



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

119

RSA-1819-2023 (O&M)

Date of Decision: 22.01.2025

Balbir Singh

....Appellant

Versus

Mahabir Parshad

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. SK Sirsa, Advocate for the appellant.

NIDHI GUPTA, J.

1. The defendant is in second appeal before this Court against the concurrent findings returned by the learned Courts below whereby vide judgment and decree dated 15.09.2018 passed by the learned Additional Civil Judge (Senior Division), Hisar; duly affirmed in appeal by the learned Additional District Judge, Hisar, vide judgment and decree dated 15.12.2022, the suit of the plaintiff/respondent for Possession by way of Specific Performance has been **decreed**.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is being referred to as 'the defendant', whereas the respondent as 'the plaintiff'.

3. The plaintiff had filed the present suit, seeking possession by way of specific performance in respect of house constructed on plot No. 164-A min reassuming 111 sq. yards situated at Kunj Lal Garden, Hisar, as per Agreement/Mortgage Deed No. 10704 dated 23.10.2012 executed and registered by defendant in favour of plaintiff for a total sale consideration of ₹36,45,000/- (₹25,00,000/- as principal amount and



₹11,45,000/- as interest); **AND** for direction to the defendant to execute and register the sale deed as per term and condition of the Mortgage Deed/Agreement with consequential relief of permanent injunction restraining the defendant from alienating, transferring creating third party charge over the suit land in any manner.

4. Brief facts of the case as set out in the plaint are that the defendant was in need of money, so he requested the plaintiff to advance money. The defendant offered to mortgage his house with plaintiff against borrowed money. The plaintiff accepted his offer and advanced him ₹25,00,000/- on 23.10.2012 in the presence of witnesses. The defendant had also executed mortgage deed No. 10704 dated 23.10.2012 in favour of plaintiff regarding the suit property. The suit property was mortgaged without possession for consideration of ₹25,00,000/-. The terms and conditions of mortgage without possession are as follows:-

- “a) The last date of the redemption of the mortgage deed was fixed as 30.04.2015.*
- b) The defendant agreed to repay the mortgage money alongwith interest @ Rs.1/- per hundred.*
- c) He undertook to pay the interest every month to the plaintiff against proper receipt.*
- d) It was agreed that if the defendant failed to repay the amount alongwith interest then the plaintiff has a right to recover the said amount alongwith interest through the process of the court at the cost of defendant or in the alternative he would be entitled to get the house transferred in his name through process of the court against the principle and interest amount.*
- e) The defendant undertook that he shall not alienate the house in question.*
- f) The other conditions as mentioned in the said mortgage deed.”*



5. However, the defendant neither paid the principal amount nor paid any interest within the stipulated period in spite of repeated demands from the plaintiff violating the terms and conditions of Mortgage Deed. At the time of filing of suit, an amount of ₹36,45,000/- (₹25,00,000/- as principal amount and ₹11,45,000/- as interest thereupon) was due against the defendant. Thus, as per the terms and conditions of the Mortgage Deed, the plaintiff is entitled to get the sale deed registered for ₹36,45,000/- in his favour regarding the house in question. It was further averred that the plaintiff was always ready and willing to perform his part of Agreement/Mortgage Deed and is ready to bear the expenses and execution and registration of sale deed in his favour. On the other hand, the defendant had refused to execute the sale deed.

6. Upon notice, defendant appeared and filed written statement vehemently contesting the suit on numerous grounds/objections denying the averments made in the plaint (Annexure A-1), *inter alia*, taking the objection that the amount of ₹25,00,000/- was never given by the plaintiff to the defendant; and that the plaintiff had taken undue advantage of the drinking habit of the defendant and got executed and registered the Mortgage Deed No. 10704 dated 23.10.2012; and taking various defence.

7. No replication to the written statement was filed by the plaintiff.

8. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 31.05.2017: -

“1. Whether the plaintiff is entitled for decree of possession of house in question as prayed for in the body of the plaint alongwith consequential relief of



permanent injunction on the grounds as mentioned in the plaint? OPP.

2. *Whether plaintiff has no locus standi and cause of action to file the present suit? OPD.*
3. *Whether present suit is not maintainable in the present form? OPD.*
4. *Whether plaintiff is estopped by her own act and conduct from filing the present suit? OPD.*
5. *Whether plaintiff has not come to the court with clean hands? OPD.*
6. *Whether suit is not properly valued for the purpose of court fees and jurisdiction? OPD.*
7. *Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD.*
8. *Whether suit is time barred? OPD.*
9. *Relief.”*

9. On the basis of oral and documentary evidence adduced by the parties, the learned trial Court decreed the suit of the plaintiff with costs vide judgment and decree dated 15.09.2018 holding that the plaintiff is entitled to decree for possession by way of specific performance in respect of house in dispute by the dint of Mortgage Deed No. 10704 dated 23.10.2023 Ex. PW-5/B. The defendant was directed to execute and get registered the sale deed of the house in dispute in favour of the plaintiff within two months from the date of judgment and will hand over the possession of the house in dispute to the plaintiff.

10. The defendant had approached the Ist Appellate Court by way of filing Civil Appeal No.516/2018, against the judgment and decree dated 15.09.2018, which too was dismissed by the learned



Additional District Judge, Hisar, vide judgment and decree dated 15.12.2022. Hence, the present second appeal.

11. Learned counsel for the appellant-defendant assails the judgments of both the Courts below by submitting that the same have been passed without appreciating the facts and evidence on record. Both the learned Courts below had totally overlooked and ignored the fact that the defendant had never borrowed any money from the plaintiff and had also never offered to mortgage the house in question with the plaintiff. The plaintiff had never advanced the alleged amount of ₹25,00,000/- to the defendant and therefore, there was no question of execution of Agreement/Mortgage Deed No. 10704 dated 23.10.2012, which in fact is a result of fraud and misrepresentation.

12. It is contended that both the Courts below have committed grave error by ignoring the testimony of PW-5 Ajay Gupta, Deed Writer who proved the Agreement/Mortgage Deed No. 10704 dated 23.10.2012Ex. PW-5/B upon which the defendant had admitted his signatures. However, in this regard it has been ignored that the defendant is a drug addicted person, so, these signatures were taken by the plaintiff under the influence of the alcohol. Moreover, one of the attesting witnesses of the said deed Ex. PW-5/B, namely, Naveen Kumar, who is the own son of the plaintiff, has not been examined as plaintiff's witness. Even opinion of handwriting expert has not been taken whether the attesting signature actually belong to the son of the appellant. It is submitted that the defendant had never signed any agreement/deed knowing it to be a mortgage deed and his signatures



were obtained by the plaintiff by playing fraud and under the influence of liquor. The defendant had never intended to mortgage the suit property.

13. Further, it is submitted that in passing the impugned judgments and decrees, both the Courts below have also ignored the testimony of PW-4 Sh. Parveen Chaudhary, Advocate, who deposed that no payment/transaction took place in his presence. Moreover, the plaintiff even failed to prove his source of funds and payment of Rs.25,00,000/- to the defendant. Even the evidence of plaintiff in his affidavit Ex. PW-7/A was totally beyond the pleadings, which was wrongly relied upon by the learned Courts below. it is accordingly prayed that the concurring judgments of the courts below be set aside.

14. No other argument is raised on behalf of the appellant.

15. I have heard learned counsel for the appellant and perused the case file in great detail.

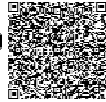
16. At the very outset, it is pertinent to mention herein that the matter pertains to the 2023 and notice is yet to be issued in the same. Perusal of the order-sheets shows that earlier this case was listed for hearing for 09 times i.e. on 03.07.2023, 22.08.2023, 19.12.2023, 14.02.2024, 20.02.2024, 21.02.2024, 29.02.2024, 18.07.2024 and 23.10.2024; out of which on 04 dates i.e. 03.07.2023, 19.12.2023, 18.07.2024 and 23.10.2024 (last date of hearing), the appellant had gone un-represented; whereas on the remaining 05 dates the case was adjourned at the request of learned counsel for the appellant.



17. Learned counsel for the defendant has laid challenge to the Agreement/Mortgage Deed No. 10704 dated 23.10.2012 Ex. PW-5/B by submitting that the plaintiff had obtained the signatures of the defendant upon the said Deed by taking advantage of the inebriated state of the defendant; that the said Deed has been procured by false and fraudulent means and, therefore, no right accrues to the plaintiff in respect of the said Deed. It has further been submitted by the defendant that he did not borrow any amount of ₹25,00,000/- from the plaintiff.

18. However, the said arguments of the defendant are liable to be rejecting in view of the fact that perusal of the record of the case reveals that the plaintiff had proved the Mortgage Deed Ex. PW-5/B by examining PW-5 Ajay Gupta, Deed-Writer, who deposed that he had scribed the said Mortgage Deed *on the instructions of defendant* and the defendant had admitted receiving of ₹25,00,000/- from the plaintiff. He had further deposed that the Deed was read over to both the parties by him and the parties put their signatures on the same after admitting its contents as correct. The witnesses had also affixed their signatures on the deed in the presence of PW5; then he made an entry of the same in his register and copy of which was tendered in evidence as Ex. PW-5/A.

19. The plaintiff had also examined PW-4 Parveen Chaudhary, Advocate who is one of the attesting witnesses of the said Agreement/Mortgage Deed No. 10704 dated 23.10.2012 Ex. PW-5/B, who had fully supported the case of the plaintiff and deposed that the said Mortgage Deed was executed in his presence.



