
(1961) 04 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 606/C of 1961 in First Appeal No. 64 of 1961

Bawa Tirath Singh

APPELLANT

Vs

Prem Nath and Others

RESPONDENT

Date of Decision : 03-04-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, 151

Citation : AIR 1961 P&H 520

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : T.S. Munjral, for the Appellant; H.L. Sarin, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—By judgment dated 16-12-1960 of the Court below, the plaintiff-mortgagors were granted a preliminary decree for possession of the property in suit by redemption on Payment of Rs. 8,200/- on or before 18-4-1961 and on the payment of this amount the defendant-mortgagees had to deliver the possession of the suit land to the plaintiffs. The defendant-mortgagees have filed an appeal against this preliminary decree in this Court praying that the suit should be decreed only on payment of a further sum of Rs. 3560/-due as additional interest.

2. In this appeal, the present application under Order XLI, Rule 5, and Section 151 of the CPC has been filed by the appellants, in which they have prayed that the mortgaged land be not delivered to the plaintiffs till the decision of the appeal

3. On this application notice was issued to the plaintiffs, who have opposed this application and have stated that they have already deposited the amount of Rs. 8,200/- on 7-3-1961 and were therefore entitled to get possession of the suit land from the defendants.

4. Learned counsel for the appellants submitted that ordinarily in a mortgage suit, where an appeal has been filed against the preliminary decree further proceedings in connection with the final decree should be stayed. He relied on a

decision in *Diwan Chand v. Nanak Chand* AIR 1932 Lab 271.

5. After hearing the counsel for the Parties I am of the view that no general rule can be laid down for stay of proceedings in such cases. In the present case, the plaintiffs want redemption of their property and they have deposited the mortgage amount together with interest as directed by the trial Court. They are, therefore, entitled to the possession of the mortgaged land. The mortgagees want an additional sum of Rs. 3,560/-.

Their interests will be amply protected if the plaintiffs are asked to give adequate security for the payment of this amount, in Case the appeal is accepted. In these circumstances, I would not stay further proceedings pursuant to the trial Court's decree, but would, however, direct that the plaintiffs will get possession of the mortgaged property only if they furnish adequate security to the satisfaction of the Executing Court regarding the payment of Rs. 3,560/-. The adequacy of the security will be determined in the presence of the defendant-mortgagees. No order as to costs.