IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.1045 of 1988 (O&M)
Date of Decision: 27.11.2018

Ram Parshad ...... **Appellant**

Versus

Anaro Devi and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Alok Mittal, Advocate for the appellant.

Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing the suit filed by him for possession by way of redemption of the mortgage.

Undisputed facts are that the plaintiff executed a sale deed in favour of Khilli Ram, predecessor-in-interest of the respondents herein. In the sale deed, there was no condition of re-conveyance. The sale deed is on payment of Rs.43,000/-. It is alleged that on the next day, two documents were executed. One was a lease deed and second was agreement. In the lease deed, there is no reference to the re-conveyance. However, the agreement dated 04.02.1960 provide that if the vendor in the sale deed pays the amount of Rs.46,600/- by 04.02.1961 or Rs.50,200/- by 04.02.1962 or Rs.53,800/- by 04.02.1963 or Rs.57,400/- by 04.02.1964 or Rs.61,000/- by 04.02.1965, the vendee under the sale deed shall get a reverse sale deed executed in favour of the plaintiff (vendors under the sale deed). The outer limit agreed between the parties was 04.02.1965. During this time, agreement could be enforced.

The plaintiff claims that the sale deed as well as the agreement dated 04.02.1960 would mean that the property was in fact under mortgage and therefore, he is entitled to possession by way of redemption.

Both the Courts after appreciating the evidence have dismissed the suit filed by the plaintiff. Learned counsel appearing for the appellant has submitted that in the income tax record as well as in the plaint which was sought to be produced by way of additional evidence, the property in dispute has been depicted as a mortgaged property and therefore, the suit for redemption is maintainable. This Court has considered the submission. Undisputedly neither the sale deed nor subsequent agreement as set up by the plaintiff creates or refers to any mortgage. In such circumstances, the decree for redemption cannot be passed only on the basis that in the income tax record in which defendant had referred to the property as mortgaged property. As regards copy of the plaint which is also sought to be produced in additional evidence, the plaintiff has been referred to as proforma defendant being owner. The plaint also does not talk of any mortgage of the property.

The title in the suit property passed on the date of execution of the sale deed. No doubt, the vendor had been given right to get the property re-conveyed by executing a reverse sale deed from the vendee. Admittedly, those steps have not been taken by the plaintiff within the stipulated period as noticed above. In such circumstance, a sale deed cannot be declared as a deed of mortgage.

In view thereof, there is no ground to interfere.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

27.11.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No