



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1335-1994 (O&M)

Reserved on :- 20.08.2025

Date of Pronouncement:-22.082025

Sadhu Ram (since deceased) through his LRs and Others

... Appellants

Versus

The State of Haryana through Collector, Kurukshetra

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Pankaj Gautam, Advocates
for the appellants.

Mr. Pritam Singh Saini, Senior Additional
Advocate General, Haryana-respondent.

VIRINDER AGGARWAL, J.

1. The appellants/plaintiffs filed suit for declaration along with consequential relief of permanent injunction on the allegations that Rulia father of plaintiffs/appellants was owner in possession of 133 Bighas 12 Biswas of land situated in village Bhorakh, Tehsil Pehowa District Kurukshetra. In the year 1919-20, Yamuna and Baru sons of Sidhu were made co-sharers in the suit land by Rulia by way of gift. Both Yamuna and Baru died issue-less and were succeeded by their mother Satehari @ Satari, who mortgaged the land to Lachhman. After death of Lachhman rights were



inherited by his son Bhikhan, mutation No.365 was sanctioned in this regard. Bhikhan sold his mortgagee rights in favour of plaintiff by oral sale for a consideration of ₹60/-, Mutation No.573 was sanctioned in favour of plaintiff, during consolidation the land was converted into 115 Kanals 4 Marlas and was allotted to the plaintiff as mortgagee. Whereabouts of Satehri were not available and she was not heard for the last 20 years, she was presumed to be dead leaving behind no legal heir, so her estate was escheated to the State of Haryana and State of Haryana was recorded as owner mortgagor vide mutation No.527.

2. Plaintiffs filed civil suit No.222 of 1972 for declaration that they are owners in possession with consequential relief of permanent injunction restraining defendant from dispossessing on the grounds that land is ancestral and would revert back to donor or his heir after death of donee, they perfected their title by way of adverse possession. They being legal heirs of Satehri, so the ascheat of land to provincial Government is bad and right to redemption of mortgage has extinguished by lapse of time. The suit was dismissed vide judgment and decree dated 30.09.1996 and plaintiffs were held to be mortgagees in possession, since they failed to prove particulars of mortgage, accordingly they failed to prove that period of limitation for redemption of mortgage has elapsed and that since they were mortgagees in possession, they cannot be held to be in adverse possession.

3. Appeal filed was dismissed vide judgment and decree dated 27.08.1979 holding that plaintiffs being mortgagees in possession cannot claim adverse possession and finding of learned Additional Senior Sub-Judge, Pehowa on all issues were affirmed. RSA-3060-1979 was partly allowed and plaintiffs were granted relief of permanent injunction



restraining defendants from forcibly dispossessing the plaintiffs except in due course of law. The RSA was partly allowed vide order dated 06.02.1992.

4. On 03.05.1974 respondent/defendant-State filed an application for redemption of suit land under Redemption of Mortgages (Punjab) Act 1913, the same was dismissed by Assistant Collector First Grade, Kaithal vide order dated 19.11.1976 holding that period prescribed for redemption of mortgage has already expired, the order has attained finality. On 23.05.1974 *Fard Badder* No.7 was entered by Patwari without any jurisdiction correcting the revenue record from 1944 to 1970 by showing the plaintiffs as mortgagee in possession to the extent of 333/869 share in the suit land and the remaining land was shown without mortgage. After decision of RSA on 06.02.1992, respondent/defendant-State on 31.03.1992 filed a petition under Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1972. That petition was dismissed vide order dated 15.12.1992 by recording the fact that plaintiffs as per the judgment of Civil Court are mortgagees in possession and the period of redemption had already expired.

5. Appellant/plaintiff filed the present suit for declaration claiming ownership and that *Fard Badder* No.7 is illegal. Respondent/defendant-State contested the suit on the grounds that the same is barred by res-judicata, plaintiffs are estopped from filing the suit and suit is bad in view of the provisions of Order 2 Rule 2 CPC as earlier suit qua the same relief has been dismissed upto the Hon'ble High Court vide RSA-3060/1979 decided on 06.02.1992.

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



1. Whether the plaintiffs have become the owner of the suit land and is legally entitled for the relief of injunction ? OPP.
2. Whether the plaintiffs have no *locus-standi* to file the present suit ? OPD.
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs are estopped to file the present suit by their own act and conduct?OPD
5. Whether the plaintiffs have no cause of action? OPD.
6. Relief.
7. After evidence was led by both the parties, the learned Additional Senior Sub-Judge, Pehowa decreed the suit and declared plaintiffs to be owners of land in dispute and that the right of redemption has since extinguished by lapse of time and defendants were restrained from interfering in the possession of plaintiffs.
8. Respondent/defendant-State preferred an appeal against the judgment and decree so passed by learned Additional Senior Sub-Judge, Pehowa and vide judgment and decree dated 07.04.1994, the learned Additional District Judge, Kurukshetra allowed the appeal and set aside the judgment and decree so passed by Additional Senior Sub-Judge, Pehowa by recording finding that suit is barred by principles of res-judicata, plaintiffs are estopped from filing the suit and suit is also bad in view of provisions of Order 2 Rule 2 of CPC and that plaintiffs have failed to prove that land mortgaged by Satari to Lachham or Bhikhan. So, Bhikhan is unable to pass mortgagee rights to the plaintiffs. The present regular second appeal was filed by the appellants/plaintiffs. Notice of the same was served upon respondent/defendant-State. Record was requisitioned.



