



RSA No.1671 of 2000 (O&M) -1-

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

212

RSA No.1671 of 2000 (O&M)

Reserved on:06.08.2025

Pronounced on:12.08.2025

Kundan Singh and others

...Appellants

Vs

Joginder Singh and others

...Respondents

2. **COCP No.2542 of 2015 (O&M)**

Kundan Singh and another

...Petitioners

Vs

Joginder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Sudeep Mahajan, Advocate
Ms. Saanchi Mahajan, Advocate
for the appellants in RSA No.1671 of 2000 and
for the petitioners in COCP No.2542 of 2015.

Mr. Kuldeep Sanwal, Advocate
the respondents.

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AMARINDER SINGH GREWAL J.

1. This order of mine shall dispose of two cases i.e. RSA No.1671 of 2000 and COCP No.2542 of 2015. The former is preferred by the appellants-defendants No.1 to 4 against the concurrent finding rendered vide judgments and decrees dated 31.03.1999 and 19.01.2000 passed by the learned trial Court and the learned 1st Appellate Court respectively whereby the suit for possession by way of redemption filed by contesting respondent No.1-plaintiff was decreed and the appeal preferred against the aforesaid judgment and decree by the appellants-defendants No.1 to 4, stood dismissed. The latter has been filed by the petitioners-defendants No.1 to 4 under Section 12 of the Contempt of Courts Act, 1971 for imposing

**RSA No.1671 of 2000 (O&M) -2-**

appropriate punishment on the respondents for willful disobedience of orders dated 27.04.2000 (Annexure P-1) and 14.03.2001 (Annexure P-2) passed by this Court in aforementioned regular second appeal. For the sake of brevity, facts are being enumerated from RSA No.1671 of 2000.

2. Succinctly, the facts are that Harbans Singh, Rattan Singh sons of Ganga Singh and Smt. Keso widow of Ganga Singh were owners in possession of the land in dispute mentioned in the head-note of the plaint and they mortgaged the same with defendants No.1 to 4, who are appellants before this Court, on 10.06.1975 and executed a mortgage deed in their favour for a period of 14 years i.e. upto 10.06.1989. Harbans Singh, mortgagor, died on 10.10.1991 and being unmarried, his estate was inherited by defendant No.8-Bachan Singh (proforma respondent No.5 before this Court) and his sister Tari Kaur. Tari Kaur also died and her legal heirs are defendants No.11 to 13 (proforma respondents No.8 to 10 before this Court). On death of Rattan Singh, mortgagor, his estate was inherited by his sons namely Sulakhan Singh, Dalbir Singh, Kashmir Singh (proforma respondent No.6 before this Court), Balkar Singh, Swinder Singh alias Jaswant Singh (proforma respondent No.7 before this Court) and his widow Smt. Mayo and out of them Sulakhan Singh, Dalbir Singh, Balkar Singh and Mayo also died. Sulakhan Singh, Dalbir Singh, Balkar Singh remained unmarried throughout their life and defendants No.9 and 10 namely Kashmir Singh and Swinder Singh alias Jaswant Singh i.e. proforma respondents No.6 and 7 respectively before this Court, are their legal heirs. Smt. Keso has also died and her estate was inherited by her grandsons i.e. defendants No. 5 to 7 (proforma respondents No.2 to 4 before this Court) namely Swinder Singh, Virsa Singh, Kirpal Singh and

**RSA No.1671 of 2000 (O&M) -3-**

by the plaintiff-Joginder Singh (contesting respondent No.1 before this Court) on the basis of valid Will and mutation No.1373 dated 31.08.1981 has also been sanctioned in this regard. A case regarding redemption of the suit land was filed by contesting respondent No.1-plaintiff, who is legal heir of Bachan Singh (proforma respondent No.5 before this Court) in the court of S.D.O. (Civil), Gurdaspur exercising the powers of Collector but the same was withdrawn by him due to the incapacity of the Court on the basis of pecuniary jurisdiction. Thereafter, he asked defendants No.5 to 13 to pay the mortgage money to defendants No.1 to 4 and get the suit land redeemed but when they showed their incapacity in paying of the mortgage money to defendants No. 1 to 4, he came forward to pay the mortgage money to defendants No.1 to 4 for getting the suit land redeemed. Defendants No.5 to 13 were put at liberty to join at any stage of the suit and can get their share of the suit land after paying the mortgage money of their share to the plaintiff. The plaintiff asked defendants No.1 to 4-mortgagees to take the mortgage money from him and to deliver the possession of the suit land to him one day prior to the filing of the suit but they refused to do so. Hence, the instant suit filed by the plaintiff for possession by way of redemption of the suit land on the basis of mortgage deed dated 10.06.1975 against defendants No.1 to 4.

3. Defendants No.1 to 4 contested the suit by filing written statement on the ground that the suit is barred under Order 2 Rule 2 C.P.C. and under Order 23 Rule 1(4) C.P.C. On merits, defendants No.1 to 4 admitted that Harbans Singh, Rattan Singh and Keso were the owners of the suit land and they mortgaged the same with them on 10.06.1975 vide mortgage deed of the even date with possession and the date of expiry of the period of

**RSA No.1671 of 2000 (O&M) -4-**

mortgage was 10.06.1989. Defendants further admitted that Rattan Singh, mortgagor has died but they denied that his estate was inherited by his sons namely Sulakhan Singh, Dalbir Singh, Kashmir Singh and Balkar Singh as alleged in the plaint. According to these defendants, Smt. Mayo, widow of Rattan Singh succeeded to the estate of Rattan Singh and she had sold her share in the suit land to them and Sulakhan Singh and his brothers also sold out their share in the suit land to them on the basis of sale deeds dated 06.04.1979, 07.04.1979 and 16.04.1979. It was also contended in their written statement that the plaintiff filed a suit for redemption of the suit land, which was withdrawn by him without seeking permission to file a fresh suit on the same cause of action and as such, the plaintiff is estopped from filing the present suit by his act and conduct, therefore, prayed that the suit of the plaintiff be dismissed.

4. Defendants No.5 to 8 and 10 to 13 filed separate written statement whereby they admitted the claim of the plaintiff and prayed that they had no objection if the plaintiff get redeemed the suit land to the extent of their share from defendants No. 1 to 4 and they will get their share from the plaintiff after paying the mortgage money to him. Defendant No.9 also filed a separate written statement whereby he admitted the claim of the plaintiff and alleged that he has no objection if the plaintiff get redeemed his share from defendants No 1 to 4 regarding the suit land and he will get his share in the suit land from the plaintiff after paying mortgage money to the plaintiff.

5. From the pleadings of the parties, following issues were framed by the learned trial Court:-

**RSA No.1671 of 2000 (O&M) -5-**

- 1) Whether the plaintiff is entitled for the redemption of the suit property? OPP
- 2) Whether the suit is barred under Order 2 Rule 2 CPC and Order 23 Rule 1(4) CPC? OPD
- 3) Relief

6. Qua issue No.1, the learned trial Court after appreciating the oral as well as documentary evidence placed before it, returned a finding in favour of the plaintiff and against defendants No.1 to 4 by holding that he is entitled to get the suit land redeemed from defendants No.1 to 4 on payment of the mortgage amount of Rs.39,000/- and defendants No.5 to 13, who are also co-owners of the suit land, can get their share in the suit land from the plaintiff after payment of their share of mortgage money to him. Issue No.2 was not pressed by learned counsel for defendants No.1 to 4, thus, the suit was decreed vide judgment and decree dated 31.03.2019 passed by the learned trial Court. Aggrieved by the aforesaid judgment and decree passed by the learned trial Court, an appeal was preferred by defendants No.1 to 4, which was also dismissed. Hence, the regular second appeal.

7. Learned counsel for the appellants-defendants No.1 to 4 argued that admittedly, Smt. Mayo Devi widow of Rattan Singh, Kashmir Singh, Dalbir Singh, Sulakhan Singh, Balkar Singh and Jaswant Singh sons of Rattan Singh had sold their share of the land to appellants and therefore, by the act of parties, the integrity of the mortgage has been broken. In that eventuality, the plaintiff could not seek redemption of whole of the mortgaged property and his right of redemption was restricted to his own share. Furthermore, he could not seek redemption on behalf of other co-



RSA No.1671 of 2000 (O&M) -6-

sharers/co-mortgagors. In support of this contention, he relied upon the proviso to Section 60 of the Transfer of Property Act, 1882 that right of mortgagor to redeem the suit property is available only if such right is not extinguished by act of the parties or by decree of a court. It was argued that since the appellants have purchased a share of the property from some of the mortgagors, the right to redeem has been extinguished by act of parties, as the suit property has lost the character of mortgage. In this regard, reliance was placed upon the judgment passed by Full Bench of the Hon'ble Allahabad High Court passed in *Mt. JagannathKunwar and others Vs. Jaipal and others AIR 1993 Allahabad 257* to contend that where the mortgagees purchase a share of the property mortgaged to them, the integrity of the mortgage is broken and therefore, it is not open to the purchaser from some of the mortgagors to redeem more than the share purchased by him. On the same analogy, the respondent No.1/plaintiff cannot be held entitled to seek redemption of property more than his share. Further reliance was placed upon the judgment passed by the Hon'ble Supreme Court in *Jamila Begum (D) through LRs Vs. Shami Mohd. (D) through LRs and another* where one of the mortgagees had purchased the entire mortgaged property from the mortgagors and therefore, the Hon'ble Supreme Court has held that purchase of property by sale deed dated 21.12.1970 is an act of the parties, by which the right of redemption qua the appellant became extinguished. Therefore, learned counsel for the appellant prayed for setting aside of the impugned judgments and decrees passed by the learned Courts below and dismissing the suit of the respondent No.1-plaintiff.

**RSA No.1671 of 2000 (O&M) -7-**

8. Per contra, learned counsel appearing for the respondents argued that judgments and decrees passed by both the learned Courts below are based on correct appreciation of facts and law and therefore, do not require any interference in the instant regular second appeal, thus, prayed for dismissal of the same.

9. I have heard learned counsel for the parties and have gone through paper book with their able assistance as well as the case laws cited.

10. While issuing notice of motion vide order dated 27.04.2000, this Court had stayed the operation of impugned judgments and decrees passed by the learned Courts below. Thereafter, vide order dated 14.03.2001, the appeal was admitted and interim order was ordered to be continued. In the contempt petition filed by the petitioners-defendants No.1 to 4, it is contended that despite stay orders granted and ordered to be continued by this Court vide orders dated 27.04.2000 and 14.03.2001, respondent No.-1/plaintiff and others entered into the suit property forcibly and raised a boundary line throughout the length of the land in dispute and thus, willfully and deliberately disobeyed orders dated 27.04.2000 and 14.03.2001 passed by this Court.

11. The issue for consideration before this Court is whether respondent No.1/plaintiff can seek redemption on behalf of other co-mortgagors as well and whether the right to seek redemption of the suit property has been extinguished by act of parties, as some part of the mortgaged property has been purchased by the mortgagees themselves.

12. Right of mortgagor to redeem mortgaged property is recognized as a statutory and legal right under Section 60 of the Transfer of Property Act, 1882, which is reproduced as under:-



“60. Right of mortgagor to redeem.—At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.”

**RSA No.1671 of 2000 (O&M) -9-**

13. A mortgagor's right of redemption is indefeasible and invariable, which can be extinguished only in a manner known to law. Such extinguishment of the right can take place; (i) by act of parties viz; by a contract between the parties, by a merger or by a statutory provision or (ii) by decree of the court. Otherwise, a mortgagee who has entered into possession of the mortgaged property under a mortgage will have to give up possession of the property when a suit for redemption is filed unless he shows that the right of redemption has come to an end or that the suit is liable to be dismissed on some other valid ground. This flows from the legal principle, which is applicable to all mortgages namely "once a mortgage, always a mortgage".

14. Admittedly, in the present case, appellants-defendants No.1 to 4/mortgagees purchased a share of the property from legal heirs of one of the original mortgagors namely Rattan Singh vide sale deeds Ex.D1 to D3 dated 06.04.1979, 07.04.1979 and 16.04.1979 respectively and thus, can such act of parties has resulted into extinguishment of the mortgage itself, the answer is in negative. This Court in *Naurang Singh Vs. Jangir Singh AIR 1985 P&H 268* has held that where one only of a number of mortgagees has acquired by purchase a part of the mortgaged property, it cannot be said that the mortgage over that portion has merged in the sale. The purchaser mortgagee cannot insist that the mortgagor should redeem only that part of the property, which has not been purchased. The Madras High Court in *Eswara Krishna Aiyar and Anr. Vs Mariya Susai Reddiar and Ors. AIR 1940 MADRAS 498* has held as under:-

“.....It may be necessary in this connection to examine the reason why an exception is made to the general rule that the



