

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

RSA No. 712 of 2010 (O&M)  
Date of decision : January 29, 2018

Pritpal Singh

..... Appellant

v.

Gulzar Singh and others,

..... Respondents

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**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI**

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Present : Mr. Arun Abrol, Advocate  
for the appellant.

Mr. RS Rana, Advocate  
for respondents No.1 to 7.

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**Ajay Tewari, J (Oral)**

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit filed by the appellant wherein he had claimed that he had become the owner of the suit property because a period of 30 years had elapsed since the respondents had attained the right to redeem the same.

As per the plaintiff, the predecessor-in-interest of respondents No.1 to 3 had mortgaged the land to his predecessor in the year 1968 and as per the mortgage deed, the same was to be redeemed after five years. Redemption having not been done, the plaintiff filed the instant suit after 1998. On the other hand, the claim of the respondents was that the land had been redeemed in the year 1973 as per the receipt Ex.D1. It was further

mentioned that the predecessor-in-interest of respondents No.1 to 3 was owner of only 11 marlas out of the 3 kanals 8 marlas of land and hence any mortgage beyond that share would be subject to the superior rights of the co-owners.

Both the Courts below held that the receipt had been proved and that the predecessor-in-interest of respondents No.1 to 3 was owner only to the extent of 1/6th share out of 3 kanals 8 marlas of land, and consequently dismissed the suit.

Counsel for the appellant has argued that the appellant had produced a hand writing expert who had clearly deposed that signatures on the receipt Ex.D1 did not match the standard signatures of the mortgagee, and no expert was produced in rebuttal and, thus, the Courts below erred in holding that the receipt was proved. In this connection, both the Courts below have found that the respondents had produced DW3 Gurmeet Singh who was a witness to the return of money, and held that the testimony of DW3 was more acceptable than the testimony of the handwriting expert.

In my opinion, mere production of the handwriting expert can not be taken to create preponderance of probability in favour of the appellant in the face of the unflinching testimony of DW3 as appreciated by the two courts of fact. As regards the finding that the mortgagor was entitled only to 11 marla out of the aforesaid land, it is the case of the appellant that actually the total land with the mortgagor and his co-sharers was 9.1/2 acres and 1/6th share of the mortgagor was much more than 3 kanals 8 marlas of land and, therefore, the Courts below erred in holding that his entitlement was only 11 marlas of land. Apart from the bald testimony of the appellant, no other evidence was led by him to show that the joint land was in fact

9.1/2 acres or that the land in question fell within that joint land. Consequently, no fault can be found with the judgments of the Courts below. Resultantly, this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

January 29, 2018  
'kk'

( AJAY TEWARI )  
JUDGE

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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |