

2026:PHHC:128938



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

RSA-668-1999

Reserved on : 02.07.2026

Pronounced on : 10.09.2026

SARABJEET (SINCE DECEASED) THROUGH LRS

...Appellant

Versus

AMI CHAND (SINCE DECEASED) THROUGH LRS

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ram Bilas Gupta, Advocate
for the appellant.

Mr. B.R. Rana, Advocate
for the respondent.

PARMOD GOYAL, J.

Present regular second appeal has been preferred by unsuccessful appellant/defendant being aggrieved by judgment and decree dated 03.05.1996, passed by learned Civil Judge (Junior Division), Palwal, whereby suit for possession preferred by respondent/plaintiff was decreed as well as by judgment and decree dated 09.12.1998, passed by learned Additional District Judge, Faridabad, whereby first appeal preferred by appellant/defendant was dismissed.

2. Respondent/plaintiff in his suit for possession by way of redemption of mortgage had asserted that he is owner of suit property detailed in para No.1 of the plaint. That earlier he had filed a suit for possession on the basis of his title against the appellant/defendant in the Court of the then learned Sub Judge, Palwal which was initially decreed by

Court of learned Sub Judge (First Class), Palwal. However, appellant/defendant had preferred an appeal against said decree in favour of respondent/plaintiff wherein learned First Appellate Court concluded that since appellant/defendant has been recorded as mortgagee in possession of suit land in the relevant revenue record since the year 1976, therefore, appeal was allowed with stipulation that possession of appellant/defendant over the suit land was of a mortgagee and respondent/plaintiff could only take possession after redemption of mortgage. In view of the findings of learned First Appellate Court, respondent/plaintiff had preferred suit for possession by way of redemption of mortgage.

3. The suit preferred by respondent/plaintiff was contested by appellant/defendant by taking preliminary objections regarding maintainability and suit being barred under Order II Rule 2 CPC along with other preliminary objections. Appellant/defendant had also claimed ownership by way of adverse possession and claimed that his possession had been open, overt, asserted, hostile and continuous for more than last 12 years. Earlier litigation between the parties wherein learned First Appellate Court had held appellant/defendant to be mortgagee was admitted, however, it was asserted that the said findings are bar against present suit being *res judicata* and accordingly, dismissal of suit with cost was prayed for.

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

1. Whether the plaintiff is owner of the suit land as alleged? OPP
2. Whether the plaintiff has no locus standi to file the present suit?
OPD
3. Whether the suit is barred by the principles of *res judicata*?

OPD

4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
 5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
 6. Whether the suit is barred by limitation? OPD
 7. Whether the defendant has also become the owner of the suit property by way of adverse possession? OPD
 8. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD
 9. Whether the suit is barred under Order 2 Rule 2 CPC? OPD
 10. Relief.
5. Both the Courts below by way of concurrent finding of fact on appreciation of evidence had concluded that in previous litigation between appellant/defendant and respondent/plaintiff, appellant/defendant was held to be mortgagee over the suit property and, therefore, suit for possession by way of redemption of mortgage preferred by respondent/plaintiff was held to be permissible and redemption of mortgage and delivery of possession on redemption was allowed.
6. As far as previous litigation is concerned, wherein respondent/plaintiff had sought possession of suit property being owner of suit land, same is not in dispute and same has been duly admitted by appellant/defendant. Hence, it is also established by copy of judgment passed by the then learned Additional District Judge, Faridabad (Ex.P1). In previous suit, respondent/plaintiff had claimed himself to be owner of suit

property and had claimed that appellant/defendant was a trespasser, however, learned First Appellate Court vide Ex.P1 had specifically found that since appellant/defendant had been recorded as mortgagee since 1976, therefore, the status of appellant/defendant was held to be that of mortgagee and possession could only be taken upon redemption of mortgage.

7. As per revenue records also, as noticed by learned Courts below, the possession of appellant/defendant over the suit property for the first time was recorded vide *rapat rojnamcha* (Ex.P5) in the year 1972. The change of possession was duly incorporated in favour of appellant/defendant in jamabandi for the year 1976-77 (Ex.P9) wherein appellant/defendant had been shown as mortgagee in possession of suit land. These facts have not been rebutted by appellant/defendant.

8. Admittedly, on the basis of Ex.P5 and Ex.P9 learned First Appellate Court in previous suit vide Ex.P1 had declared appellant/defendant to be mortgagee in possession. The finding given by learned First Appellate in previous suit had attained finality between the parties, therefore, the status of appellant/defendant with effect from 1972 onwards was that of mortgagee in possession.

9. The present suit was filed on 20.08.1991. The general period of limitation to seek redemption is 30 years and in case of equitable mortgage, no limitation is prescribed, therefore, even from 1972, if limitation period of 30 years is applied, the suit for redemption was within limitation and the claim of appellant/defendant that he had become owner by way of adverse possession is not established as he had never given up his right as mortgagee and continued to be mortgagee under respondent/plaintiff. The appellant/

defendant cannot blow hot and cold at the same time. In previous suit for possession, he claimed himself to be mortgagee and succeeded. In subsequent suit for possession by way of redemption, he cannot deny mortgage and seek ownership on the basis of adverse possession unless he shows that he had forgone his claim of being the mortgagee after passing of judgment (Ex.P1). No such evidence was led by appellant/defendant, therefore, his claim of ownership on the basis of adverse possession was rightly rejected being not tenable. Learned Courts below have also rightly rejected the claim of appellant/defendant that since in previous suit that respondent/plaintiff could get possession, therefore, finding of previous suit is *res judicata*.

10. In the previous suit decided vide Ex.P1, learned First Appellate Court had found respondent/plaintiff entitled to decree of possession by way of redemption. The status of respondent/plaintiff and appellant/defendant being mortgager and mortgagee respectively, was only acknowledged by way of judgment (Ex.P1). Once status of respondent/plaintiff and appellant/defendant was determined vide judgment and decree passed by Court (Ex.P1) then subsequent suit for redemption of mortgage preferred by respondent/plaintiff cannot be held to be *res judicata*, as right to seek redemption would accrue only by proof of existence of mortgage between the parties which for the first time was recognized by Ex.P1.

11. Learned counsel for appellant/defendant has argued that suit for redemption is not maintainable as respondent/plaintiff has not complied with requirement of Form 46 of CPC as respondent/plaintiff has not disclosed date of mortgage and amount of mortgage to seek redemption. Reference has

been made to testimony of respondent/plaintiff who appeared as PW1 wherein he had admitted in cross-examination that neither he had received any amount of mortgage nor was he aware about the amount of mortgage or date of mortgage.

12. In the present case, learned First Appellate Court in previous litigation vide Ex.P1 had found appellant/defendant to be a mortgagee on the basis of entries in jamabandi for the year 1976-77 (Ex.P9) wherein factum of mortgage in favour of appellant/defendant was recorded. *Rapat rojnamcha* Ex.P5 for the first time showed that appellant/defendant had come in possession of suit land as mortgagee. In fact, jamabandi for the year 1971-72 (Ex.P8) goes to show that appellant/defendant was not in possession of suit land, he came to be in possession only by virtue of *rapat rojnamcha* Ex.P5 recorded in 1972-73 wherein possession was changed in favour of appellant/defendant being mortgagee.

13. From the evidence placed on record, it is, therefore, clearly made out that appellant/defendant had become mortgagee in the year 1972 when he had entered in possession of suit land being a mortgagee. Learned Courts below have duly taken into consideration statement of appellant/defendant Sarabjeet (Ex.P7), who had appeared as DW1 in previous suit wherein he himself claimed to be mortgagee for amount of Rs.2,500/-. The learned Courts below have rightly taken this admission on the part of appellant/defendant who appeared as DW1 and on the basis of said admission having secured judgment (Ex.P1) in his favour, it was held that appellant/defendant is estopped from withdrawing the said admission. Therefore, in the present case, commencement year in which mortgage had

commenced and mortgage amount, stand established by way of evidence of parties, therefore, argument raised on behalf of learned counsel for appellant/defendant that suit for redemption is not maintainable is without any merit and had rightly been rejected by both the Courts below.

14. The finding of facts recorded by learned Courts below is based upon correct appreciation of evidence and, therefore, no interference is warranted. No question of law arises in the present appeal.

15. Appeal preferred by appellant/defendant is without any merit, hence is dismissed.

16. Pending application(s), if any, is/are disposed of accordingly.

10.09.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	Yes