9. I have considered the submissions made by learned counsel for the respondent/defendant-State but find the same to be devoid of merit.

10. 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 the Punjab Courts Act, 1918 and not under Section 100 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.

11. The learned Additional District Judge in Para No.35 of the impugned judgment has held the suit to be bad in view of principles of estoppel, res-judicata and bar of Order 2 Rule 2 of CPC, the same is reproduced as under:-

35. It stands well settled that doctrine of estoppel by the record or res-judicata is based on the twin principles that there must be an end of litigation and, that man should not be vexed twice over for the same cause of action, In the previous suit, as well as in the present case, the plaintiffs have set-up that Satari had mortgaged the land to Lachhman, and Bhikhan son of Lachhman had further mortgaged the suit land to the plaintiffs. Issues involved in the two proceedings were identical and parties were the same. They were litigating under the same title. It is not disputed before me that earlier suits were not decided by the competent court of jurisdiction. It has been observed in **Lal Chand (dead) by L.Rs. and others V. Radha Kishan, A.I.R. 1977 Supreme Court-789** that section 11 is not exhausted and the principle which motivates that, section can be



extended to cases which do strictly not fall strictly within the letter of the law. The plaintiffs were duty bound to have specified the terms and conditions of the mortgage in the earlier suits and as the plaintiffs had merely purchased the mortgagee rights from Bhikhan, as per their assertion, they merely stepped into the shoes of Bhikhan. Therefore, under the circumstances, the principles of estoppel; res-judicata and bar of order 2 rule 2 of the code to the extent stated above. would fully apply to the facts of the present case.

12. The main point of contention between the parties in the present controversy is *'as to if the findings recorded by this Court in RSA-3060-1979 operates res-judicata and appellants/plaintiffs are estopped from filing the suit or provisions of Order 2 Rule 2 of CPC are attracted in this case'*. In the previous suit filed by the appellants/plaintiffs, plaintiffs have claimed ownership of the suit land and has also sought permanent injunction. After filing of the previous suit, the respondent/defendant-State preferred a petition for redemption of mortgage before competent revenue authority and that petition was disallowed and subsequently the State preferred a petition under Public Premises Act claiming that appellants/plaintiffs are in unauthorized possession and all these facts were not subject matter of the litigation in the previous litigation. Once it has been held in the previous litigation that appellants/plaintiffs are mortgagees in possession and the contention of the appellants/plaintiffs that right of redemption of mortgage of respondent/defendant-State has extinguished by lapse of time was not accepted, so at that time it was declared that the State has right to redeem the mortgage property, but in between the State applied for redemption of mortgage before the competent authority and that was declined by the competent authority. Learned counsel for the appellants pointed out that for



the decision of this matter provisions of Sections 4, 9 and 13 of the Redemption of Mortgages (Punjab) Act, 1913 are relevant. The provisions are reproduced as under:-

4. The mortgagor or other person entitled to institute a suit for redemption may, at any time after the principal money becomes payable and before a suit for redemption is barred, present a petition to the Collector applying for an order directing that his mortgage be redeemed, and where the mortgage is with possession that he be put in possession of the mortgaged property. The petition shall be duly verified in the manner prescribed by law for the verification of plaints, and shall state the sum which the petitioner declares to the best of his belief to be due under the mortgage. The petitioner shall at the same time deposit such sum with the Collector.

The petitioner shall state in his petition such particulars and file therewith such documents as may be prescribed.

9. If the mortgagee raises objection on any ground other than the amount of the deposit, or if the petitioner is not willing to pay the sum demanded by the mortgagee, the Collector may either (a) for reason to be recorded dismiss the petitioner, or (b) make a summary inquiry regarding the objection raised by the mortgagee or regarding the sum due.
13. The dismissal of a petition under this Act shall bar any further petition in this Act by the same petitioner or his representative in respect of the same mortgage.

13. He further pointed out that the provision of Sections 62 and 67 of Transfer of property Act, 1882 were also relevant, which are reproduced as under:-

62. Right of usufructuary mortgagor to recover possession.—In the case of a usufructuary mortgage, the mortgagor has a right to recover



possession of the property 4 together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,— (a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property.—when such money is paid: (b) where the mortgagee is authorised to pay himself from such rents and profits [or any part thereof a part only of the mortgage -money] when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee 6 the mortgage-money or the balance thereof or deposits it in Court as hereinafter provided.

