

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

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**CM-15843-C-2016 in/and
RSA-6021-2016 (O&M)
Date of Decision : 14.08.2018**

Buta Singh (since deceased) through LRs

..... Appellants

Versus

Narinder Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Sachin Mittal, Advocate
for the appellants.

AJAY TEWARI, J. (ORAL)

CM-15843-C-2016

For the reasons recorded, the application is allowed. Delay of 20 days in filing the appeal is condoned.

RSA-6021-2016 (O&M)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit for possession by way of redemption of mortgage which was filed by the predecessor-in-interest of the appellants.

The case of the predecessor-in-interest of the appellants was that he had mortgaged his property measuring 47 kanals of land by way of registered mortgage deed dated 27.09.1966 and he wanted to redeem it by paying the mortgage amount. The case of the respondents on the other hand was that there was no mortgage with them. Actually, at one stage

the predecessor-in-interest of the appellants had become a defaulter of Government dues and the land in dispute was sold by public auction of the District Collector and one Niranjana Singh (brother of respondent No.6) had purchased it in public auction. Thereafter the predecessor-in-interest of the appellants had filed a suit challenging that action in which said Niranjana Singh was also made party, but that suit was dismissed. In replication, the predecessor-in-interest of the appellants did not try to explain that occurrence except by denying that he had filed any suit. He did not take a specific denial that he had never become a defaulter or that his land was never sold as mentioned above. He merely denied having filed the suit. In evidence, the predecessor-in-interest of the appellants did not place on record either the original registered mortgage deed or even tried to produce it by way of secondary evidence and merely relied upon a mutation which showed him to be a mortgagor of the land in dispute. The respondents No.3, 4 & 6 had placed on record certified copy of the judgment Ex.D1 dismissing the earlier suit of the predecessor-in-interest of the appellant. In his testimony, the predecessor-in-interest of the appellants only stated that he had never filed the suit and that it may have been filed by way of impersonation. He, however, did not lead any evidence by way of comparison of his signatures on that earlier suit to corroborate his assertion that that suit was filed by way of impersonation. It was in these circumstances that both the courts below held that the case of the respondents was more probable and consequently dismissed the suit.

Before me also, the counsel for the appellants

has emphasized on the original mutation of 1966 which reflected the

mortgage by the predecessor-in-interest of the appellants in favour of Lal Singh – father of respondents No.1 and 2. He has further argued that even the subsequent mutation in favour of the predecessor-in-interest of respondents No.3 and 4 reflected him to be the mortgagee and the predecessor-in-interest of the appellants to be the mortgagor. As per the counsel, this shows that Malook Singh had only purchased mortgagee right and the story which was trotted out was false.

In my considered opinion, this appeal must fail. On the one hand, we have two mutations which reflect a mortgage but on the other hand the registered mortgage deed had not come on the record. The appellants have not been able to show that the suit filed by their predecessor-in-interest in respect of the same land was actually filed by way of impersonation. In the circumstances, no fault can be found with the findings of the courts below that the case of the respondents was more probable than that set up by the appellants.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 14, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No