

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

**RSA No.445 of 2012
Reserved on: 21.07.2026
Decided on : 30.09.2026
Uploaded on : 30.09.2026**

Harcharan Singh (deceased)
through LRs & Anr. ...Appellants

Versus

Yashoda Nand and Ors. Respondents

Coram:

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. Mukul Sood and Mr. Het
Ram Thakur, Advocates.

For the Respondents : Mr. Jia Lal Thakur,
Advocate, vice Mr. G.R.
Palsra, Advocate, for
respondents No.1 to 3.

Mr. Amardeep, Advocate, as
Court Guardian, for
respondents No.13(e)(i) to
13(e)(iii).

Virender Singh, Judge

The appellants have preferred the present Regular Second Appeal, under Section 100 of the Code of Civil Procedure (hereinafter referred to as the 'CPC'), against the judgment and decree dated 31.12.2011,

passed by the Court of learned Additional District Judge, Mandi, District Mandi, H.P., (hereinafter referred to as the First Appellate Court), in Civil Appeal No.76 of 2008, titled as Harcharan Singh and another versus Yashodha Nand and others.

2. By way of judgment and decree dated 31.12.2011, the learned First Appellate Court, has dismissed the appeal of the present appellants, which had been filed by them, against the judgment and decree dated 24.05.2008, passed by the Court of learned Civil Judge, (Junior Division), Court No.2, Mandi, H.P. (hereinafter referred to as the trial Court), in Civil Suit No. 314/99/97, titled as “Yashodha Nand Vs Harjeet Kaur (deceased) through LRs & Ors.”.

3. By way of judgment and decree dated 24.05.2008, the learned trial Court has decreed the suit of respondent No.1-Yashodha Nand and passed a preliminary decree.

4. For the sake of convenience, the parties to the lis are, hereinafter, referred to, in the same

manner, in which, they were referred to, by the learned trial Court.

5. Brief facts leading to the filing of the present appeal, before this Court, as borne out from the record, may be summed up, as under:-

5.1. Plaintiff-Yashodha Nand has filed a suit for redemption of mortgage against the defendants, on the ground, that his father has mortgaged the property comprised in Khewat-Khatauni Nos. 81/167 to 174, bearing Khasra Nos.2134, 2136, 2142, 2147, 2155, 2153, 2156, 2144, 2133, 2137, 2140, 2143, 2148, 2151, 2152, 2154, Kittas-16, measuring 229.64 Sq. meters, situated at Mauza Tarna Mandi Town, District Mandi, H.P., consisting of house and shops two storeyed, (hereinafter referred to as the suit property).

5.2. According to him, the date of mortgage is 27.04.1973 and mortgagor was Madho Prashad Sharma, son of Jiwa Nand (father of the plaintiff) and mortgagees were defendants.

5.3. The said property was mortgaged for a sum of Rs.35,000/- with interest at the rate of 1% per

month, which is liable to be adjusted, in rent of suit property. According to him, it was agreed between mortgagor and the mortgagees that the suit property will be redeemed, on payment of the mortgage amount, with interest, as per the terms and conditions. The proforma defendants have consented to redeem, on obtaining their due shares, in sum secured which, they have got obtained and in this manner 2/3rd share of property in mortgage stood redeemed.

5.4. According to the plaintiff, he is entitled to redeem the property, on payment of due share of mortgage to defendants No.1 and 2, i.e. Rs.11,700/- with interest, for which, defendants No.1 to 3, were requested, in the last week of January, 1996, to accept the amount and recovery and redeem the property, which, defendants Nos. 1 to 3 have been evading. The legal notice, in this regard was also served, upon defendants Nos.1 to 3.

5.5. On the basis of the above facts, the plaintiff has prayed that the subject matter of the lis, may kindly be redeemed and preliminary decree, to that

effect, may kindly be passed, by permitting the plaintiff to deposit the mortgage amount.

6. When, put to notice, the suit has been contested, by the defendants. Defendant No.1(c) has filed the written statement, by pleading that the defendant is in possession of one shop, comprising Khasra No.2147. The same was in possession of defendant No.1(c), on the basis of Rent Deed dated 22.03.1997, executed between the plaintiff and defendant No.1(c) with the consent of Lala Bisan Singh, who was the father of defendant and expired on 22.08.1999. He has made no objection, if, the property is redeemed, but, according to him, plaintiff shall not interfere in the physical possession of defendant No.1(c), over Khasra No.2147.

6.1. Defendants No.1(a) and 2, have filed their separate written statement, admitting that the father of defendant was in possession of one shop, as tenant, comprising Khasra No.2147 and entry to this effect, is in revenue record and Kultar Singh, being son of Bisan Singh, is entitled to retain the possession to the extent

of 1/5 share. Admitting the claim of the plaintiff, a condition has been put forward that he is not entitled for the possession of Khasra No.2147.

6.2. Defendant No.1(e) filed the separate written statement, by admitting that the father of defendant was tenant, in the shop constructed over Khasra No.2147. Admitting the claim of the plaintiff, it has been pleaded that the plaintiff is not entitled for the possession of land bearing Khasra No.2147. According to him, he is entitled to receive the redemption money.

6.3. Defendants No.1 (b) and 3 filed their separate written statement, by taking the stand that the shop comprising Khasra No.2147, together with the store was on lease, with late Sardar Bishan Singh, which tenancy was originally created by late Bajir Madho Prashad Sharma, father of the plaintiff and after the death of said Sardar Bishan Singh, his sons and daughters are the tenants. According to them, after the death of Sardar Bishan Singh, his successors are necessary parties.

6.4. It is his further case that the plaintiff colluded with Sardar Narender Singh, son of late Sardar Bishan Singh, prior to the institution of the present suit, executed a fake, false and concocted rent note in his favour. Suit is also stated to be not valued for the purpose of court fee and jurisdiction; the suit is not maintainable.

6.5. Since, the suit has only been contested, by defendants No.1(b) and 3, as such, the plaintiff has filed the replication, in which, it has been pleaded that the shop, comprising Khasra No. 2147 was in the tenancy of late Sardar Bishan Singh and thereafter, Sardar Narender Singh, who was running business, in the premises, in dispute and suit is stated to be with regard to redemption of mortgage and not with regard to the tenancy, as such, tenants are stated to be necessary parties. Preliminary objections have also been denied.

7. From the pleadings of the parties, following issues were framed by the learned trial Court, vide order dated 08.01.2003:

1). Whether the plaintiff is entitled to redeem the suit property and deposit the mortgage amount? OPP.

2). Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPP.

3). Whether the suit is not maintainable in the eyes of law? OPD-1(b) & 3.

4). Whether the defendant No.1(b) has suffered by loss and is entitled to be indemnified by the plaintiff? If so, its effects? OPD-1(b).

5). Whether the suit is bad for non joinder of necessary parties, as alleged? OPD-1(b).

6). Whether the legal representatives of the plaintiffs' father late Sh. Madho Prashad Sharma are necessary parties? If so, its effect? OPD-1(b).

7). Whether the defendant No.1(c) is in possession of one shop comprised in Khasra No.2147 on the basis of rent deed dated 22.03.1997 executed between him and the plaintiff with the consent of late Bishan Singh as alleged? If so, its effects? OPD-1(c).

8). Whether the defendant No.2 is entitled to 1/3rd share in the shop as alleged? OPD-2.

9. Relief.

8. Thereafter, parties to the lis were directed to adduce evidence.

9. After closure of the evidence, the learned trial Court, upon hearing learned counsel for the

parties, decreed the suit of the plaintiff and preliminary decree was passed.

10. Against the said judgment and decree, defendants No.1(b) and 3, filed the First Appeal, under Section 96 of CPC, before the learned First Appellate Court.

11. The findings of the learned trial Court have been assailed, on the ground, that the plaintiff is not entitled to redeem the property, without joining the other legal heirs of late Madho Prashad. The learned trial Court has wrongly relied upon the joint affidavits of Shyam Sharma, Sanoo Sharma, Raksha Sharma and Sansari Devi, as the said joint affidavit has not been proved, in accordance with law, as none of the deponents has appeared in the witness box, to state the contents thereof and opportunity of cross examination has not been given to the defendants.

12. The findings have further been assailed, on the ground, that the suit of the plaintiff for partial redemption is not maintainable. The document Ex.DA,

is stated to be not a public document and the contents of the same cannot be proved, by oral evidence.

13. On the basis of the above facts, a prayer has been made to allow the appeal, by setting aside the judgment and decree passed by the learned trial Court and it has also been prayed that suit of the plaintiff may kindly be dismissed.

14. The learned First Appellate Court, in the present case, has dismissed the appeal, vide judgment and decree dated 31.12.2011.

15. Feeling aggrieved from the said judgment and decree, present Regular Second Appeal has been filed, before this Court, in which, findings have been assailed, on the ground, that both the Courts below have misconstrued the documents Ext. DA, Ext. DW3/A, Ext. DW3/B, Ext. DW4/A, Ext. DW4/C, and Ext. P-1 to Ext. P-3.

16. The findings have further been assailed, on the ground, that the mortgage, in the present case, had neither, been redeemed, nor, could be redeemed, in the manner, in which, it has been alleged and no

contribution allegedly having been proved to have been made by defendant No.2, as such, there could be no redemption.

17. It is the case of the appellants/defendants that peacemeal redemption of the property is not permissible in law. The relief granted, while passing the preliminary decree, in the alternative, are contradictory and not sustainable.

18. According to the appellants, both the Courts below have failed to consider the fact that the appellants were tenants in the property, as such, a specific direction ought to have been issued that the redemption of the property would not affect their tenancy as their tenancy was prior to the mortgage. The judgment is also stated to be in violation of the provisions of Order 20, Rule 5 of CPC.

19. On the basis of the above facts, Mr. Mukul Sood, Advocate, appearing for the appellants has prayed that the appeal may kindly be allowed, by setting aside the judgment and decree passed by learned trial Court, as upheld by the the learned First

Appellate Court and the suit of the plaintiff may kindly be dismissed.

20. The appeal has been admitted, on the following substantial questions of law:-

1). Whether the judgment of the Court below is perverse, based on misreading of oral and documentary evidence and pleadings of the parties and misconstruction of the basic document of title Exhibit DA and documents DW3/A, DW3/B, DW4/A, DW4/C and P1 to P3?

2). Whether on the pleadings of the parties and the material on record, it had to be held that the property could not be partly redeemed and in any case, the appellants have not received their share of the mortgage amount pursuant to the alleged redemption when the appellant Avinash Kaur contributed Rs.8,000/-?

21. This Court, while exercising the power under Section 100 of CPC, can only interfere with the judgment and decree passed by the learned trial Court, as upheld by the learned First Appellate Court, if the findings are perverse.

22. Hon'ble Apex Court in ***Arulvelu and Another Versus State represented by the Public Prosecutor & Another, (2009) 10 Supreme Court***

Cases 206, has elaborately discussed the term ‘perverse findings’. Relevant paragraphs 24 to 30 of the said judgment, are reproduced, as under:-

“24. The expression ‘perverse’ has been dealt with in number of cases. In Gaya Din (Dead) through LR. & Others v. Hanuman Prasad (Dead) through LR. & Others (2001) 1 SCC 501 this Court observed that the expression ‘perverse’ means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In Parry’s (Calcutta) Employees’ Union v. Parry & Co. Ltd. & Others AIR 1966 Cal. 31, the Court observed that ‘perverse finding’ means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In M. S. Narayanagouda v. Girijamma & Another AIR 1977 Kar. 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey, the Court defined ‘perverse’ as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

27. The expression “perverse” has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner’s Dictionary of Current English Sixth Edition

“Perverse – Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. *Longman Dictionary of Contemporary English – International Edition*

“Perverse – Deliberately departing from what is normal and reasonable.”

3. *The New Oxford Dictionary of English - 1998 Edition*

“Perverse – Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.”

4. *New Webster’s Dictionary of the English Language (Deluxe Encyclopedic Edition)*

“Perverse – Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.”

5. *Stroud’s Judicial Dictionary of Words & Phrases, Fourth Edition*

“Perverse – A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”

28. In *Shailendra Pratap & Another v. State of U.P.* (2003) 1 SCC 761, the Court observed thus:

“We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity.”

29. In *Kuldeep Singh v. The Commissioner of Police & Others* (1999) 2 SCC 10, the Court while dealing with the scope of [Articles 32](#) and [226](#) of the Constitution observed as under:

“9. Normally the High Court and this Court would not interfere with the findings of fact

recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

30. The meaning of 'perverse' has been examined in H. B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others 1992 Supp (2) SCC 312, this Court observed as under:

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to [Section 39\(5\)](#) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness – as distinguished from the legal permissibility – of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant

material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

23. Similar view has again been taken by the Hon'ble Supreme Court in '**S.R. Tewari Versus Union of India and Another**', reported in **(2013) 6 Supreme Court Cases 602**. Relevant paragraph 30 of the said judgment, is reproduced, as under:-

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: [Rajinder Kumar Kindra v. Delhi Administration](#), [Kuldeep Singh v. Commissioner of Police & Ors.](#), [Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh](#) thr. Secretary and [Babu v. State of Kerala](#))."

24. Being guided, by the above decisions, now this Court would proceed further to consider the fact, whether the documents Ext.DA, Ext. DW3/A, Ext. DW3/B, Ext. DW4/A, Ext. DW4/C and Ext. P-1 to Ext. P-3, have rightly been considered, by the learned trial Court or not.

25. Ext. D-A is the copy of the mortgage deed, by virtue of which, Madho Prashad Sharma, mortgaged the subject matter of the lis, in favour of Sansar Devi, Mohani Devi, Harjeet Kaur, Prakash Kaur and Avinash Kaur. As per clause 8 of this document, there is a stipulation that without the consent of the owner, mortgaged property could not be rented out, whereas the defendants in the present case, have taken the plea that one shop, out of the suit property, was rented out, which is contrary to Ext. D-A.

26. Ext. P-1 is the affidavit of Smt. Sansari Devi, by virtue of which, she has accepted 1/3rd of the mortgaged amount from plaintiff Yashodha Nand and possession of the shops and houses has been handed over to him.

27. Similarly, vide affidavit Ext. P-2, Shyam Sharma, Jagdish Chander Sharma-sons and Smt. Shano Sharma & Smt. Raksha Sharma-daughters of Madhoo Prakash had accepted the mortgaged money qua 1/3rd of their share and handed over the possession to plaintiff Yashodha Nand, after receiving a sum of Rs. 11,667/-.

28. This document has rightly been considered by the learned trial Court to consider the scope of partial redemption of the subject matter of the lis. Even, the learned first appellate Court has rightly considered the stand of the plaintiff, according to which, the share of other mortgagees was already redeemed, as such, the plaintiff has every right to redeem the share of remaining mortgagee.

29. Considering the prayer, as made by the plaintiff, for redemption of the mortgage, the stand, as taken by the defendants has rightly been negated by learned trial Court, as upheld by learned first appellate Court.

30. Considering the above facts, there is no reason to interfere with the judgment and decree passed by the learned trial Court, as well as, the learned first appellate Court.

31. Consequently, both the substantial questions of law, are liable to be decided against the appellants. Ordered accordingly. Consequently, the appeal is dismissed, however, there shall be no orders as to cost.

32. Decree sheet be prepared accordingly.

33. Pending miscellaneous application(s), if any, shall also stand disposed of.

34. Record be sent back.

(Virender Singh)
Judge

30th September, 2026

(Subhash/Pramod Kumar)