

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

RSA No.3820 of 2014 (O&M)

Date of decision : 06.04.2018

Dhan Singh and another

...Appellants

Versus

Ravinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. B.S. Rathee, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.8898-C of 2014

For the reasons stated in the application, which is duly supported by an affidavit, delay of 145 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

Both the Courts below have found that Chandgi had mortgaged the property measuring half share of 19 marlas for a sum of ₹750/- and mutation was sanctioned on 17.04.1962 in favour of Bhola, his brother. The Courts below have ordered that the property can be redeemed as there was no period prescribed for redemption.

Learned counsel for the appellants has vehemently argued that initially Chandgi had filed an application under Redemptions of Mortgages (Punjab) Act, 1913 (hereinafter to be referred as “the Act of 1913), in the year

1984, which was withdrawn. He further submitted that again an application was filed in the year 2007 which was also dismissed. Hence, he submits that once effort to redeem the land before the authority constituted under the Act of 1913 have failed, no civil suit was maintainable.

On the other hand, learned counsel for the respondents-plaintiffs has supported the judgments passed by the Courts below.

It is not disputed that in the year 1984, the application for redemption of mortgage was withdrawn. There was no adjudication on the merits of the case. When second time, the petition was filed, it was dismissed in the year 2007 and the aforesaid dismissal was challenged, before the Civil Court as permitted under Section 12 of the Act of 2013. Section 12 of the Act of 2013 is extracted as under:-

“12. Any party aggrieved by an order made under Sections 6, 7, 8, 9, 10 or 11 of this Act may institute a suit to establish his rights in respect of the mortgage; but, subject to the result of such suit, if any, the order shall be conclusive.”

In view of the aforesaid statutory provisions, the plaintiffs filed the present suit which has been decreed by both the Courts below.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

06.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No