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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.01.2018

1.

RSA-2974-2016 (O&M)

M/s Foundation Engineering

... Appellant(s)

Versus

Smt. Babita Rani and another

... Respondent(s)

2.

RSA-3288-2016 (O&M)

M/s Foundation Engineering

... Appellant(s)

Versus

Smt. Babita Rani

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arjun Atri, Advocate
for the appellant(s).

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA No.2974 of 2016** titled as **“M/s Foundation Engineering V/s Smt. Babita Rani and another”** and **RSA No.3288 of 2016** titled as **“M/s Foundation Engineering V/s Smt. Babita Rani”** filed against the concurrent findings of fact, whereby the suit seeking following relief preferred by the respondent(s)-plaintiff(s) has been decreed by both the Courts below, as

according to the learned counsel for the parties, the issues involved therein, are identical:-

"Claim for : A decree for possession by way of redemption of the agricultural land fully detailed in Para No.1 of the plaint on payment of ₹ 205/- may kindly be passed in favour of the plaintiff and against the defendants with costs of the suit and the defendants may kindly be directed to hand over the possession of the suit land detailed in Para No.1 of the plaint to the plaintiff and to put the plaintiff in actual physical possession of the same at his own costs."

For the sake of brevity, the facts are being taken from **RSA No.2974 of 2016.**

Learned counsel for the appellant(s)-defendant(s) submits that the lower Appellate Court misinterpreted the provisions of Section 120 of the Indian Evidence Act as the husband had appeared, but the plaintiff-wife did not step into witness box and thus, prevented the defendant to cross-examine the plaintiff as the husband being an agent would not have the knowledge of the principal. The suit for redemption of the property was not maintainable, much less, the plaintiff(s) did not have any *locus standi*. The suit was also time barred. The Courts below have not taken into consideration the nature of the suit. The total land has not been included in the plaint and also all the co-owners were not impleaded as parties, therefore, the suit seeking partial redemption was not admissible in the eyes of law. All these factors were required to be gone into by the Courts below, but having failed to advert to the same, there is illegality and perversity, much less, adjudication, thus, urges this Court for setting aside the concurrent findings, under challenge.

I have heard the learned counsel for the appellant(s)-defendant(s) and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Atri, for, the plaintiffs are none-less, but are stated to have purchased the mortgage rights vide registered sale deed bearing Vasika No.420 dated 10.05.2010 and as per the latest revenue record, the name was recorded in the column of ownership, whereas name of the respondent(s)-defendant(s) were shown to be in the column of cultivation being the mortgagees. There is no period prescribed for seeking redemption of mortgaged property in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in "Singh Ram (dead) through Legal Representatives vs. Sheo Ram and others" (2014) AIR SC 3447. The documentary evidence brought on record from Ex.P-1 to Ex.P-51, as noticed by the trial Court and the lower Appellate Court in the impugned judgments and decrees, connected, the property in question. The defendant(s) have not been able to place on record any document by leading any evidence enabling the Court to form a different opinion. As regarding the non-appearance of the plaintiff, it has now settled that the husband can always appear on behalf of the wife particularly it was not a personal right as granted to the plaintiff which the defendant(s) would have been prevented to ask the question. The Courts below have relied the provisions of Section 120 of the Indian Evidence Act, which in my view is a correct appreciation of law.

No other argument has been raised.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the

same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. Accordingly, both the appeals are dismissed.

11.01.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No