaintiff against the concurrent judgments and decrees passed by the Courts below, whereby the suit for declaration of the order dated 31.08.2010 passed by the Sub Divisional Magistrate, Kharar (for short 'the SDM') to be null and void; has been dismissed and the appeal has also been dismissed.

For convenience, the parties would be referred herein as plaintiff and the defendant as they were described in the plaint.

The brief facts of the case are that the plaintiff filed a suit claiming that the defendant had mortgaged his land in question vide mortgage deed No.418 dated 18.05.1999 registered with the office of Sub

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Registrar, Kharar. The mortgage was for a sum of Rs.1,70,000/-, which has been specifically mentioned in the mortgage deed. It is further claimed that the suit land was not cultivable and was not even properly leveled for growing any kind of crop. Earlier, in the presence of Kuldip Singh son of Nasib Singh and Jasbir Singh son of Sampuran Singh, both the parties agreed that the plaintiff will level the land by incurring expenses and defendant would repay the amount spent on leveling the land after expiry of mortgage deed. The mortgage was extended for a period of further 10 years. It was further claimed that in the year 1999, plaintiff had spent an amount of Rs.90,000/- for leveling the land and handed over the photocopy of the receipts, issued by driver of the tractor, for leveling the land, to the defendant. In the month of March, 2008, the defendant demanded a sum of Rs.50,000/- more as additional mortgage amount from the plaintiff. The plaintiff handed over the said amount in the presence of Jasbir Singh. It was further claimed that in order to grab the mortgage amount, on 03.06.2009, the defendant illegally and forcibly, ploughed the land without informing the plaintiff and the plaintiff reported the matter to the police. However, the matter was compromised on 04.06.2009 in the Police Station, where the defendant agreed not to interfere in the possession of the plaintiff. Still further, it was pleaded that the defendant had deposited less mortgaged amount in the office of SDM for redemption of the mortgage. The total amount, including additional amount, comes to Rs.3,10,000/-, whereas the amount deposited by the defendant was Rs.1,70,000/-. It was further pleaded that the extended period of mortgage was to expire on 16.09.2019. Therefore, the redemption proceedings initiated before the SDM were premature. On all

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these grounds, the order dated 31.08.2010 passed by the SDM, permitting redemption of the mortgage, was sought to be declared as null and void.

On notice, the defendant appeared and filed written statement resisting the claim of the plaintiffs. Besides taking preliminary objections, the plaintiff denied having given consent for improvement of the land. The fact of spending amount of Rs.90,000/-, in the month of June 2009, was also denied. Still further receiving of any additional mortgage money of Rs.50,000/- was also denied by the defendant. It was further pleaded that the land was mortgaged only for 10 years. However, no specific khasra number was mortgaged and only the share was mortgaged with the plaintiff. Further the land was properly cultivable at the time of mortgage. The defendant deposited the amount of Rs.1,70,000/- in the Treasury on 03.06.2009, vide receipt Challan No.18. Hence, it was pleaded that the order passed by the SDM was well reasoned and legal order.

Parties led their evidence. After hearing the parties, the Trial Court dismissed the suit filed by the plaintiff. While dismissing the suit, the trial Court recorded a finding that the factum of any improvement by the plaintiff by spending an amount of Rs.90,000/- or the factum of giving consent therefore by the defendant, has not been proved. It is recorded that in order to prove that the plaintiff has spent Rs.90,000/- for leveling of the land he produced on record photocopy of the receipt Ex.PA. However, this is not the original receipt nor this receipt is containing the particulars of the suit property, year or the dates on which leveling of the suit land took place and the same has not been proved by examining the witness who was alleged to have issued this receipt. Therefore, the Court recorded finding that the receipt Ex.PA cannot be relied upon. As per

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Section 63-A of the Transfer of Property Act, 1882, if the plaintiff made any improvement in the land without consent, then the plaintiff is not entitled to recover expenditure of improvement from mortgagor. In the present case also, the plaintiff has failed to prove the consent given by defendant. Therefore, the order passed by the SDM was upheld by the trial Court.

Aggrieved against the judgment and decree, the plaintiff filed appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the plaintiff. While dismissing the appeal, the lower Appellate Court also recorded a finding that the plaintiff has not been able to prove either the improvement in the land, consent of the defendant for improvement, expenditure of sum of Rs.90,000/- incurred or even the transaction of extending mortgage and receipt of the amount of Rs.50,000/-. The lower Appellate Court further held that to prove his case, the plaintiff has examined Jasbir Singh as PW-1 and Harbant Singh as PW-2. While appreciating the testimony of witnesses, the lower Appellate Court recorded that PW-1 has categorically admitted the fact that he has not seen the land in question and does not know anything regarding the case. It was recorded by the lower Appellate Court that although the plaintiff had pleaded that this witness was present when the defendant had agreed to level the suit land. He was also present when the amount of Rs.50,000/- was paid to the defendant by the plaintiff for extending mortgage in the year 2008. He is also alleged to be the witness to the receipt of Rs.90,000/-. However, this witness has conceded that he does not know anything about the case. Still further, the receipt Ex.PA has not been proved nor any permission has been taken for

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production of the secondary evidence. Moreover, the receipt Ex.PA neither contains description of the property on which the improvements were made nor carries any date, time and place, to prove that it relates to the property in question. Therefore, this receipt was disbelieved by the lower Appellate Court. The Court further said that even the consent of the defendant; to make improvement, has not been proved on record. It was held by learned lower Appellate Court that mortgage deed was created on 18.05.1999 and the improvement is claimed to have been made in June 1999. Had this been agreed by defendant, then the fact of improvements would have found mention in the mortgage deed itself. Therefore, the lower Appellate Court upheld the findings recorded by the trial Court.

Arguing in the present appeal, learned counsel submits that since the mortgage amount in the case is more than Rs.5,000/-, therefore, the redemption could not have been resorted to under the Redemption of Mortgages (Punjab) Act, 1913. It is his submission that the Act is applicable only if the mortgage money not exceeds Rs.5000/-. Hence, in the presence case, the proceedings before the SDM could not have been taken up by the defendant for redemption of the mortgaged land. Next argument is that the Courts have wrongly appreciated the evidence on the point of improvements and the additional mortgage money.

On the other hand, learned counsel for the defendant/ respondent/caveator has submitted that the provisions of the Redemption of Mortgages (Punjab) Act, 1913 is applicable where, either the land mortgaged does not exceeds 50 acres or the mortgage money does not exceed Rs.5000/-. His submission is that in the present case, the land holding mortgaged with the plaintiff was only 22 *kanals* 10 *marlas*, which

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is less than the prescribed provisions of 50 acres, therefore, the defendant rightly got redemption of the land under Redemption of Mortgages (Punjab) Act, 1913 by depositing mortgaged amount.

On the improvements and additional amount, the counsel submits that the plaintiff has failed to lead cogent evidence either to prove the consent of defendant or the fact of any improvements made by the plaintiff, therefore, the redemption order has rightly been passed by the SDM and the suit has rightly been dismissed by the Courts below.

Having heard the counsel for the parties and perusing the record with the able assistance of the counsel for the parties, this Court is of the considered opinion that the submissions made by learned counsel for the appellant are not sustainable.

So far as the applicability of the Redemption of Mortgages (Punjab) Act, 1913 is concerned, it is clear that the Act would have applicability in the situation where either land mortgaged does not exceed fifty acres and if it exceeds 50 acres then the mortgage money does not exceed Rs.5000/-. This has already been held by the Division Bench of this Court in the judgment reported as '***1960 PLR 848*** titled as ***Uggar Singh and another Vs. Gumdoor Singh and others***'. In that case, the Division Bench has held that it is clear from the Act that the only type of mortgage which is excluded from the application of the Act, is a mortgage in which the area exceeds fifty acres and also the principal money secured exceeds Rs.5000/-. All the other mortgages are covered by either clause (a) or clause (b) of Section I of the Act. Hence, the Division Bench has held that the Act would be applicable in all the cases where the land holding mortgaged does not exceeds fifty acres, even if the mortgage amount exceeds Rs.5000/-.

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In the present case, as submitted by counsel, as is also evident from the record, the land holding does not exceeds fifty acres. Therefore, the Act has rightly been applied by the authorities. There is no illegality in the application of the Act in the present case.

Learned counsel for the appellant has submitted that the plaintiff has made improvements in the land by spending an amont of Rs.90,000/-, therefore, this amount was also required to be repaid to him. The argument is to be noticed only to be rejected. Both the Courts have appreciated the evidence and have rightly come to the conclusion that the plaintiff has failed to prove; either the fact that he made any improvement in the land in question or that he incurred the amount of Rs. 90,000/- for that purpose. The person who is alleged to have levelled the land has not been produced as witness by the plaintiff. Even the receipt Ex.PA has not been proved on record by producing the executants of the receipt. Even the witness examined to prove this fact has admitted before the Court in cross-examination that he does not know anything regarding the case. Therefore, the Courts below have rightly held that the improvements claimed by the plaintiff in the land in question; by spending amount of Rs.90,000/-; has not been proved on record. Same is the situation qua the consent of the defendant for improvement of the land and qua the advancement of additional mortgage money as well. There is no written consent of improvement nor any receipt of Rs.50,000/- has been produced on record by the plaintiff. The only witness produced in this regard is Jasbir Singh PW-2. The Court has recorded that this witness has not supported the case of the plaintiff in the manner as it was sought to be

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projected by the plaintiff. This witness has denied knowledge regarding the land in question. Hence, these facts have been proved.

No other argument was raised by learned counsel for the appellant.

In view of the above, finding no merit in the appeal and the same being devoid of any merit, is hereby dismissed.

[RAJBIR SEHRAWAT]
JUDGE

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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

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CM-11426-C-2017 in
RSA-4396-2017

AMRIK SINGH
VERSUS
DARA SINGH

Present: Mr. Sanjeev Manrai, Senior, Advocate with
Mr. Inderjeet Singh, Advocate
for the appellant.

Mr. Parveen Chauhan, Advocate
for the respondent-Caveator.

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Present application is for condonation of delay of 23 days in refiling the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 23 days in filing the appeal is condoned.

[RAJBIR SEHRAWAT]
JUDGE

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