20. Moreover, it has also to be borne in mind that the Mortgage Deed Ex. PW-5/B is a registered document. Therefore, presumption of truth is attached to the same. Further, to prove its authenticity, the plaintiff had examined PW-9 Atma Ram, Tehsildar-cum-Sub Registrar, Hisar, who had deposed that the Mortgage Deed was presented before him *by the defendant*, and he admitted the borrowing of an amount of ₹25,00,000/- from the plaintiff. After admitting the contents of the Mortgage Deed Ex. PW-5/B as correct, both the parties and attesting witnesses have put their signatures in his presence. PW-9 Atma Ram, had further deposed that the defendant was in his senses at the time of registration of Mortgage Deed. The Mortgage Deed Ex. PW-5/B even bears the photographs and signatures of the parties as well as the signatures of the attesting witnesses. As stated above, presumption in law is attached with a registered document, therefore, the defendant was required to lead cogent and convincing evidence to prove that the aforesaid Deed was a result of fraud and misrepresentation; and that the plaintiff by taking the benefit of drunkard condition of defendant got executed the said Mortgage Deed Ex. PW-5/B in his favour. However, except the self-serving statement of the defendant, no other evidence has been produced by him.

21 The relevant findings of the learned First Appellate Court in para Nos. 24, 25 and 29 of the judgment and decree dated 15.12.2022, reads as follows:-

24. Otherwise also, the plaintiff successfully proved the execution of the mortgage deed by the defendant and payment of Rs.25 Lakhs to defendant. He examined PW4 Shri Praveen Chaudhary, Advocate, who was one of the attesting



witnesses of the mortgage deed. He categorically deposed that mortgage deed was drafted by Ajay Gupta, Deed writer in his presence and both the witnesses had also put their signatures in his presence and he had also signed the document in the presence of the parties. The plaintiff further examined PW5 Ajay Gupta, Deed writer, who also categorically deposed that the mortgage deed was scribed by him on the asking of defendant Balbir. He further deposed that Balbir had also admitted before him that he has received Rs.25 lakhs from the plaintiff Mahabir. The document was read over to both the parties and thereafter, both the parties and the witnesses put their signatures in his presence. In his cross-examination also, he deposed that before taking signatures of defendant Balbir Singh, he had duly enquired from him about receipt of mortgage money Rs.25 lakhs, to which, Balbir Singh had admitted that he has received the amount.

25. It is further pertinent to mention that the plaintiff also examined PW8 Sultan son of Gopal Ram, who categorically deposed that on 23.10.2012, the plaintiff had handed over Rs.9 lakhs to the defendant in his presence and he had also admitted that earlier, he had taken Rs.16 lacs from the plaintiff. In his cross-examination, on a query by learned counsel for the defendant, as to whether the witness had counted the cash of Rs.9 lakhs, the witness deposed that the recipient i.e. the defendant had counted the cash amount of Rs.9 lakhs. PW 9 Atma Ram, Retired D.R.O. who was posted as Tehsildar/Sub-Registrar on 23.10.2012, categorically deposed that when the mortgage deed was presented before him for registration, he had verified the facts from both the parties and the parties had admitted the money transaction at residence. He also deposed that at the time of registration of the document, the executant Balbir was fully conscious and was in his senses.

26 to 28

xxx

xxx

xxx

29. Moreover, the defendant did not adduce any evidence to prove that he ever returned even a single penny to the plaintiff. He also did not adduce any evidence that he had paid any amount as interest in pursuance of terms and conditions of the mortgage deed Ex.PW5/B. Moreover, in the written statement, it was never the case of the defendant that



he has been ready and willing to get the suit property redeemed by paying the redemption money. Even in the grounds of appeal also, no such plea has been taken by the defendant. No legal notice was issued by him to the plaintiff or no suit/application was filed by him to get the suit property redeemed. At all stages till this appeal, it has been the case of the defendant that mortgage deed Ex.PW5/B was never executed by him. However, as already noted above, the defendant failed to prove his pleas of fraud and misrepresentation and therefore, as per terms and conditions of the mortgage deed Ex.PW5/B, the plaintiff was duly entitled to seek relief of specific performance of the documents seeking transfer of the suit property in his name as well as delivery of possession in his favour. The judgments/authorities relied upon by learned counsel for the defendant pertain to redemption of mortgage, which are not applicable in facts and circumstances of the present case.”

22. The argument of the learned counsel for the defendant that the plaintiff did not prove on record that he had the capacity to advance huge loan of ₹25,00,000/- is also liable to be rejected as, it was proven by the evidence of PW1 Kavita, Assistant Manager, who had brought the bank account statement of the plaintiff Ex. PW-1/A; and evidence of PW-2 R.K. Sharma, Manager, SBI HAU, Hisar, who had brought the bank account statement of the plaintiff and his wife Ex. PW-2/C, as per which various transactions were shown to have been made in the account of the plaintiff and his wife, thus, falsifying the contentions of the defendant.

23. It is also to be noted that in the written statement filed by the defendant before the learned trial Court it was never pleaded that the defendant was ever ready and willing to get the suit property redeemed by paying the redemption money. Even in the grounds of appeal, no such plea has been taken by the defendant. No legal notice was issued



by him to the plaintiff or no suit/application was filed by him to get the suit property redeemed. As such, the said plea of the defendant at this stage are belated and liable to be rejected.

24. Learned counsel for the appellant is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same.

25. In view of the above, present appeal is **dismissed**.

26. Pending application(s) if any also stand(s) disposed of.

22.01.2025
rishu

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No