

**RSA No. 2378 of 1993**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2378 of 1993 (O&M)**Reserved on: 17.09.2025****Pronounced on: 22.09.2025****Yakub & Anr.****...Appellants**

Versus

Munshi & Anr.

...Respondents**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by:- Mr. Manuj Chadha, Advocate
for the appellants.

Mr. Sachin Mittal, Advocate for
Mr. S.C. Mytle, Advocate
For respondents.

DEEPAK GUPTA, J.

It is defendant's appeal against the concurrent findings of the Courts below. The plaintiffs (*respondents herein*) had filed a suit for possession by way of redemption of the suit land, which was decreed by the Trial Court on 17.09.1992 and affirmed by the First Appellate Court on 20.10.1993.

2. For convenience, parties are referred to as per their status before the Trial Court. Trial Court record was called. Same has been perused.

3. The dispute concerns 27 Kanal 12 Marla of land situated in village Niwana, Tehsil Ferozepur Jhirka, originally owned by Alladin son of Ghisa. Plaintiffs alleged that their father Roshan was the mortgagee in possession, who had orally sub-mortgaged the suit land for ₹2,000 with Rahim Khan, the father of the defendants, in June 1960. They sought redemption on payment of this amount.

4. The defendants contested, asserting that their father Rahim Khan had purchased the equity of redemption from Alladin vide registered sale deed dated 26.05.1958 (Ex.D1) for ₹4,000, and thereafter redeemed

**RSA No. 2378 of 1993**

the mortgage from Roshan in 1968. They relied upon supporting entries in the revenue record.

5. In rejoinder, plaintiffs contended that Alladin had expired in 1957 and could not have executed any sale deed in 1958.

6. Necessary issues were framed. Evidence produced by the parties were taken on record.

7. Both Courts below accepted death entry Ex.P9 (*showing Alladin's death on 10.12.1957*), disbelieved the rival death certificate Ex.D2 (*showing death of Alladin in 1966*), and consequently held Ex.D1 to be invalid. Accordingly, the suit was decreed.

8. Learned counsel for the appellants-defendants has assailed these findings, urging that Ex.D1, being a registered document, was duly proved through the scribe (DW1) and attesting witness Ishak (DW2), who confirmed Alladin's execution of the deed. DW2 also testified that Alladin died five to six years later at Vrindavan, and proved Ex.D2 in support. It is argued that the Courts erred in rejecting this evidence and in accepting Ex.P9, a document supported only by the self-serving statement of PW1. Reliance is also placed on consistent revenue entries from 1961-62 onwards, showing Rahim Khan as mortgagor and Roshan as mortgagee, with redemption recorded in 1968, and thereafter Rahim Khan and his successors reflected as owners in possession. It is further contended that the plaintiffs' plea of oral sub-mortgage in 1960 is untenable in law. Prayer is accordingly made to dismiss the suit by setting aside judgments of courts below and by accepting this appeal

9. In response, learned counsel for the respondents-plaintiffs has supported the concurrent findings, stressing that as per Ex.P9, Alladin had expired in 1957 and could not have executed the sale deed in 1958.

10. This Court has considered the rival submissions and scrutinized the record.

11. Mutation No. 523 of 1954 (Ex.P7) evidences the mortgage by Alladin in favour of Roshan, the father of plaintiffs. The registered sale deed

**RSA No. 2378 of 1993**

dated 26.05.1958 (Ex.D1) bears Alladin's thumb impression, proved by the attesting witness DW2. The Sub-Registrar's endorsement also carries a presumption of correctness. If plaintiffs' plea of Alladin's prior death were correct, they ought to have led cogent evidence to show that the thumb impression on Ex.D1 was not his, which they failed to do.

12. Revenue records further corroborate defendants' version. Jamabandi for 1961-62 show Rahim Khan, the father of defendants - appellants, as mortgagor and Roshan as mortgagee. The Jamabandi of 1966-67 (Ex.P2) carries a red entry noting redemption vide mutation No.986. In jamabandi for 1971-72 (Ex.P3), Rahim Khan alone is recorded as owner in possession, and subsequent Jamabandis consistently reflect him and thereafter his sons (the defendants) as owners in possession. Roshan's name disappears from the record after 1968. These entries, carrying presumption of truth, were never challenged by the plaintiffs even in the present suit filed in 1987.

13. In these circumstances, there was no justification for the courts below to discard the registered sale deed (Ex.D1) or the consistent revenue record, by relying solely on Ex.P9 and the uncorroborated testimony of PW1.

14. The further plea of the plaintiffs that their father had orally sub-mortgaged the land to the defendants' father in June 1960 is equally untenable. The revenue records produced on file from 1961 onwards do not support this assertion. At no stage is Rahim Khan or the present defendants recorded as sub-mortgagees, nor is Roshan, the plaintiffs' father, reflected as a sub-mortgagor. Rather, the Jamabandis consistently show Rahim Khan as mortgagor and Roshan as mortgagee, with the mortgage duly redeemed by Rahim Khan in 1968.

15. Even otherwise, the plea of oral mortgage is unsustainable in law. Section 59 of the Transfer of Property Act, 1882, as extended to the State of Haryana by Notification dated 05.08.1967, mandates that a mortgage, other than by deposit of title deeds, can only be effected by a



RSA No. 2378 of 1993

registered instrument. This Court in ***Amar Singh v. Dalip Singh (1990 SCC OnLine P&H 925)*** held that no oral mortgage could be recognized in Haryana after the said notification, and a claim based on such plea was rejected in the absence of pleadings or evidence about the terms of mortgage. The same principle was reiterated in ***Khuda Bux v. Sukhan Ram 2011 (3) PLR 227***. Thus, even assuming the plaintiffs' contention to be correct, the plea of oral sub-mortgage is legally impermissible.

16. In view of the foregoing discussion i.e., (i) the registered sale deed dated 26.5.1958 (Ex.D1) duly proved by independent witnesses; (ii) the consistent revenue entries recording redemption in 1968 and the presumption of correctness attached to both, besides (iii) the untenability of the plaintiffs' plea of oral sub-mortgage, the judgments and decrees of the Courts below suffer from patent illegality and cannot be sustained.

17. Accordingly, the appeal is allowed. The impugned judgments and decrees are set aside. The suit for possession by way of redemption filed by the plaintiffs – respondent stands dismissed. The parties shall bear their own costs.

(DEEPAK GUPTA)
JUDGE

22.09.2025

Jiten

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No