

RSA No. 4877 of 2013 (O&M)

Date of decision : November 27, 2018

Mahinder SinghAppellant

Versus

ACIG Ballabgarh and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Kulbhushan Sharma, Advocate
for the appellant.

None for respondent No. 1.

Mr. Lokesh Sinhal, Advocate
for respondents No. 2 to 5, 8 and 9.

LISA GILL, J.

Appellant – plaintiff is aggrieved of judgment and decree dated 03.12.2010 passed by the learned Civil Judge (Junior Division), Faridabad as well as judgment and decree dated 16.02.2013 passed by the learned Additional District Judge, Faridabad.

The appellant – plaintiffs filed a suit for declaration with consequential relief of permanent injunction to the effect order dated 28.03.2003 passed by the learned Collector, Ballabgarh is null and void and not binding upon the right, title and interest of the plaintiffs qua the suit land. It was further prayed that the defendants be restrained from dispossessing the plaintiffs from the suit land in respect of their shares perpetually and not to implement order dated 28.03.2003. Learned Civil Judge (Junior Division), Faridabad vide judgment and decree dated 03.12.2010 dismissed the said suit

Appeal filed by the present appellant was dismissed by the learned Additional District Judge, Faridabad vide judgment and decree dated 16.02.2013.

Learned counsel for the appellant submits that the appeal has been dismissed solely on the ground that the appellant – plaintiff could have challenged order dated 28.03.2003 passed by the learned Collector, Ballabgarh under the Redemption of Mortgages (Punjab) Act, 1913 (for short – 'the Redemption Act'), therefore, jurisdiction of the civil Court is barred.

Learned counsel for the appellant relies upon the judgment of this Court in **Jaswant Singh versus Financial Commissioner 1995 (1) PLR 180**. It is contended that the learned Additional District Judge, Faridabad has grossly erred in dismissing the appeal solely on the question of jurisdiction and especially in view of Section 12 of the Redemption Act, which reads as under:-

“12. Saving of suits to establish rights. - Any party aggrieved by an order made under Sections 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage; but, subject to the result of such suit, if any, the order shall be conclusive.”

It is, thus, apparent that no appeal or revision against order dated 28.03.2003 would lie. Learned first Appellate Court did not touch any of the other issues which have, however, been decided on merits by the learned trial Court.

Learned counsel for respondents No. 2 to 5, 8 and 9 is unable to deny that no appeal or revision would lie for challenging order dated 28.03.2008 before the Appellate Authority under the Punjab Land Revenue Act in view of the Redemption Act.

Learned counsel for the above said respondents fairly states that the matter be remanded to the learned Additional District Judge, Faridabad

for a decision afresh on the appeal filed by the present appellant.

Keeping in view the facts and circumstances of the case and the specific stand of the respondents, judgment and decree dated 16.02.2013 passed by the learned Additional District Judge, Faridabad is set aside and the matter is remanded to the learned Additional District Judge, Faridabad. Civil Appeal No. 5 RBT of 21.05.2012 filed by the present appellant shall stand revived to be decided afresh after affording proper opportunity of hearing to all the parties to the suit in accordance with law. Parties to appear before the learned Additional District Judge, Faridabad on 17.12.2018.

Present appeal is, accordingly, disposed of.

November 27, 2018

rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No