

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

RSA No. 4225 of 2017 (O&M)

Date of decision : 28.08.2018

Wariama @ Wariam Singh (deceased) thr. LR Neeru Rani

....Appellant

V/s

Kaushalya Devi

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ashok Paul Batra, Advocate for the appellant.

RAJAN GUPTA J.

Present appeal is directed against the judgments passed by two courts below whereby suit for redemption of the suit property was decreed in favour of plaintiff-respondent. Learned counsel for the appellant has assailed the findings contending that courts below did not appreciate the findings in correct perspective and wrongly decreed the suit in favour of the respondent-plaintiff.

I have heard learned counsel for the appellant.

Plaintiff-respondent filed a suit for redemption of suit property, detail whereof has been mentioned in head note of the plaint, owned by Ram Sahai (husband of the plaintiff) alongwith her brothers Tarsem Lal and Jugal Kishore in equal shares. They had mortgaged the suit property with the appellant-defendant for a sum of ₹2000/- on 07.01.1997 vide registered mortgage-deed. It was agreed between the parties that on payment of entire amount, plaintiff can redeem the suit property at any time. After their death, suit property was inherited by plaintiff-respondent, being legal heir of Ram

Sahai. It was averred that as the plaintiff had already deposited the amount of mortgage in the bank, she requested the defendant many times to hand-over the possession of the house in question but her request fell on deaf ears which necessitated her to file the present suit. Defendant, however, resisted the suit and contended that proper procedure for redemption was not adopted. On merits, it was submitted that defendant had taken the mortgaged shop on rent and was regularly paying the rent to plaintiff. On appreciation of evidence, trial court decreed the suit in favour of the plaintiff and directed the defendant to hand-over the vacant possession of the suit property on receiving the redemption amount of ₹2000/-. Appeal was preferred against the said judgment and decree. However, defendant remained unsuccessful. To prove his case, plaintiff herself stepped into the witness box as PW1 and exhibited mortgage deed Ex. P1. Defendant produced the mortgage deed Ex. P1 and examined herself as DW-1 to contend that the suit shop was on rent with her. Trial court on the basis of oral and documentary evidence on record held that defendant has miserably failed to adduce any evidence to show that the suit property was given on rent against the mortgage-deed. It, thus, came to the conclusion that as the property in question was mortgaged by Ram Sahai, husband of the plaintiff-respondent alongwith his brothers to appellant-defendant and no particular time for redemption of suit property was stipulated in the mortgage-deed, the plaintiff was entitled to seek declaration for redemption of suit property from the defendant on payment of mortgage amount. On perusal of judgments of both the courts below, I find no legal infirmity with the same. There is no ground to interfere with the concurrent findings of two courts below. Thus,

As the main appeal has been dismissed on merits, no order needs to be passed in the accompanying application.

August 28, 2018
Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No