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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 283 of 1992

Date of Decision: 25.04.2024

State of Haryana

.....Petitioner

Versus

Dalip and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S.Pannu, AAG, Haryana.

Mr. Amit Jain, Sr. Advocate with
Mr. Varun Parkash, Advocate for the respondents.

ANIL KSHETARPAL, J.(ORAL)

1.

This Regular Second Appeal has been filed by State of Haryana to challenge the correctness of judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial Court.
2.

In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.
3.

Plaintiff Dalip Singh s/o Motta Singh filed a suit for decree of declaration that he is owner in possession of land measuring 126 Kanal 11 Marlas (hereinafter referred to as suit land). It is the plaintiff’s case that Sh. Kesa Singh s/o Sh. Tan Sukh s/o Sh. Fulkina was owner of the property, who sold the property to the plaintiff vide registered sale deed dated 10.04.1965. He filed the suit claiming that in the revenue record, there is an entry of the land being under mortgage with defendants No.2 and 3, which is incorrect. In fact the mortgage was redeemed in the year 1940. In substance, the plaintiff claims that initially the entire land was mortgaged with Sh.

Ibrahim etc. who transferred their rights in favour of Sh. Shadi etc. In a separate suit, defendants No. 2 and 3 have admitted the claim of the plaintiff resulting in decree dated 14.02.1986.

4. In this suit also, defendants No. 1 and 2 admitted the plaintiff's claim, whereas, State of Haryana contested the suit while alleging that Sh. Kesa Singh was the owner of the property, which was mortgaged to Sh. Ibrahim etc. who never transferred their mortgagee rights. Therefore, when Sh. Ibrahim etc. migrated to the area which is now in the possession of an independent country-Pakistan, then as a consequence the State of Haryana, stepped into the shoes of mortgagee.

5. Upon re-appreciation of evidence, the First Appellate Court came to the conclusion that Sh. Ibrahim etc. were mortgagees but they transferred their rights vide Mutation No. 1061 dated 26.10.1934 in favour of Sh. Shadi etc. Subsequently, Sh. Shadi etc. also transferred their rights in favour of Sh. Har Chand etc. In the year 1947, Sh. Ibrahim etc. were not the mortgagees and hence, State of Haryana has no interest in the property.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. Learned State counsel submits that the jurisdiction of Civil Court is barred because the property was the custodian property. He submits that under Section 46 of Administration of Evacuee Property Act, 1950, the jurisdiction of Civil Court is explicitly barred.

8. This Court has considered the submission of the learned counsel representing the parties.

9. The jurisdiction of the Civil Court to decide the civil disputes is plenary. The specific provision debarring the Civil Courts jurisdiction shall

that in the year 1947 Sh. Ibrahim etc. were possessing the mortgagee rights.

In absence thereof, the suit filed by the plaintiff was only to get the revenue entry corrected. Section 45 of the Punjab Land Revenue Act, 1887 enables the Civil Court to order correction of entry in the Jamabandi.

10.

Hence, no ground to interfere is made out.
11.

Dismissed accordingly.

25.04.2024

(ANIL KSHETARPAL)

Rajeev (rvs)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No