

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

**R.S.A. No. 1614 of 2012**

**DATE OF DECISION :- January 16, 2019**

**Raj Kumar**

**...Appellant**

**Versus**

**Amarjit Kaur**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE H.S. MADAAN**

**Present:-** Mr. Manish Kumar Singla, Advocate for the appellant.

**\*\*\***

Heard.

Plaintiff Raj Kumar had brought a suit against defendant Amarjit Kaur seeking possession of land measuring 3 Kanal 4 Marlas i.e. 64/390 share out of land measuring 19 Kanal 10 Marlas bearing Khata No. 83/134 comprising of Khasra Nos. 114//13(8-0), 14(3-12), 20(7-18) situated in the revenue estate of village Lehra, Tehsil Moonak for a total consideration of Rs.6,52,800/- i.e. @ Rs.17,000/- per Biswa and to get same registered after adjusting an amount of Rs.1,65,000/- already received by the defendant from the plaintiff as part payment (earnest money) at the time of execution of agreement to sell dated 28.3.2007 and after receiving the balance sale Price of Rs.4,87,800/- from the plaintiff besides craving for grant of permanent injunction in the alternative plaintiff had suit for recovery of Rs.3,30,000/- i.e. Rs.1,65,000/- being principal amount as earnest money and the similar amount liquidated to damages.

Notice of that suit was given to the defendant, who was duly

served but did not appear. After recording ex-parte evidence, the trial Court granted alternative relief of recovery to the plaintiff finding as alternative relief for recovery of Rs.1,65,000/- vide judgment and decree dated 19.3.2009. The plaintiff felt aggrieved by the said judgment and decree and filed an appeal before District Judge, Sangrur which was assigned to Additional District Judge, Sangrur and the same was dismissed vide judgment and decree dated 16.12.2011.

The defendant, who was respondent in the appeal had appeared before the First Appellate Court and contested the appeal. The plaintiff was dissatisfied with the judgments passed by the Courts below and has filed Regular Second Appeal before this Court.

Notice of the appeal was given to the respondent but he did not appear despite service.

I have heard learned counsel for the appellant besides going through the record.

As submitted by learned counsel for the appellant, which is corroborated by the discussion in the judgments passed by the Courts below, specific performance of the agreement to sell was denied to the plaintiff mainly for the reason that the defendant had mortgaged the land in question with P.A.D.B Lehra Gaga which was duly reflected in the Jamabandi for the year 2005-2006 and a status quo order with regard to alienation has been passed against the defendant. It has been contended that the mortgage has since been redeemed and it is so reflected in the Jamabandi for the year 2005-2006 which could not be brought to the notice of the First Appellate Court since plaintiff was not aware of the same. An application for additional evidence has been filed before this Court to produce the Jamabandi in additional evidence.

After hearing learned counsel for the appellant and going through the record, I find that it would be proper and appropriate if the First Appellate Court is made aware of the development regarding redemption of the mortgaged property so that this fact can be taken into consideration and matter be decided afresh.

Therefore, this appeal is disposed of resulting in setting aside of the judgment and decree passed by Additional District Judge, Sangrur dated 16.12.2011 and remanding the case to him for fresh decision taking into consideration the factum of redemption of the mortgage of the property in question. The plaintiff appellant may move appropriate application before learned Additional District Judge, Sangrur in that regard which be disposed of as per law. Learned Additional District Judge, Sangrur shall issue notice to defendant-respondent and after getting the service effected shall dispose of the appeal afresh. The parties are directed to appear before Additional District Judge, Sangrur on 20.2.2019.

A copy of judgment be sent to the Court of Additional District Judge, Sangrur through District and Sessions Judge, Sangrur for information and necessary compliance. Lower Court record be also returned immediately by the Registry.

**(H.S. MADAAN)**  
**JUDGE**

**January 16, 2019**

*p.singh*

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No