



RSA-1945-1995 (O&M)

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

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RSA-1945-1995 (O&M)
Reserved on:-07.11.2025
Pronounced on:- 01.12.2025
Uploaded on:-02.12.2025

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced:*

operative part/full judgment

Chandu (deceased) through LRs

....Appellant

VERSUS

Gopi (deceased) through LRs

....Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Baldev Raj Mahajan, Sr. Advocate assisted by
 Ms. Nikita Goel and Mr. Daanish Mahajan, Advocates
 For LR's of the appellant.

Mr. Aman Arora, Advocate and
 Mr. Mukesh Yadav, Advocate for respondent No.1(i)

Respondents No.1(ii) and 1 (iii) proceeded against ex-parte
 vide order dated 23.09.2025

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by the appellant—
 plaintiff against the concurrent findings of the Courts below, whereby the learned
 Trial Court, vide judgment and decree dated 18.10.1993, dismissed the suit of the
 plaintiff for possession and the learned Lower Appellate Court, vide judgment and
 decree dated 07.04.1995, upheld the said dismissal.

Brief Facts

2. The case set up by the plaintiff is that he had become owner of the
 agricultural land comprised in Khewat No.160 situated in the revenue estate of
 Village Andhop, Tehsil Hathin, District Faridabad by acquiring occupancy rights

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therein, and that the defendants were in permissive possession of the suit land as licensee under him. It was pleaded that after acquiring the occupancy rights, the plaintiff terminated the licence of the defendants and required them to deliver possession of the suit land, but the defendants failed to do so, leading to the filing of the suit.

3. Defendant No.1 was proceeded ex parte. Defendant No.2, in his written statement, broadly denied the plaintiff's assertions and contended that the suit was not maintainable as the plaintiff had no locus standi to file it, and further pleaded that the plaintiff was estopped by his own act and conduct from filing the present suit. The defendant asserted that he had been in possession of the suit land for more than thirty years as a mortgagee and had become owner of the land, in the alternative, he set up a plea of ownership by adverse possession.

4. The plaintiff, in his replication, reiterated his case and denied the pleas raised by the defendant.

5. On the basis of the rival pleadings following issues were framed

1. Whether the plaintiff is owner of the suit land? OPP
2. Whether the defendants are in possession of the suit land as licensees under the plaintiff, and if so, to what effect? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
5. Relief.

6. Both sides led oral and documentary evidence in support of their respective stands, which included revenue records, jamabandis of various years, khasra girdawaris, and an order of the Assistant Collector Grade I.

**Findings of the Trial Court**

7. The Trial Court, upon appreciating the oral and documentary evidence, concluded that the plaintiff failed to establish his ownership over the suit land as the entries in the revenue record consistently showed the defendants and their predecessors as *Gair Morusi Doen* (mortgagees with possession) and tenants, whereas the plaintiff had not produced any credible evidence rebutting the presumption of truth attached to these entries. The documents relied upon by the plaintiff, including the order Ex.P3 and decree Ex.P4 regarding alleged acquisition of occupancy rights, were held inconsistent with long-standing revenue entries and thus insufficient to prove ownership, especially when the plaintiff had admittedly mortgaged his tenancy rights prior to such orders. Further, the defendants' possession for more than 30 years without redemption of the mortgage was accepted, making the defendants owners by prescription, and consequently the plea that they were licencees under the plaintiff was rejected. Since the defendants were found to be in lawful possession as sub-tenants/mortgagees and not as licencees, and the plaintiff having neither redeemed the mortgage nor challenged the revenue entries, the suit was held not maintainable and devoid of merit, leading to dismissal.

Findings of the Lower Appellate Court

8. The Lower Appellate Court, upon a thorough re-appraisal of the entire evidence, upheld the dismissal of the suit by holding that the revenue record spanning several decades consistently depicted the defendants and their predecessors as *Gair Morusi Doen* (mortgagees with possession) under an oral mortgage created by the plaintiff himself, and that the plaintiff never redeemed this mortgage within the prescribed period, thereby allowing the defendants to mature



their possession into ownership by prescription. The Court found the plaintiff's reliance on an ex parte decree and orders regarding alleged acquisition of occupancy rights to be wholly inconsistent with long-standing revenue entries and incapable of extinguishing the defendants' subsisting rights as mortgagees and sub-tenants. It further held that the plaintiff's plea that the defendants were merely licencees was misconceived, ill-founded, and contrary to overwhelming documentary evidence, as no tenancy or permissive possession under the plaintiff was ever established. Consequently, the appellate Court affirmed the Trial Court's reasoning, found no merit in any of the challenges raised, and dismissed the appeal while endorsing the conclusion that the plaintiff had no subsisting title or right to recover possession of the suit land.

9. Aggrieved by the concurrent findings of the Courts below, the plaintiff has filed the present regular second appeal, which is contested by the respondent No.1(i). Respondents No.1(ii) and 1(iii) were proceeded against ex parte vide order dated 23.09.2025.

Submissions of learned counsel for the appellant

10. The learned counsel for the appellant argued that the Courts below failed to appreciate that the plaintiff had acquired occupancy rights under Section 8 of the Punjab Tenancy Act, 1887 and thereby became owner of the suit land, and that this position stood recognised by the order of the Assistant Collector and the decree relied upon by the plaintiff. It was urged that once such occupancy rights were declared, the earlier revenue entries could not prevail and the defendants could not claim to have acquired ownership by adverse possession or prescription. The appellant further submitted that the possession of defendants was permissive, as licencees under the plaintiff, and after termination of this licence the plaintiff



was entitled to recover possession. Reliance was placed by the appellant upon the Full Bench judgment of this Court in *Ram Kishan and Others v. Sheo Ram and Others 2008(1) R.C.R (Civil) 334*, asserting that usufructuary mortgage without a fixed period of redemption does not become irredeemable even with the passage of decades, that a mortgagee never becomes owner by prescription in such a situation, and that the right of redemption subsists regardless of how long the mortgagee remains in possession. On this basis, the appellant contended that the plea of the defendants that their long possession matured into ownership, was legally unsustainable.

Submissions of learned counsel for respondent No.1(i)

11. On the other hand, the respondent No.1(i) opposed the appeal by submitting that the revenue entries for several decades consistently recorded the defendants as *Gair Morusi Doen* or mortgagees with possession, and that the plaintiff had never redeemed the alleged oral mortgage nor produced any evidence rebutting the presumption of correctness attached to the jamabandi entries. It was argued for the respondents that the plaintiff's claim of acquiring occupancy rights was inconsistent with the revenue record, because the entries in favour of the defendants extended over more than thirty years and the plaintiff had neither challenged those entries nor adduced any cogent evidence to displace them. It was further contended that the decree obtained by the plaintiff could not extinguish the rights of persons who were recorded in possession under the revenue law, and that the plaintiff could not treat them as licencees when the record itself showed them as mortgagees/sub-tenants in continuous, uninterrupted possession. The respondents, therefore supported the concurrent findings and asserted that the plaintiff never established ownership or entitlement to possession.

**Findings**

12. Having considered the record, the impugned judgments and decrees of the Courts below and the submissions of counsel, this Court finds no infirmity in the concurrent conclusion that the plaintiff has failed to establish ownership or the right to recover possession. The jamabandi entries for multiple years record the defendants and their predecessors as *Gair Morusi mortgagees*/sub-tenants in possession, and these entries carry a presumption of truth which has not been rebutted by the plaintiff. No documentary or oral evidence has been produced to show that any mortgage was ever redeemed, or that the defendants were at any stage licencees under the plaintiff. On the contrary, the revenue entries demonstrate uninterrupted possession of the defendants for more than thirty years, which the plaintiff has neither explained nor challenged. The decree relied upon by the plaintiff does not override or negate these entries, particularly as the defendants were not shown to have been parties to the proceedings culminating in that decree. The findings of the trial court, as affirmed by the lower appellate court, are thus based on proper appreciation of evidence and cannot be termed perverse or contrary to law.

13. The judgment in *Ram Kishan's case (supra)*, relied upon by the appellant, is distinguishable on the facts of the present case. That judgment deals with the concept that usufructuary mortgage without a fixed period of redemption does not become irredeemable by mere passage of time and that the mortgagee does not become owner by prescription. However, the foundation of that judgment is the admitted existence of a valid usufructuary mortgage and the question of limitation for redemption. In the present matter, the essential controversy is not the enforceability of the right of redemption under a subsisting mortgage, but whether

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the plaintiff has proved ownership at all, and whether the revenue entries showing the defendants as *Gair Morusi mortgagees* with possession for more than thirty years stand displaced by any legal or factual material. The plaintiff has not proved the existence or terms of any mortgage so as to bring the case within the ratio of the Full Bench. More importantly, the plaintiff has not redeemed any mortgage, has not challenged the longstanding revenue entries, and has relied instead on orders which, on their face, do not unsettle the factual position consistently reflected in the jamabandis. Therefore, the principles laid down in ***Ram Kishan's case (supra)*** do not assist the appellant and cannot be applied to alter the factual and evidentiary conclusions reached by the courts below.

14. Consequently, this Court concurs with the view taken by the Courts below that the plaintiff has not discharged the burden of proving title or entitlement to possession, and the present appeal is dismissed being devoid of merit.

15. Pending application(s), if any, also stands disposed of.

December 01, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.