

DIWAKER GULATI
2018.10.10 16:22

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

RSA No. 1382 of 2017(O&M)

Date of decision: 4.10.2018

Mahavir

.....Appellant

VERSUS

Bhagwat and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Adarsh Jain, Advocate for the appellant.

Mr. Rajat Garg, Advocate for
Mr. Aditya Jain, Advocate
for respondents No.1 to 4/caveators.

REKHA MITTAL, J. (Oral)

CM No.3291-C of 2017

Prayer in this application is for condoning delay of 15 days in filing the appeal.

Heard.

In view of averments made in the application, the same is allowed. Delay of 15 days in filing the appeal stands condoned.

Disposed of accordingly.

RSA No.1382 of 2017

The present appeal directs challenge against judgments passed by the Courts whereby suit for possession by way of redemption on payment of mortgage amount of Rs.900/- was decreed by the trial Court by allowing decree for possession for redemption of half of the land falling in

Rect. No.131 killa No.25/2 (7-13) and Rect. No.132 Killa no.21/2 (5-7) total measuring 13 kanals on payment of half of mortgage amount of Rs.450/-. Feeling aggrieved against the judgment and decree passed by the trial Court, Mahavir – appellant/defendant No.2 preferred the appeal and the same was partly allowed, judgment and decree passed by the trial Court were modified to the extent that respondents/plaintiffs are entitled to take symbolic possession by redemption of 5/9th share of suit land on payment of 5/9th share of mortgage money. The parties were left at liberty to seek specific possession by initiating the partition proceedings.

Counsel for the appellant would urge that as part of the suit land, subject matter of mortgage, was purchased by defendants No.1 and 2, the appellant raised two grievances before the Appellate Court namely that the mortgagors are not entitle to actual possession of land in question and secondly that decree passed by the trial Court cannot be allowed to sustain as it amounts to partial redemption, not permissible in law. However, the Appellate Court rectified the judgment and decree passed by the trial Court to the extent that the respondents/plaintiffs are allowed symbolic possession to the extent of 5/9th share of suit land but the Court did not address the issue of partial redemption.

Counsel for the appellant, after going through the grounds of appeal raised before the first Appellate Court, would fairly concede that no such issue was raised by the appellant. Perusal of the judgment passed by the Court in appeal makes it evident that even no such issue was raised during the course of hearing. Not only this, no such objection was raised in the written statement or otherwise at any stage of proceedings before the

trial Court. Had the appellant raised such an issue, the respondents/plaintiffs might have amended their suit. As such, appellant cannot be allowed to raise this issue for the first time in second appeal.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

OCTOBER 4, 2018	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no