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

RSA-63-2017 (O&M)

Date of decision : 27.11.2018

Banti

... Appellant

Versus

Hari Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vinod K. Kaushal, Advocate
for the appellant.

AMIT RAWAL, J.

CM-101-C-2017

For the reasons stated in the application, the applicant is allowed and the delay of 42 days in re-filing the appeal is condoned.

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The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the claim of redemption of mortgagee rights have been granted, which were declined by the trial Court.

The respondents-plaintiff sought the redemption of the suit property on the basis of the mortgage dated 10.10.1984 for a sum of ₹2,000/-.

The defendants opposed the suit being barred by law of limitation, but did not deny the status of mortgagee. It was alleged that the

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suit land was owned by one Bhola Singh, who mortgaged 1/3rd share in favour of Banta Singh and 2/3rd in favour of Santa Singh. Thereafter, on 10.10.1984, Nand Kaur and Surjit Singh transferred their mortgagee rights in favour of the defendants.

The plaintiff was declined the aforementioned relief on the ground that the evidence was beyond pleadings as the mortgage deed was not of 10.10.1984, but of 1943. The lower Appellate Court, as noticed above, reversed the findings.

Learned counsel appearing on behalf of the appellants-defendants submitted that the lower Appellate Court has committed illegality and perversity in setting aside the well-reasoned judgment of the trial Court as mortgage was not of 10.10.1984, but of 1943. The whole genesis of the pleadings of the suit was not backed by any direct and cogent material. The transfer deed of 1984 cannot be construed to be a mortgage deed. In fact, the property had already been redeemed, therefore, the suit, aforementioned, was not maintainable.

I am afraid the aforementioned argument is not sustainable as the lower Appellate Court being the last Court of fact and law, after examining the documentary evidence on record, found that the defendants had admitted the status to be of a mortgagee and had stepped into shoes of previous mortgagees. No time-line for redemption was referred to in the mortgage and in such circumstances, the suit could not have said to be barred by law of limitation. The entries to this effect also reflected in the revenue record.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Kaushal to form a different opinion than the one already

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arrived at by the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

27.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**