

RSA No. 3421 of 2016 (O&M)

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

**RSA No. 3421 of 2016 (O&M)
Date of decision: 24.5.2018**

Likhi Ram and others

... Appellants

Versus

Sugun alias Suman

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. M.S. Hussain, Advocate, for
Mr. Ashok Kaushik, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial court, vide judgment and decree dated 24.1.2014. As even the appeal preferred against the said decree failed, and was dismissed on 19.11.2015, the appellants-defendants are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of redemption of the suit land.

On a consideration of the matter in issue and the evidence on

RSA No. 3421 of 2016 (O&M)

record, both the courts concurrently concluded that the fact that suit land was mortgaged with the defendants was not disputed. Further, this was the case of the defendants themselves that they were in possession of the suit property since the time of mortgage, and reaping the benefits thereof. Resultantly, it was held that the mortgage was usufructuary in nature. And, since no time limit was prescribed by the parties, by which the plaintiff was required to redeem the property, there was no issue as regards suit being barred by time. As once a mortgage is always a mortgage, and thus, redeemable. The plea set out by the defendants that application for redemption of the suit property was moved by the plaintiff before the Assistant Collector Ist Grade, Palwal, and the said application having been dismissed, the present suit before the civil court was not maintainable, was also rejected. For the defendants had disputed the title of the plaintiff to the suit property, which is why the Assistant Collector observed that the plaintiff could approach the civil court. Thus, once the question of title/ownership was raised, the civil court had the jurisdiction to try and decide the suit. As regards the issue: whether the plaintiff was a legal representative of Nathi Ram alias Natthan, suffice it to say that in the jamabandi for the year 2005-06 (Ex.P2), she, along with Dibbo and Anguri, was shown to be the mortgagor qua the suit property. Further, in para 1 of the written statement filed by the defendants, it was conceded that the plaintiff, Dibbo and Anguri, were co-sharers in the suit property. Thus, no further evidence was required to prove that the plaintiff had a locus standi to institute the present suit.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusion arrived at by both the courts was either contrary to the record or suffered from any

RSA No. 3421 of 2016 (O&M)

material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

24.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO