

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6345 of 2016 (O&M)

Date of Order:17.05.2018

Raj Pal

..Appellant

Versus

Charan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kaushik, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, allowing the suit for possession by way of redemption of usufructuary mortgage in favour of the respondents.

Learned counsel for the appellant has relied upon an interim order passed by a Coordinate Bench which is extracted as under:-

“Counsel for the appellants inter alia contents that as the mortgage in the present lis pertains to agricultural land, the respondents were required to file a petition under Section 4 of the Redemption of Mortgages (Punjab) Act, 1913, applicable to the State of Haryana as well but the respondents without approaching the Collector have straightway approached the Civil Court.

Notice of motion for 25.04.2016.

In the meantime, parties shall maintain status quo with regard to possession of the suit property.”

He has submitted that in view of the aforesaid order, the issue is under consideration before this Court.

The Redemption of Mortgages (Punjab) Act, 1913(hereinafter referred to as 'the Act of 1913') does not bar the jurisdiction of the Civil Court. There is no statutory provision which excludes the jurisdiction of the Civil Court from ordering redemption of the mortgagees.

Still further a reading of Section 10 of the Act of 1913, the Collector has been empowered to dismiss the petition, if in case it finds that contentious issue has been raised. The proceedings under Section 4 of the Act of 1913 is only summary in nature.

Still further as per Section 13 of the Act of 1913, any party aggrieved by an order made under Sections 6, 7, 8, 9, 10 and 11 of the Act of 1913, is entitled to institute a suit to establish rights in respect of the aforesaid mortgage. From the scheme of the Act, it is apparent that the procedure prescribed under the Act of 1913, is summary in nature and the order passed by Collector while exercising powers under the Act of 1913 are subject to review by the civil court.

Further, it is admitted by learned counsel for the appellant that specifically the issue of lack of jurisdiction was not raised before the courts below.

In view of the aforesaid, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

May 17, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No