

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

RSA No.3201 of 2016 (O&M)

Date of decision:17.05.2018

Gaya Parshad (deceased) through LRs

... Appellants

Vs.

Dhanna Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.K.Mittal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.8576-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 1 day in re-filing the appeal is condoned.

C.M stands disposed of.

RSA No.3201 of 2016 (O&M)

The appellant-plaintiff is aggrieved of the judgments and decrees of the Courts below, whereby, suit claiming declaration with regard to land measuring 5 bighas 7 biswas, with consequential relief of permanent injunction restraining the defendants from interfering into possession, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr. M.K.Mittal, learned counsel appearing on behalf of the appellant-plaintiff submits that one Shimbhu Parshad was owner of the land

measuring 10 bighas 14 biswas. He has three sons, namely, Panna Lal, Jai Narayan and Ram Kumar. Panna Lal had died and his share was inherited by his widow Chima Kaur and after the death of Chimma Kaur, vide mutation No.6521, Ram Kumar and Jai Narayan became owner in possession of the disputed land to the extent of $\frac{1}{2}$ share each and in this manner, father of plaintiff namely Ram Kumar became the owner in possession of $\frac{1}{2}$ share of the disputed land. The land was mortgaged to the mortgagees and got the property redeemed on 24.05.1958. Since then, they had been in possession. Jai Narayan sold his share to the third party. Since they were causing interference, necessity arose to file the suit.

The defendants contested the suit by denying the averments made in the plaint. The trial Court dismissed the suit as noticed above and the Lower Appellate Court affirmed the findings.

He further submits that judgments and decrees of the Courts below are not sustainable in the eyes of law, for, once Ram Kumar had become the owner of the property and other $\frac{1}{2}$ share of the property was sold to the third party, thus, remedy was to seek partition of the property, therefore, the Courts below could not have rejected the plea of injunction as the revenue record showed the exclusive possession of Ram Kumar but erroneously relegated the parties to seek partition. There is gross illegality and perversity in the findings under challenge.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Mittal.

During the course of hearing, Mr. Mittal showed the copy of document dated 24.05.1958. The contents of the aforementioned document do not reveal that it was redemption but in fact, Ram Kumar had purchased the mortgagee rights from the mortgagor, therefore, his status in the suit property was of mortgagee. By filing a suit for declaration and ownership, the mortgagee cannot claim declaration and ownership until and unless, the mortgage deed specifies the time line for redemption. In view of the law laid down by the Hon'ble Supreme Court in **Singh Ram (D) through LRs Vs. Sheo Ram and others 2014 AIR SC 3447**, there is no limitation prescribed to file the suit for redemption, in essence, there is no limitation for seeking redemption of the property until and unless the mortgage deed prescribes the period for the purpose of redemption.

The sale deed revealed that Power of Attorney holder of Jai Narayan had sold the entire property and there is no challenge to the aforementioned sale deed. The remedy for Ram Kumar, in my view, was to file a suit for partition in case he was not a mortgagee or co-sharer and therefore, rightly so, the Courts below rightly declined to grant injunction.

During the course of hearing, it is submitted that all the co-owners are shown to be in possession and therefore, injunction can be granted, I am afraid such argument cannot be accepted, for, it would be domain of competent Court/authority to deal with prayer, if any, for partition as no injunction in favour of other co-sharers could be granted.

As an upshot of my findings, I do not find any illegality and

perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 17, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No