

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

**RSA No.3167 of 2016 (O&M)
Date of Decision.14.11.2018**

Tulsi and othersAppellants

Vs

Krishan Lal @ Har Krishan Lal and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sumit Gupta, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-defendants have not been successful in defending the suit for possession where the trial Court partly decreed the suit by ordering redemption but possession was declined. The lower Appellate Court, however, decreed the suit in toto.

The respondents-plaintiffs instituted the suit on the premise that the suit land bearing khasra No.108 and 340 measuring 1 bighas 9 biswas was mortgaged with the predecessor-in-interest of the defendants about 104 years ago for ₹26.25. The defendants did not adhere to their request to hand over possession, thus, constrained to file suit.

Defendants No.1 to 4, 6, 7, 10 to 12 opposed the suit qua the locus standi, limitation and denied that the plaintiffs or their predecessor had any concern with khasra No.108, 340. The narration of the mortgage, allotment and consolidation was said to be false and fictitious.

The plaintiffs in support of the averments brought on record Ex.P1 to Ex.P7/1 i.e. revenue record in the shape of

jamabandis old and of subsequent period whereas in rebuttal brought Ex.X1, X4 and X6, copies of jamabandis in Urdu, Ex.X5, Ex.X1/H to Ex.X6/H, copies of jamabandis in Hindi.

On the other hand, defendant Bhim Singh appeared himself as DW1.

Mr. Sumit Gupta, learned counsel appearing on behalf of the appellants submitted that the respondents-plaintiffs have not been able to establish the identity of the property and relationship of mortgagor and mortgagee. No pedigree table has been brought on record. The factum of mortgage deed was not denied but the identity of the property, much less, relation of mortgagor & mortgagee emphatically denied. In such circumstances, the suit was liable to be dismissed.

I am afraid aforementioned argument of Mr. Gupta is not sustainable, as the judgment is based upon the appreciation of the documentary evidence, particularly, when the defendants did not deny status of mortgagee. The finding of fact and law arrived at by the lower Appellate Court granting the possession by claiming redemption is the in perspective, for, there is no limitation for seeking redemption. Even if party had filed the suit for possession without seeking the redemption treating it to be deemed can always be called upon to deposit the redemption amount and seek possession. This is what is import of the judgment of the lower Appellate Court. Bhim Singh, DW1 in the cross-examination admitted the pedigree table i.e. the line of succession of the mortgagor Munshi, who executed the registered Will in favour of plaintiff No.1.

In view of the aforementioned observations, the arguments of Mr. Gupta have not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 14, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No