

RSA-1295-2021 (O&M)

Date of decision : 22.11.2022

Sikander Singh

...Appellant

Vs.

Kashmir Kaur and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Jasbir Singh, Advocate for the appellant.

MANOJ BAJAJ, J.

Appellant (defendant No.1) has preferred this regular second appeal to challenge the judgment and decree dated 10.09.2021 passed in Civil appeal No.40 of 2017 by District Judge, Gurdaspur, whereby the judgment and decree dated 22.05.2017 passed by Civil Judge (Junior Division), Gurdaspur, decreeing plaintiff's suit for declaration was affirmed.

Learned counsel has argued that the defendants are sons of mortgagee Harjit Singh, with whom land measuring 15 kanals, 6 marlas owned by Darbara Singh was mortgaged with possession for a sum of Rs.2 lakhs vide registered mortgaged deed dated 27.02.2001, for a period of 9 years. During the mortgage period, the parties died, therefore, the appellants continued to remain in possession of the said property. Learned counsel has argued that after the death of mortgagor Darbara Singh, the property devolved upon his two sons and daughter, Prem Singh, Tarsem Singh and Guljinder Kaur and mutation bearing No.2089 was also sanctioned in their favour in equal shares.

It is pointed out that subsequently, Prem Singh and Guljinder Kaur vide sale

deeds dated 23.7.2010 and 19.7.2010 respectively sold their 1/3rd share each measuring 5 kanals, 2 marlas, in favour of plaintiff-Kashmir Kaur, who requested the defendants for redemption of the mortgage, but they did not respond, therefore, she filed an application under Section 4 Redemption of Mortgages (Punjab) Act, 1913. Learned counsel has argued that the said proceedings were adjourned sine die by the Collector, Gurdaspur vide order dated 22.09.2011 and this order was challenged by the plaintiff in the suit and both the Courts have wrongly accepted the claim of the plaintiff by decreeing her suit, as appeal filed by the appellant has also been dismissed by the First Appellate Court.

He submits that the appellant has already filed a suit for specific performance of agreement to sell dated 29.06.2009 executed in his favour by Prem Singh and Tarsem Singh and considering the same, as well as the pendency of another suit between sons and daughter of mortgagor Darbara Singh, who have questioned the status of Guljinder Kaur as their sister, the redemption proceedings could not have been decided before the adjudication of these civil suits and the Collector rightly adjourned the redemption proceedings *sine die*. Learned counsel has argued that even prayer of the defendants for adjourning the subsequent suit in terms of Section 10 CPC has not been entertained by the Courts, while returning findings against him on issues No.2 and 3, therefore, the impugned judgment and decree, passed by the appellate Court, warrants interference by this Court.

After hearing the learned counsel and considering the material on record, this Court finds that the claim of the plaintiff is based upon the sale deeds Ex.P2 and P3, whereby the descendants of mortgagor Darbara Singh

have transferred their 1/3rd share each in her favour, thus, by virtue of these instruments, she has stepped into the shoes of mortgagor and applied for redemption of mortgage. The issue relating to redemption of mortgage before the Collector, Gurdaspur is entirely different than the claim of descendants of mortgagee (Harjit Singh) set-up against the vendors of plaintiff in their suit based upon an agreement to sell, because mere execution of agreement to sell would not confer any title upon them to thwart redemption proceedings. Similarly, the other suit filed by brothers of Guljinder Kaur also cannot be construed to have any bearing on the merits of this case, thus, the argument that the subsequent proceedings (Redemption of Mortgage) deserve to be stayed in terms of Section 10 CPC is misplaced.

A perusal of the impugned judgment and decree passed by the Appellate Court shows that it has examined the pleadings of the parties as well as documentary evidence carefully before affirming the findings delivered by the trial Court on material issues. The case of the parties is based upon documentary evidence, which is properly appreciated, thus, this Court does not find any ground to interfere with the concurrent findings of the fact recorded by both the Courts below.

No other argument was raised.

Resultantly, finding no merit in this appeal, much less the involvement of any substantial question of law, the same is hereby dismissed.

(MANOJ BAJAJ)
JUDGE

22.11.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No