67. Right to foreclosure or sale.—In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold. A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure Nothing in this section shall be deemed 1 (a) to authorise any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or (b) to authorise a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or (c) to authorise the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to



institute a suit for foreclosure or sale; or (d) to authorise a person interested in part only of the mortgage-money to-institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

14. Learned counsel for the appellants argued that when the respondents/defendants applied for redemption of mortgage under the Redemption of Mortgages (Punjab) Act, 1913, under Section 4 of that Act, the respondent-State was required to state the sum due under the mortgage and was also required to deposit the sum with the Collector and the petition was not dismissed by the competent authority for want of deposit rather the petition was dismissed by recording a finding that period for redemption of mortgage has elapsed and right to redemption was extinguished by lapse of time. So the respondent/defendant has deposited the mortgage money for redemption of mortgage with the Collector and as per Section 13 of the Act, the party aggrieved by the order has to institute a suit to establish his rights in respect of mortgage and in the absence of any such suit the order shall be conclusive. Learned counsel argued that after orders of Collector has become conclusive and respondent/defendant-State has not preferred any appeal within a period of limitation of one year, as per Article 100 of Limitation Act, 1963, the right to redeem mortgage has finally extinguished and that fact has become conclusive in view of Provisions of Section 13 of the Redemption of Mortgages (Punjab) Act, 1913 and he relied upon the judgment of Hon'ble Apex Court "*Mithu Singh vs. Kishan Singh 1988(2) RRR 260*", wherein in para No.3 Hon'ble Apex Court has held as under:-

The scheme of this statute is, therefore, clear to the extent that if an order made by the Tribunal set up under this Act is not challenged within the



period of limitation it assumes finality, otherwise, stated, in the absence of a suit, in terms of Section 12 the right stands extinguished. In our view the High Court was right in holding that the plaintiff not having filed his suit within the period under Article 100 of the Limitation Act, the suit was barred by limitation and the order of the Collector having become conclusive, the right to sue for redemption was no more available. The appeal is accordingly dismissed. Parties shall bear their own costs throughout.

15. He further pointed that once the right of redemption stood extinguished then a right to foreclosure of mortgage accrued in favour of appellants/plaintiffs as per Section 67 of Transfer of Property Act, 1882 and all this was not subject matter of previous litigation. So the judgment and decree in the previous suit cannot operate as res-judicata and the present suit is not barred by provisions of Order 2 Rule 2 of CPC and appellants/plaintiffs cannot be held to be estopped from filing the suit.

16. Learned counsel for the respondent/defendant-State argued that the question of ownership of the plaintiff on the basis of foreclosure of mortgage by lapse of time was in dispute in the previous suit, so present suit was rightly held to be barred by the Provisions of Order 2 Rule 2 of CPC and principles of res-judicata was rightly applied and plaintiffs were rightly held to be estopped from filing the present suit.

17. I find no force in the contention of learned counsel for the respondent/defendant-State as in the previous litigation the status of appellants/plaintiffs as mortgagee in possession of suit land was recorded but it was recorded that appellants/plaintiffs have failed to prove that right to redeem the mortgage has extinguished by lapse of time as terms of mortgage deed were not brought on record and it is not proved as to if the mortgage



was usufructuary mortgage or simple mortgage or as to from when the right to redeem has accrued. When it is held in the previous litigation that plaintiffs are mortgagees in possession of the suit land, they can file a subsequent suit for foreclosure of mortgage whenever right to foreclosure accrues, in view of subsequent events. In the present case, respondent/defendant-State preferred a petition for redemption of mortgage before the competent authority and that petition was dismissed by recording a finding that limitation to redeem the mortgage has elapsed and their right stood extinguished and respondent/defendant-State has not filed any suit challenging the order of competent authority, as per Provisions of Section 13 of the Redemption of Mortgages (Punjab) Act, 1913, as such, the order of Collector has become conclusive, in view of the provisions of Section 13 of the aforesaid Act.

18. Once the right of redemption of the mortgage has stood extinguished by lapse of time, then the right to foreclose the mortgage has accrued in favour of appellants/plaintiffs, in view of the provisions of Section 67 of Transfer of Property Act, 1882 reproduced above. As the right to foreclosure has become available when the mortgage money has been deposited by the respondent/defendant-State with the Collector at the time of filing of the petition for redemption of mortgage and appellants/plaintiffs have got a right to obtain a decree from the Court that the mortgagor shall be absolutely debarred of his right to redeem the property.

19. Now in view of the provisions Section 13 of the Redemption of Mortgages (Punjab) Act, 1913, when the order of Collector has attained finality and has become conclusive, the plaintiffs have got a fresh cause of action to file suit to obtain a decree that right of redemption of mortgage as



permanently extinguished in view of the provisions of Section 67 of Transfer of Property Act, 1882. So a fresh cause of action has accrued in favour of appellants/plaintiffs, which was not available at the time of filing previous suit, accordingly the present suit was wrongly held to be barred by re-judicata, provisions of Order 2 Rule 2 of CPC and plaintiffs were wrongly held to be estopped from filing the present suit.

20. In light of the foregoing discussion, the judgment and decree passed by the First Appellate Court, which is under challenge in the present appeal, is hereby set aside. The appeal filed by the appellant is allowed. Consequently, the judgment and decree originally passed by the learned Additional Senior Sub-Judge, Pehowa, is restored.

21. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

22.08.2025
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No