

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

**RSA-4974-2018 (O&M)
Date of decision: 12.09.2018**

Sadhu Ram & others

... Appellants

Versus

Ram Pal & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. K.S. Virk, Advocate for the appellants.

Mr. Vikas Mehsempuri, Advocate for the caveator.

...

TEJINDER SINGH DHINDSA, J.

A suit filed by the plaintiffs for delivery of possession by way of redemption of mortgage of the suit land was decreed by the trial Court on 05.02.2016. Civil appeal preferred by the defendants has been dismissed in terms of judgment dated 30.05.2018 passed by the Additional District Judge, Patiala and thereby affirming the judgment and decree of the trial Court.

Defendants/appellants resultantly are in second appeal before this Court.

Brief facts of the case are that the suit had been instituted by the plaintiffs/respondents herein for delivery of possession by way of redemption of mortgage of suit land measuring 2 bighas 10 biswas situated at Village Binjal, Tehsil and District Patiala. Case of the plaintiffs was that they had purchased land measuring 3 bighas 17 biswas from defendant No.3 vide sale deed dated 11.01.2008. Out of such land purchased by them, 2 bighas 10 biswas of land had been mortgaged by defendant No.3 with the appellants/defendants No.1 and 2 vide mortgage deed dated 02.02.2006 for a

period of three years i.e. upto 02.02.2009. It was contended that after expiry of such period, the appellants/defendants had no right to hold onto the land.

Suit was contested by the defendants by filing a written statement stating that defendant No.3 had extended the mortgage deed in the first instance from 02.02.2009 upto 02.02.2012 by virtue of writing dated 09.08.2008 and thereafter a second extentension from 02.02.2012 upto 02.02.2020 had been done vide another writing dated 03.08.2010. The appellants/ defendants took a stand that the sale deed dated 11.01.2008 relied upon by the plaintiffs was a forged and fabricated document.

Defendant No.3 did not contest the suit and was proceeded against ex-parte.

As has been noticed herein above, suit of the plaintiffs was decreed by the trial Court and such judgment stands affirmed by the lower Appellate Court.

Counsel representing the appellants has submitted that the plaintiff/respondents had filed an application before the Collector, Patiala for redemption of the mortgage but the same was dismissed vide order dated 27.07.2009. The Collector had taken a view that the property could not have been redeemed before the date stipulated in the mortgage deed and as had been extended from time to time by defendant No.3. Further argued that the execution of the sale deed dated 11.01.2008 had been challenged by defendant No.3 himself but subsequently he had colluded with the plaintiff/respondents and on account of which his suit was dismissed for non-prosecution. It is argued that such vital aspects have been overlooked by the Courts below.

Having heard counsel for the appellants at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

It is a case where there is no dispute as regards the fact that the suit property was owned by defendant No.3 and defendant No.3 had executed a mortgage deed dated 02.02.2006 in favour of defendants No.1 and 2 (appellants herein) and such mortgage was for a period of three years i.e. upto 02.02.2009.

The plaintiffs/respondents set up a case that they had purchased the suit property from defendant No.3 vide sale deed dated 11.01.2008. A concurrent finding of fact has been recorded by the Courts below with regard to due execution of the sale deed dated 11.01.2008 Ex.P2 after recording oral as well as documentary evidence. Such finding of fact recorded upon due appreciation of evidence would not call for any interference in second appeal by this Court. No perversity in the same has been pointed out by the counsel.

Concededly, the suit property had been mortgaged for a period of three years ending 02.02.2009. After execution of the sale deed on 11.01.2008 in favour of the plaintiffs/respondents as regards the suit property, defendant No.3 had no right to mortgage the property and create encumbrance thereupon. The order dated 27.07.2009 passed by the Collector, Patiala would not enure to the benefit of the appellants as the Collector had failed to take into consideration that defendant No.3 had already sold the suit property and thereafter was not competent to grant any extensions of mortgage. The lower Appellate Court has rightfully observed that

as per Section 12 of the Redemption of Mortgages Act, the only remedy available to the plaintiff/respondents was to file a civil suit and there was no remedy of filing of an appeal before the Revenue Authority against the order of the Collector dated 27.07.2009.

The impugned judgments are based on due appreciation of evidence and are founded on cogent and valid reasoning.

No interference in the same is warranted.

Appeal is dismissed.

12.09.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |