

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

101

RSA No.2906 of 1988 (O & M)

Date of Decision:20.04.2018

Satbir Singh and others

...Appellants

Versus

Surjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. O.P. Sharma, Advocate with
Mr. Radhe Shyam Sharma , Advocate
for appellant No.2.

Mr. Sandeep Kotla, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Defendants-appellants are in the appeal against the judgment passed by the learned First Appellate Court. Plaintiff filed a suit for possession by way of pre-emption seeking to pre-empt the sale deed dated 31.05.1985. Plaintiff had claimed superior right of pre-emption as a tenant. Defendants contested the suit and pleaded that no doubt the plaintiff is tenant but he is tenant of the mortgagee and not of the mortgagor i.e. the owner.

Learned trial Court after appreciating the evidence available on the file, decreed the suit with respect to the land measuring 6 kanals and 8 marlas.

Two appeals were preferred. Learned First Appellate Court after re-appreciating the evidence available on the file, decreed the suit in toto. The Court recorded a finding that the defendants failed to prove that the plaintiff was inducted as a tenant. The Court further found that the plaintiff is not only tenant on the mortgaged land but is also tenant on land comprised in Rectangle No.94, killa No.14/2 and 17. The Court further found that these two khasra numbers were not subject matter of the mortgage. On the basis of the aforesaid finding,

dismissed the appeal filed by the defendants.

Defendants-appellants have filed this single appeal against the judgment passed by the learned First Appellate Court deciding two appeals. Although, once the appeal filed by the defendants-appellants has been dismissed and the aforesaid order has not been challenged, single appeal was not maintainable. Anyhow without further going into the aforesaid issue, learned counsel for the appellants could not dispute that the plaintiff-Surjit Singh is recorded in possession of the land as a tenant, which was not subject matter of the mortgage. Such being the position, the only defence taken by the defendants was that the plaintiff was a tenant of the mortgagee. The land comprised in 2 killas referred to the above was not subject matter of mortgage. The mortgagee could not induct a tenant in the land which was not subject matter of a mortgage.

Learned counsel for the appellants has argued that tenancy is to be determined by the rent column i.e. Column No.9, wherein it is recorded that the possession is referable to mortgage.

This Court has considered the argument. It is not the case of the defendants that Surjit Singh i.e. the plaintiff was a mortgagee. It is the case of the defendant themselves that the plaintiff is no doubt a tenant but under a mortgagee. Once tenancy is admitted, entry in column No.9 would not come to rescue of the appellants.

In view thereof, there is no scope for interference in the finding of the fact arrived at by the learned First Appellate Court.

Regular second appeal is dismissed.

20.04.2018
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(ANIL KSHETARPAL)
JUDGE