IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2958 of 2017 (O & M)
Date of Decision:-10.01.2018

Suraj Bhan and others

...Appellants

Versus

Karam Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Baldev Singh Dhillon, Advocate for the appellants.

AMIT RAWAL J.

The appellants-defendants are in appeal against the concurrent findings of fact whereby the suit claiming possession in respect of suit land measuring 5 Kanal 6 Marlas comprised in Khewat No.225, Khatoni No.310, Rectangle No.106, Killa No.18/1 situated within the revenue estate of Village Bakhli, Tehsil Pehowa, District Kurukshetra vide jamabandi for the year 2000-01 has been decreed by both the Courts below.

Learned counsel appearing on behalf of appellants has submitted that the plaintiffs filed the suit aforementioned claiming the possession on the premise that the aforementioned property was mortgaged to the predecessor in interest of defendants No.1 to 20. The mortgage was usufructuary mortgage effected orally and there was no time limit fixed for the redemption of mortgage. The defendants filed a civil suit No.51 of 2003 against the plaintiffs seeking foreclosing the mortgage which was dismissed vide judgment and decree dated 04.8.2005 and the appeal preferred against the same was also dismissed vide judgment and decree dated 31.7.2008 but the stand of the defendants had not been noticed by the lower Appellate Court. In fact both the Courts below have committed illegality and perversity in not noticing the fact that bare perusal of Appendix A, Form No.46 of CPC shows that it was mandatory for the plaintiffs to disclose the date, month and year of the mortgage, names of the mortgagor and mortgagee, sum assured, rate of interest and properety subject to mortgage. In the absence of compliance of mandatory provisions of CPC, both the impugned judgments and decrees of the Courts below are not sustainable. He has further submitted that as per the Limitation Act, mortgage land could be redeemed only within a period of 30 years from the date of mortgage but in the absence of the particulars, suit was barred by law of limitation.

Learned trial Court also failed to appreciate that respondents-plaintiffs No.1 and 2 failed to produce the particulars of the mortgage land.

I have heard learned counsel for the appellant, perused the case file and I am of the view that there is no force and merits in the submissions of learned counsel for the appellant, for, the factum of the mortgage had been admitted in the civil suit No.51 of 2003. Once there is a plea regarding the existence of mortgage, the objection with regard to the compliance of the aforementioned provisions was not required to be proved.

The defendants had enjoyed the possession and earning handsome income since long and hence nothing is to be paid to them by the plaintiffs but still learned trial Court having determined amount of Rs.350/- as mortgage money to be paid by the plaintiffs to defendants, which has already been deposited on 26.8.2013. Thus, in my view there was no necessity of passing the preliminary decree. Once the factum of the mortgage has been proved there was no defence than the one available to what has been ascertained in the plaint by the defendants, who were plaintiffs in suit No.51 of 2003. Having failed to achieve any positive view in their favour either before the trial Court or before the lower Appellate Court, I am of the view that the finding rendered by the lower Appellate Court is based upon the preponderance of the evidence and nothing has been brought to the notice of the Court that there is any illegality or perversity. In the absence of the same, I am of the view that the concurrent findings cannot be interfered unless there is substantial question of law is involved. Resultantly, the appeal stands dismissed.

January 10, 2018 **(AMIT RAWAL)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No