



109

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

RSA-3960-2018 (O&M)

Reserved on : 05.02.2025

Pronounced on : 11.02.2025

Ashwani Kumar & Anr.

....Appellants

VERSUS

Vijay Kumar (deceased) through LRs & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Piyush Setia, Advocate for
Mr. Ashok Paul Batra, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgments and decrees dated 19.07.2016 and 14.09.2017 passed by the Trial Court and the First Appellate Court, respectively, dismissing the suit filed by them.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for declaration and permanent injunction. As per the plaintiff-appellants on 01.07.1957 one Hem Raj mortgaged the suit property with one Rikhi Ram. A registered mortgage deed was executed, and the possession of the suit property was handed over to Rikhi Ram. Rikhi Ram resided in the suit property with his family and after his death the plaintiff-appellants and other heirs of Rikhi Ram resided there. On 02.11.1998 the heirs of Hem Raj sold the suit property in favour of defendant-respondent Nos.10 and 11. The said defendant-respondent Nos.10 and 11 approached the Court

of the Collector Subdivision Malout who on 31.08.2010 passed an order for redemption of the mortgage. As per the plaintiff-appellants they, being the legal heirs of Rikhi Ram, are owners in possession of the suit property by lapse of time as the mortgage had not been redeemed by the executant or by any of his legal heirs. Hence, the suit. The defendant-respondent Nos.2, 3, 4, 6, 9 to 12 and LRs of defendant-respondent No.1 did not appear and were proceeded against ex-parte. In their written statement the defendant-respondent Nos.1 and 5 asserted that Hem Raj was the owner of the suit property and after his death the suit property was mutated in favour of some of his heirs who had further sold it to defendant-respondent Nos.10 and 11 vide sale deed dated 02.11.1998 and also delivered the possession of the suit property to the vendees. The existence of any mortgage deed dated 01.07.1957 was denied. The possession of Rikhi Ram or his heirs over the suit property was also denied. Defendant-respondent Nos.10 and 11 their separate written statements also denied the existence of any mortgage qua the suit property which fell in Khasra No.2716/2432. According to them the mortgage deed also does not mention Khasra No.2716/2432 but mentions Khasra No.2716/2412 and for that Rikhi Ram was paid Rs.2000/- by Hem Raj to redeem the same.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for declaration as prayed for ? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for ? OPP

3. Whether suit is not maintainable ? OPD
4. Whether suit is not properly valued for the purpose of court fee and jurisdiction ? OPD
5. Whether suit is time barred ? OPD
6. Whether plaintiff is estopped to file the suit by his own act and conduct ? OPD
7. Whether the plaintiff has no action and locus standi to file the suit ? OPD
8. Relief.

4. The Trial Court vide judgment and decree dated 19.07.2016 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 14.09.2017. Hence, the present regular second appeal by the plaintiff-appellants.

5. The learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing the suit. It is urged that the suit property was mortgaged, and the mortgage was never redeemed and the plaintiff-appellants had become owners by efflux of time. It is contended that the Courts have erroneously dismissed the suit on the ground of limitation also.

6. Heard.

7. In the present case both the Courts have found that the plaintiff-appellants have not been able to prove that the suit property was the same as the one mortgaged. The mortgage deed produced by the plaintiff-appellants (Ex.P3/A) pertains to land falling in Khasra No.2716/2412 while the land sold to defendant-respondent Nos.10 and 11 falls in Khasra No.2716/2432. There being no commonality between the mortgaged land and the sold land, the suit

of the plaintiff-appellant was bound to fail. Moreover, the suit of the plaintiff-appellants was also held to be barred by limitation. The challenge to the sale deed dated 01.11.1998 in favour of the defendant-respondent Nos.10 and 11 was made only on 15.09.2010 when the present suit was filed. Learned counsel for the plaintiff-appellants has been unable to convince this Court that the suit was within limitation. There is no material available on the record to make out a case for decreeing the suit of the plaintiff-appellants. No other point has been argued.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.02.2025

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO