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3. Sohan Singh and Kartar Singh mortgaged with possession land measuring 29 bighas 12 biswas comprising khasra Nos. 2408 (16 bighas 13 biswas) and 2409 (12 bighas 19 biswas) at Village Rori, Tehsil Sirsa vide registered mortgage deed dated 10.02.1925 for a consideration of Rs.1200/- with Bishna son of Budhar, resident of Rori. Mutation was sanctioned in favour of Bishna on 19.12.1925. Sohan Singh got redeemed land measuring 09 bighas 05 biswas i.e. 5/16 share out of the total land measuring 29 bighas 12 biswas on 12.06.1934 from Bishan and mutation was sanctioned on 12.06.1934. On the same day he mortgaged with possession the redeemed land with Narain Singh son of Bishan Singh for a sum of Rs.1,000/- and mutation No. 1699 of 12.06.1934 was sanctioned. Narain Singh further mortgaged the land with Bishana, Arjan and Chatru sons of Budhar in equal shares for a sum of Rs.1000/- vide mutation No. 2041 dated 27.05.1937. Defendants No. 11 and 12 Lal Singh and Uggar Singh and Sohan Singh mortgaged with possession the land measuring 08 bigha 09 biswas with Bishana, Arjan and Chatru son of Budhar against the old amount with mutation No. 2402 of 03.12.1942. Lal Singh and Uggar Singh and Sohan Singh mortgaged further land measuring 08 bigha 1 biswa with Bishna, Arjan and Chatru vide mutation No. 2403 of 03.12.1942 . So in this manner Bishana, Arjan and Chatru became mortgagees with possession of land measuring 45 bigha 14 biswas. The land measuring 118 kanal 12 marlas was carved out during consolidation proceedings in lieu of land measuring 45 bigha 14 biswas which was in possession of Bishna, Arjan and Chatru. Statutory period of 30 years for redemption of mortgage has since expired and the suit land has not been got redeemed by the mortgagors or by defendants who are the legal heirs of the mortgagors. Plaintiffs being legal

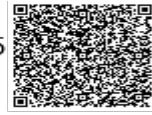


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heirs of the mortgagees have become owners of the suit land by way of efflux of time. Defendant No. 11 Lal Singh died during the pendency of the suit and his legal representatives were brought on record. Defendants No. 1, 2 and 4 contested the suit by claiming that suit is not maintainable in the present form, suit is bad for non-joinder of necessary parties and on merits. They admitted that Sohan Singh has mortgaged some land but they are unable to say how much area was mortgaged and for how much amount and with whom the same was mortgaged and it was also submitted that some land was got redeemed and that the land was got redeemed and is in possession of answering defendants since prior to year 1955-56 and Civil Court at Sirsa has no jurisdiction to try and decide the suit and the land situated at Village Jamal and Rori was mortgaged by Sohan Singh. The land of Rori was exchanged with the land of Village Jamal and in the year 1958 land of village Jamal was got redeemed through the Court decree and amount of Rs.2,000/- mortgage money was paid to Surja Ram and Ram Kishan and possession of the land was handed over to the defendants. Since then they are cultivating the suit land as owners. Defendants No. 5 to 7 & 11(v) (vii) filed written statement through Court Guardian contesting the suit. Defendants No. 8 and 10 did not file any written statement.

4. From the pleadings of the parties, the following issues were framed :-

- “1. Whether the plaintiffs have become owners of the suit land as alleged in the plaint?OPP*
- 2. Whether the plaintiffs are entitled to the possession of the suit land, if not found in possession of the same?OPP*
- 3. Whether the suit land was got redeemed by the defendants as alleged?OPD*



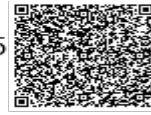
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4. *Whether the suit does not lie in the present form?OPD*
5. *Whether the suit is bad for non-joinder of necessary parties?OPD*
7. *Whether the suit is not within the period of limitation?OPD*
8. *Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?OPD*
- 9 *Whether the defendants are entitled to recover special costs under Section 35-A CPC ?OPD*
- 10 *Relief.”*

5. After the parties were given opportunities to lead evidence, the suit filed by the plaintiffs was decreed and decree for declaration was granted that plaintiffs have become owners of suit land by way of afflux of time and decree for possession of 81 kanal 13 marlas of the suit land was granted against the defendants No. 1 to 7 and defendants were restrained from alienating the suit land to any other person.

6. Aggrieved by the judgement and decree so passed, defendants No. 1 to 7 filed appeal and in appeal findings of the learned Sub Judge over issue No. 1 and 3 were partly reversed and whereas findings on issue no. 2 were totally reversed and held that land measuring 36 kanals 19 marlas had not been got redeemed within the limitation of 30 years and it was held that plaintiffs became owners by way of foreclosure of mortgage whereas land measuring 81 kanal 13 marlas possession of which is with Defendants No. 1 to 3 had been got redeemed by the mortgagors and plaintiffs are not entitled to possession of the same.

7. Aggrieved by the judgment and decree so passed in the first appeal, the present appeal was filed. The same was admitted for hearing. Notice was served upon the respondents. Records were requisitioned.



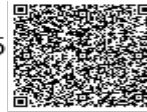
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8. I have heard learned counsel for the parties and perused the records.

9. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of Punjab Courts Act, 1918 and not under Section 100 of CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '*Pankajakshi (Dead) through LRs and others V/s Chandrika and others*', (2016)6 SCC 157, followed by the judgments in the case of '*Kirodi (since deceased) through his LR V/s Ram Parkash and others*' (2019) 11 SCC 317 and '*Satender and others V/s Saroj and others*', 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

10. Learned counsel for the appellant argued that the learned lower Appellate Court has erred in recording of finding that the land stood redeemed as mortgagors was found to be in possession of the suit land whereas there is no proof of any redemption of the mortgage. So when there is no proof of any redemption of the mortgage then the appellant-plaintiffs are entitled to possession of the suit land and the findings recorded by the learned Court below be reversed and appeal be allowed.

11. Whereas learned counsel for the respondent argued that even if it is proved on record that there is no proof of respondent-defendants getting the mortgaged land redeemed but when it is proved on record and is an admitted fact that respondent-defendants are in possession of 81 kanals 13 marlas of land out of the mortgage land then the only remedy available to the appellant-plaintiffs is to sue for claiming back the mortgage money as per the provisions of Section 68(C) of Transfer of Property Act, 1882 and as



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such findings recorded by the learned First Appellate Court are liable to be affirmed and appeal be dismissed.

12. It is not disputed fact that land measuring 81 kanals 13 which was earlier mortgaged with the predecessor in interest of appellant-plaintiffs is in possession of the defendants and when the mortgagors are found to be in possession of land which was subject matter of the mortgage even if they have obtained the possession illegally the only remedy available to the plaintiffs is to claim mortgage money as is clear from the provisions Section 68(C) of Transfer of Property Act, 1982 which is reproduced as under :-

“[68. Right to sue for mortgage-money -
 (c) *where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor*”

13. So I find no illegality and infirmity in the findings recorded by the Court below and appeal of the appellant-plaintiff is dismissed.

14. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

11.09.2025

P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No