*redemption must be of an entirety of the property in cases where the mortgagee acquires a share of the mortgagor. When the mortgagee acquires the equity of redemption he steps into the shoes of the mortgagor in respect of the property purchased subject to the mortgage in his favour. There is thus, a fusion of interests of both the mortgagor and the mortgagee and the mortgage becomes extinguished. The result of the extinguishment is that the mortgage debt over that property is wiped out, though every parcel of the mortgaged property so far as the mortgagee is concerned is liable for the entire mortgage debt but as between the mortgaged properties they are liable to contribute rate ably to the debt (Section 82 of the Transfer of Property Act). This principle would apply as between the mortgagors inter se. As the mortgagee by purchase of the equity of redemption becomes a mortgagor in respect of the property purchased, the principle would apply also against him by virtue of his taking the character of a mortgagor in respect of a portion of the property. The extent of the debt that is wiped out will be proportionate to the relative value of the property purchased. **In the case of a single mortgagor or where there is more than one mortgagor, with their consent, when the mortgagee purchases the equity of redemption in an item or a part of the property, no question of partial or piecemeal redemption would arise because the rest of the property would still be owned by the mortgagor or mortgagors and it would be liable for the remainder of the mortgage debt. It may be said that the rest of the property is "the share of the mortgagor" within the meaning of the section. It does not matter, whether the equity of redemption is purchased in execution of a decree against a mortgagor or by private treaty. The principle applicable would be the same in both cases. Vide Bisheshur Dial v. Ram Sarup (1900) I.L.R. 22 All. 284 (F.B.) (execution sale), Ponnambala Pillai v.***



Annamalai Chettiar (1920) 38 M.L.J. 239 : I.L.R. 43 Mad. 372 (F.B.) (execution sale) and Mutty Lal Pal v. Nandu Lal Neogi (1908) 12 C.W.N. 745. Where a person interested in the mortgaged property is not the mortgagor alone and before the purchase of equity of redemption portions of the mortgaged property become vested in third parties or where the mortgagee purchases from a co-sharer his share or an item of property from an owner who held it in distinct ownership, not only is the debt pro tanto extinguished but the owners of different items will be entitled to redeem the properties on payment of the proportionate part of the debt. There is no doubt about the applicability of this rule. The same principle would apply in whatsoever manner the equity of redemption is acquired by the mortgagee, that is, by inheritance or by devise- Hamida Bibi v. Ahmad Hussain (1909) I.L.R. 31 All. 335.”

15. The judgment relied upon by learned counsel for the appellants-defendants No.1 to 4 in *Mt. Jagannath Kumar and others* (supra) does not come to his rescue, as in this case, it is held that where the mortgagees purchase a share out of the property mortgaged to them, the integrity of the mortgage is broken and therefore, it is not open to the purchaser from some of the mortgagors to redeem more than the share purchased by him. However, in the case in hand, the person seeking redemption is none else but the mortgagor and not any purchaser from the mortgagor i.e. third party. Furthermore, the judgment relied by learned counsel for the appellants in *Jamila Begum (D) through LRs* (supra) is also distinguishable on facts, in this case, the appellant had purchased the entire property and thus, there was a merger of title and the mortgage was extinguished by acts of parties. Mere purchase of a share of mortgaged

**RSA No.1671 of 2000 (O&M) -12-**

property from one of the mortgagors with consent of other co-mortgagors does not extinguish the mortgage. There can be no extinguishment of a mortgage either completely or in part only if there is a merger of title. In the case of a single mortgagor or where there is more than one mortgagor, with their consent, when the mortgagee purchases the equity of redemption in an item or a part of the property, no question of partial or piecemeal redemption would arise because the rest of the property would still be owned by the mortgagor or mortgagors. Mortgaged property becomes divisible only when there is a fusion of the interest of all the mortgagors with that of the mortgagees. When a mortgagee in possession acquires a portion of equity of redemption, the mortgage is not extinguished completely. There can be only a *pro tanto* extinguishment of the mortgage right to the extent of the mortgagee acquiring the mortgagor's interest and so far as the other sharer of the equity of redemption is concerned, the mortgage will subsist. The question of breaking of the mortgage would arise only when the entire right of the mortgagors is acquired by the mortgagee and not when a fractional interest of one of the co-mortgagors is acquired by the mortgagee or his legal representatives. Undisputedly, the suit property is a joint holding and since the appellants-defendants No.1 to 4 have stepped into the shoes of mortgagors by purchasing some fraction of suit property from legal heirs of one of the mortgagors, meaning thereby, have become co-sharers, both the courts below have rightly observed that they are entitled to get partitioned the suit land on the basis of sale deeds Ex.D1 to D3, after the suit land is redeemed.

16. In view of the judgments passed by the Hon'ble Supreme Court in *Pankajakshi (Dead) through Legal Representatives and others*



RSA No.1671 of 2000 (O&M) -13-

Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71 and Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, 1918.

17. As an upshot of above discussion, this Court finds no illegality and perversity in the concurrent finding rendered by both the Courts below and the same is upheld. Resultantly, the regular second appeal is dismissed.

18. The contempt petition also stands disposed of, as nothing survives for consideration therein, in view of the judgment passed by this Court in the regular second appeal.

19. Misc. application(s) pending, if any, also stand disposed of.

**(AMARINDER SINGH GREWAL)
JUDGE**

August 12, 2025

Pankaj*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No