

**SUPREME COURT OF INDIA**

Sumer Chand

Vs.

Mewa Ram

SLP (Civil) No(s).13933/2007

(S.B. Sinha and Cyriac Joseph JJ.)

04.12.2008

**ORDER**

1. Leave granted.

2. Defendant in a suit for redemption of mortgage is before us aggrieved by and dissatisfied with the judgment and order dated 28.10.2006 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh in S.A.No. 5 of 1994 dismissing the appeal preferred by the appellant herein from a judgment and order dated 13.1.1994 passed by the Additional District Judge, Kurukshetra remanding the matter back to the trial Court for fresh decision permitting the parties to lead more evidence on a joint request made by the learned counsel for the parties.

3. Plaintiffs-respondents were the purchaser of the land in suit by reason of registered deed of sale dated 22.5.1973 from one Babu Ram. Babu Ram had executed a deed of mortgage in favour of the appellant herein by a registered deed of mortgage dated 16.6.1970.

4. A suit for redemption of mortgage was filed by the respondents herein on 18.3.1987. However, according to the respondents a mistake occurred in regard to the area of the mortgaged property vis-a-vis the suit land.

5. Keeping in view the aforementioned mistake which had occurred in furnishing proper description of the property in suit, the learned trial Court dismissed the suit opining:

“...The revenue record on the file does not show that the agricultural land comprised in Khasra No.60/25/2 and 73/4/2 was ever changed as Khasra Nos. 60/25/25/2 or 73/4/2/4, after close perusal of the entire evidence on the file, I came to the conclusion that the plaintiffs have prayed in this case for redemption of only 13 kanals 12 marlas of land out of the total land measuring 21 kanals 4 marlas, allotted in lieu of the land detailed in para No.1 of the plaint.”

6. An appeal was preferred thereagainst before the Appellate Court. An application for amendment of the plaint in terms of Order VI Rule 17 of the *Code of Civil Procedure* was also filed which was allowed. Appellant was also permitted to file additional written statement.

7. In view of the aforementioned subsequent events, the learned counsel for the parties jointly agreed that in view of the amended pleadings, additional issues were required to be framed and in that view of the matter, the matter was remanded back to the trial Court by the learned Additional District Judge, Kurukshetra by an order dated 13.1.1994 directing:

“2. Heard, the judgment and decree of the learned Lower Court of 1.6.1990 is set aside. The case is remanded to the learned Lower Court for rendering the decision afresh after receiving more evidence of the parties if necessary particularly in the light of the additional issues framed by this Court vide order dated 23.12.1993. A copy of the order dated 23.12.1993 be also sent to the learned Lower Court in this regard. There is an application of the respondents for framing further additional issues and for permission to lead the evidence. The application be also sent to the learned Lower Court which would decide in this application before proceeding further in the matter. However, the learned Lower Court would decide the matter within three months from today. Not more than two opportunities to each of the party in case of necessity of evidence to be led by the parties would be given to them. The file be sent to the learned Lower Court today forthwith. Appeal file be consigned.”

8. It was that order which was the subject matter of the second appeal before the High Court.

9. Learned counsel appearing on behalf of the appellant would submit that without any instructions from the appellant, the learned advocate did not have the requisite authority to request for remand of the matter back to the trial Court.

10. The question raised by the learned counsel for the appellant is squarely covered by a judgment of this Court in *Employees in relation to Monoharbahal Colliery, Calcutta Vs. K.N. Mishra & Ors.*<sup>1</sup>, wherein this Court categorically held that even a counsel who had filed a Vakalatnama has the requisite authority even to enter into a compromise.

11. Even otherwise, when the pleadings were amended and additional issues are framed, the Appellate Court in exercise of its jurisdiction under Order XLI Rule 23 A of the Code of Civil Procedure was entitled to pass the impugned judgment for the retrial of the suit.

12. With the aforementioned observations and directions, the appeal is dismissed. No costs.

<sup>1</sup>*AIR 1975 SC 1632*