



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1734-1997 (O&M)
Reserved on :- 22.09.2025
Pronounced on:-24.09.2025

Sukhdev Singh and Others

... Appellants

Versus

Chajju Ram (Since Deceased) Through His LRs and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Avnish Mittal, Advocate
for the appellants.

None for the respondents.

VIRINDER AGGARWAL, J.

1. The appellants-defendants have preferred this Regular Second Appeal (hereinafter referred to as "RSA") challenging the judgments and decrees rendered by the Courts below, seeking appropriate relief against the findings and directions contained therein. Appellants-defendants filed this RSA against the judgments and decrees passed by Courts below.

2. In brief, the respondent-plaintiffs filed a suit for possession of the suit land measuring 10 Kanals 1 Marla, alleging that half of the land, measuring 12 Bighas 10 Biswas as per the Jamabandi for the year 1917-18, was jointly held by Chanan Singh, Dalip Singh, and Partap Singh, while the remaining portion was owned by Daya Singh. Prior to 1917-18, Daya Singh had mortgaged 6 Bighas 5 Biswas, along with possession, to Chanan Singh,



Dalip Singh, and Partap Singh, who subsequently came into possession of the entire land as predecessors-in-interest of the plaintiffs.

2.2. Between 1920 to 1945, the plaintiffs' predecessors-in-interest acquired the mortgagee rights over the land of Daya Singh and, thereafter, became mortgagees in possession of 6 Bighas 5 Biswas. During the Consolidation exercise in 1952-53. Separate parcel of Daya Singh's land was carved out, and the land measuring 10 Kanals 1 Marla (the suit land) was allotted to the plaintiffs in lieu of the mortgaged property. The suit land was neither redeemed by Daya Singh nor by his sons, the defendants.

2.3. Over the course of time, the plaintiffs have become the rightful owners of the suit land by virtue of efflux of time. However, they were forcibly dispossessed in January 1983, prompting them to file the present suit on the basis of title and possession.

3. The suit was contested by the appellant-defendants, who initially denied the factum of the mortgage and subsequently advanced an alternative plea that the mortgage had been redeemed within the stipulated period. Upon a careful examination of the pleadings of the parties, the Court framed the following issues for determination, in order to effectively adjudicate the rival contentions between the parties:-

- 1) Whether the plaintiffs have become owners in possession? OPP
- 2) Whether Daya Singh had mortgaged with possession agricultural land in dispute to Charan Singh etc.? OPP.
- 3) Whether the predecessor of the plaintiffs had purchased the mortgaged land from Charan Singh etc.? OPP.
- 4) Whether the plaintiffs are the successor of Maha Ram and Hamela?
OPD



- 5) Whether the plaintiffs have no locus standi to file the present suit?
OPD
- 6) Whether the suit is not maintainable in the present form? OPD
- 7) Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
- 8) Whether the suit has not been properly valued? OPD
- 9) Whether the suit is not within limitation? OPD
- 10) Whether the suit is bad for nonjoinder and mis-joinder for the necessary parties?OPD
- 11) Relief

4. Both parties were afforded ample opportunity to adduce evidence in support of their respective claims and defenses. Upon the conclusion of the evidence and after hearing learned counsel for the parties at length, the learned Additional Senior Sub-Judge, Kurukshetra, decreed the suit for possession in favor of the plaintiffs. Aggrieved by the judgment and decree, the defendants preferred an appeal, which was subsequently dismissed by the learned Additional District Judge, Kurukshetra, thereby upholding the findings and decree of the trial Court.

5. Challenging the aforementioned judgment and decree, the appellant preferred the present appeal, which was admitted for hearing vide order dated 04.09.1997. In consequence, notice was duly issued to the respondents, who initially appeared through Shri Ramesh Hooda, Advocate, but subsequently absented themselves from the proceedings.

6. I have heard learned counsel appearing for the appellants at length. His submissions have been carefully considered in the context of the pleadings, the evidence adduced on record, and the findings recorded by the Courts below. The records have been meticulously examined to evaluate the

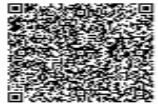


rival contentions and to ascertain whether any legal infirmity, error, or perversity exists in the impugned judgment and decree that would justify interference in the present appeal.

7. 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.

8. Learned counsel for the appellants has assailed the judgments and decrees passed by the Courts below solely on the ground that, in the case of a usufructuary mortgage, there is no limitation on the right to redeem the mortgaged land, in accordance with the settled law laid down in **Ram Kishan and Others v. Sheo Ram and Others, 2008 (1) RCR (Civil) 334**. He relied upon the judgment of the Full Bench of this Court, wherein it was observed in paragraph 40 that “once a mortgage, always a mortgage, and therefore always redeemable.” Paragraph 40 of the judgment is reproduced hereunder:-

“The limitation of 30 years under Article 61(a) beings to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage, where rents



and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and profits from the interest thereof, therefore, right of foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable.”

9. Both the Courts below have held that, since the mortgage had not been redeemed within a period of thirty years, the appellants-defendants had consequently lost the right to redeem the suit land. The learned First Appellate Court further observed that, even if the plaintiffs did not file a suit for foreclosure but filed a suit for possession, the claim cannot be barred by limitation when the mortgaged land had not been redeemed within the stipulated period.

9.1. It is an admitted position in the case that the suit land was owned by Daya Singh, predecessor-in-interest of the appellants-defendants, who had mortgaged the land to the predecessors-in-interest of the plaintiffs. The mortgage was never redeemed. In accordance with the judgment of the Full Bench of this Court in **Ram Kishan (supra)**, there is no period of



limitation prescribed for the redemption of a usufructuary mortgage; the settled principle being that “once a mortgage, always a mortgage”.

9.2. In the present case, the respondents-plaintiffs allege that they were forcibly dispossessed of the suit land by the appellants-defendants and seek to be restored to possession. In such circumstances, the provisions of Section 68 of the Transfer of Property Act are attracted, which apply where mortgagors are found in possession of the mortgaged property even if such possession was obtained illegally. The only remedy available to the plaintiffs in such cases is to claim the mortgage money, as is evident from the provisions of **Section 68(C) of the Transfer of Property Act, 1882**, 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”

10. In terms of the provisions of Section 68(c) of the Transfer of Property Act, a mortgagee who has been forcibly dispossessed by the mortgagor is not entitled to recover possession of the property from the mortgagor; the sole remedy available to the mortgagee is to file a suit for the mortgage money. Consequently, both the Courts below erred in decreeing possession in favor of the respondents-plaintiffs.

11. In the light of the foregoing discussion and for the reasons stated above, the appeal filed by the appellants-defendants is hereby allowed. The judgments and decrees rendered by the Courts below are set aside, and the suit filed by the respondents-plaintiffs is accordingly dismissed.



12. In view of the adjudication of the main matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings are also disposed of in accordance with the observations and directions contained herein.

24.09.2025
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No