

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

RSA No.5335 of 2016
Date of decision: 14.05.2018

Aman Kumar @ Ram Kumar

... Appellant

Versus

Suresh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellants/plaintiffs was dismissed by the trial Court vide judgment and decree dated 21.11.2012. As even the appeal preferred by them against the said decree failed, and was dismissed on 29.02.2016, appellant-plaintiff No.1 is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs sought a declaration that they had all the rights to get the suit land, depicted in para 2 of the plaint, redeemed and, therefore, the defendant be directed to withdraw the redemption amount of Rs.385/-, which had since been deposited in the Court of Collector, Sonapat. Further, the order dated 22.04.2008, passed by the Collector, was wholly illegal and not binding upon the rights of the plaintiffs. Briefly, the case of the plaintiffs has been that Sh. Shera Singh son of Sukhan, resident of village Rohna, Tehsil Kharkhoda, District Sonapat was the owner in possession of the land comprised in khasra No.56, measuring 17 biswas, situated in the revenue estate of village Rohna. Who mortgaged the said land with

possession for an amount of Rs.385/- on 19.09.1927 in favour of Sh. Net Ram son of Ram Nath. After consolidation of holdings in the village, the suit property was comprised in khewat No.435/415, 436/416, khata No.510, 511, rect. & killa Nos.38, 13/3 (1-0), 12/2 (6-0), 13/1 (1-0) measuring 8 kanals. Subsequently, Shera Singh, the owner/mortgager, executed a lease deed dated 25.09.1975, in favour of Arjun Dass son of Chhatar Singh, father of the plaintiffs, for a period of 99 years, and put them in possession thereof. And in terms of the said lease deed, Arjun Dass father of the plaintiffs was legally entitled to get the suit land redeemed. Further, for the lease deed of the suit property, executed in favour of the father of the plaintiffs, was for a period of 99 years, it indeed was permanent transfer/alienation/sale of the suit property, therefore, plaintiffs had every right to get the suit property redeemed.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the proposition of law was well settled that only the owner/mortgager had a right to seek redemption. Concededly, the plaintiffs on the basis of the lease deed dated 25.09.1975, executed by the owner/mortgager, were claiming to be the owners, but nothing was brought on record to show as to how the lease hold rights would convert into an absolute title. Further, Shera Singh was alleged to have mortgaged the suit land, but no evidence was led to show if he was dead or still alive. And since the revenue entries were still continue in his name, therefore, the plaintiffs ought to have examined the mortgager or his legal heirs to clarify this position. And as the plaintiffs failed to prove on record even the death certificate of Shera Singh, no presumption could be drawn either that he was dead. Therefore, the plea set up by the plaintiffs

that they being lessee were entitled to redeem the suit property, remained unsubstantiated. Still further, as per the case of the plaintiffs themselves, Net Ram son of Ram Nath was inducted as a mortgagee with possession. Therefore, the plea that pursuant to lease deed dated 25.09.1975, the plaintiffs were put in possession of the suit property, stood negated. Rather, it appeared that the said lease deed was a sham transaction. Though, the plaintiffs examined Aman Kumar (PW1) in support of their claim, but he too failed to present himself for the purpose of cross-examination and, therefore, his statement in examination-in-chief could not be read into. Thus, the case of the plaintiffs remained unsubstantiated. In these circumstances, the only conclusion that could be reached was; that the suit filed by the plaintiffs was wholly misconceived and devoid of merit. On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

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

(Arun Palli)
Judge

14.05.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO