

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

Date of decision: 18.5.2018

1. **RSA No. 1102 of 2018(O&M)**

Fateh ChandAppellant

VERSUS

Bhagwan Singh and othersRespondents

2. **RSA No. 3088 of 2018(O&M)**

Bijender Singh and anotherAppellants

VERSUS

Bhagwan Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Khunger, Advocate for the appellant(s).

REKHA MITTAL, J.

This order shall dispose of RSA No.1102 and 3088 of 2018 as identical questions of law and fact are involved for adjudication. For brevity, facts are taken from RSA No.1102 of 2018.

Bhagwan Singh and others – respondent/plaintiffs filed suit for declaration, redemption and consequential relief of permanent

injunction qua land measuring 16 kanal situated within the revenue estate of village Manpur, Tehsil Hathin, District Palwal as per jamabandi for the year 2002-03. It is averred that predecessors of the respondents/plaintiffs and performa defendant mortgaged suit land with predecessors of appellant/defendant No.1 orally for Rs.44/- and possession was delivered to the mortgagee. The mortgagor had the right to redeem mortgage at any time and usufruct of land was to be adjusted towards mortgage amount. The suit land was got redeemed by predecessors of the respondents/plaintiffs by paying Rs.44/- to predecessors of the appellant/defendant and possession was also delivered to predecessors of the respondents/plaintiffs more than 100 years ago but the revenue record did not reflect the plaintiffs to be owners in possession of suit land and the records are liable to be corrected accordingly. The defendant is taking advantage of wrong revenue entries and threatened to take forcible and illegal possession of the suit land. In the alternative, it is claimed that if the defendant/appellant alleges that any amount including mortgage amount of Rs.44/- is still outstanding, the respondents/plaintiffs are ready to make the payment.

The trial Court framed issues, permitted the parties to adduce evidence and eventually the suit was decreed allowing declaration that plaintiffs along with performa defendant are lawful owners and in possession of the suit land and suit land is redeemed in favour of the plaintiffs and performa defendant on payment of mortgage amount of Rs.44/- to the defendant. Plaintiffs were directed to deposit the mortgage amount within a period of three months and after depositing the said

amount, defendant will handover possession of the suit land to the plaintiffs.

The appeal preferred by the appellant/defendant was partly allowed, declaration given in favour of the plaintiffs was set aside but judgment and decree passed by the trial Court qua remaining relief whereby redemption of the suit property by way of possession on deposit of mortgage amount was granted, has been upheld.

Still feeling dis-satisfied, the present appeal has been preferred by the appellant/defendant.

The sole submission made by counsel for the appellant is that as per case set up by the respondents/plaintiffs, suit land was mortgaged by their predecessors for mortgage amount of Rs.44/-, therefore, jurisdiction to seek redemption of mortgage was with the Collector of the District in which the mortgaged property is situated, in view of the provisions of Redemption of Mortgages (Punjab) Act, 1913 (in short 'the Act') which also applies to the State of Haryana. It is further argued that Section 3 of the Act applies to mortgages of land if the area does not exceed 50 acres or the principal money secured under the mortgage does not exceed Rs.5000/- . Section 12 of the Act provides that any party aggrieved by an order made under Sections 6, 7, 8, 9, 10 or 11 of the 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.

Indisputably, the proceedings before the Collector under the Act are summary in nature and any party aggrieved by an order made by the Collector under Section 6 to 11 of the Act may challenge the said order

by filing a civil suit and in that eventuality order of the civil court would prevail upon the order passed by the Collector. On a pointed query raised by the Court, counsel for the appellant is not in a position to refer to any provision in the Act that bars jurisdiction of the civil Court even by necessary implication much less expressly qua redemption of mortgages.

Section 9 of the Code of Civil Procedure, 1908 (in short ‘the Code’) deals with Courts to try all civil suits unless barred. A relevant extract from Section 9 of the Code reads as follows:-

“9. Courts to try all civil suits unless barred .- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation 1.—As suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place. “

As per the settled position in law that where there is no express bar but statutory provisions implied exclusion of jurisdiction, exclusion still cannot be inferred unless the statute also provides an adequate and efficacious alternative remedy. In the case at hand, the Collector has to conduct summary procedure in redemption proceedings and such an order is amenable to challenge before the Civil Court by way of a suit. The respondents/plaintiffs in place of availing summary remedy before the Collector filed a civil suit providing opportunity to the appellant to contest

right of the respondents/plaintiffs to redeem the mortgage. Examined from another angle, as the respondents/plaintiffs filed civil suit seeking redemption of mortgage, the appellant could get better opportunity to contest claim of the respondents/plaintiffs, therefore, there is no question of any prejudice being caused to the appellant that the respondents filed civil suit seeking redemption of mortgage which was decided by the civil Court after 1½ years of its institution and the appeal came to be decided by the first Appellate Court after consuming another 1½ years. Analyzed from any angle, contention raised by counsel for the appellant is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine. No order as to costs.

MAY 18, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no