

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

**RSA No. 1332 of 1983 (O&M)**

Date of decision : February 18, 2020

Hazara Singh through LRs and another

.....Appellants

Versus

Nazar Singh through LRs and another

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. M.L. Saggar, Senior Advocate with  
Ms. Armaan Saggar, Advocate  
for the appellants.

Mr. B.R. Mahajan, Senior Advocate with  
Ms. Manpreet Ghuman, Advocate  
for respondents No. 1(i)(c), (ii)(a,b,c) and (iii) to (viii).

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**LISA GILL, J.**

Appellant – plaintiff being aggrieved of judgment and decree dated 26.02.1983 passed by the learned Additional District Judge, Amritsar whereby judgment and decree dated 30.09.1977 passed in the appellants' favour by the learned Subordinate Judge First Class, Patti, has been set aside, filed the present regular second appeal. This appeal was allowed in the appellant's favour on 27.01.2012, the impugned judgment and decree dated 26.02.1983 was set aside while judgment and decree dated 30.09.1977 passed by the learned trial Court was upheld. The respondents being aggrieved challenged the same before the Hon'ble Supreme Court. Civil Appeal No. 7002 of 2016 arising out of SLP (Civil) No. 17792 of 2012 was disposed of on 26.07.2016. Judgment dated 27.01.2012 vide which the present appeal was allowed was set aside on the ground that it was decided without framing the questions of law. The matter was remanded to this Court, to be decided afresh, after framing the questions of law and hearing

the concerned parties. The present appeal has, thus, been listed for hearing.

Learned counsel for the appellants contended that though substantial questions of law are indeed involved for adjudication in this appeal as there is complete misreading of the evidence on record due to which the learned Additional District Judge, Amritsar has set aside the well reasoned judgment and decree dated 30.09.1977 passed by the learned Subordinate Judge First Class, Patti, however, in view of the judgment of the Hon'ble Supreme Court in **Pankajakshi (Dead) through LRs and others versus Chandrika and others 2016 (2) RCR (Civil) 245** and **Kirodi (since deceased) through his LR versus Ram Parkash and others in Civil Appeal No. 4988, SLP(c) No. 11527 of 2019** the questions of law need not be framed, therefore, is no necessity of hearing of this appeal yet again and decision dated 27.01.2012 be maintained. It is further contended that there are specific grounds for interference as per Section 41 of the Punjab Courts Act and this appeal was rightly allowed on 27.01.2012.

Per contra learned counsel for the respondents submits that once decision dated 27.01.2012 has been specifically set aside and the matter remanded for a decision afresh after hearing the parties, the matter is to be heard in its entirety and decided accordingly.

At this stage, it is relevant to note that none of the learned counsel at the time of hearing before this Court, pointed out that substantial questions of law were in fact framed on 16.12.2011, when arguments were heard by the co-ordinate Bench and the judgment reserved. The judgment was pronounced on 27.01.2012. This fact came to my notice while perusing the file at the time of dictating the judgment. Order dated 16.12.2011 reads as under:-

- (i) Whether the lower Appellate Court was justified in reversing the well considered judgment of the trial Court making clear identification of the property with reference to the revenue entries that the properties were held by the defendants as mortgagees from the plaintiffs as mortgagors?
- (ii) Whether the suit for redemption must fail only on account of same defects in the date of mortgage when the possession of the defendants could be traced only in the capacity as mortgagees?

Be that as it may, learned counsel for the parties had been heard at length and the matter is being adjudicated upon afresh.

Appellant – plaintiffs had filed a suit for redemption of land measuring 25 kanal 7 marlas as described in the plaint. The present appellants are the legal representatives of the plaintiffs, who had filed the suit for redemption. It is pleaded that the land as described was mortgaged with the defendants 40 years prior to the filing of the suit. The plaintiffs claimed to be the owners of the property in question as per the entries in the jamabandi for the year 1966-67. Possession of defendant No. 1 was stated to be that of a mortgagee. Defendant No. 1 is stated to have refused to disclose the details of mortgage. Mortgage is stated to be over a sum of ₹400/-. The original owners of the suit property i.e. Sohan Singh and Bahadur Singh are pleaded to have died. Mohan Singh, their brother and legal heir was in possession of the suit property and after death of Mohan Singh, who died a bachelor, the plaintiffs claimed to be his legal heirs. Mohan Singh, it is stated, is presumed to have died as none had received any news about his existence since the last 9-10 years. Detail of the relationship between the parties is given in the plaint, which is not in dispute. It is further pleaded that the plaintiff's application for redemption of the suit land was wrongly

dismissed on 29.01.1970 by the Assistant Collector First Class, Patti which was sought to be set aside. It is pleaded that the suit land is liable to be redeemed on payment of the mortgage amount.

Respondent – defendants contested the plaintiffs' claim and claimed themselves to be the owners in possession of the suit property. It is denied that the land was ever mortgaged. The plaintiffs were denied to be the legal heirs of Mohan Singh. It is further stated that the suit was beyond limitation. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiffs are entitled to redeem the property in dispute?OPP.
2. Whether the relationship of mortgagor and mortgagee does not subsist between the parties?OPD (objected to)
3. Whether the suit is within time and the mortgage in question subsists?
4. Whether the plaint does not disclose the case of action?OPD
5. Whether Mohan Singh is dead?OPP
6. If issue No. 5 is not proved, whether Mohan Singh is presumed to be dead?OPP.
7. Relief.

Additional issues were framed by the learned trial Court:-

1. Whether the order of A.C.I. Patti dated 29.1.70 is wrong against law and facts and is not binding on the plaintiffs?OPP
2. What is the mortgage sum to which the defendants may be entitled in case of decree?OPP
3. Whether the suit is property valued for the purpose of court fee and jurisdiction?

Evidence was led by both the parties.

Learned trial Court concluded that the plaintiffs had

successfully proved their case. The plaintiffs were held to be the legal heirs of Mohan Singh. The defendants were concluded to be the mortgagors on the basis of the evidence on record. The suit was, accordingly, decreed.

Appeal filed by the defendants was, however, allowed by the learned Additional District Judge, Amritsar vide judgment dated 26.02.1983. Learned First Appellate Court upheld the finding of the learned trial Court as regards the plaintiffs being the legal heirs of Mohan Singh. Finding regarding the suit being within limitation was also upheld. There is no challenge to the said concurrent findings. However, learned First Appellate Court reversed the judgment and decree dated 30.09.1977 passed by the learned trial Court on the ground that the relationship of mortgagor and mortgagee between the parties could not be proved and moreover identity of the property in question could not be proved on the basis of the evidence on record. Learned Appellate Court held that the specific period of mortgage is not mentioned in the plaint. A vague averment of the mortgage being executed 40 years ago was not sufficient to prove the same neither the mortgage deed was proved on record. Learned Additional District Judge while referring to Exs.P12 and P13 observed that there appear to be two mortgage transactions and further Ex. P12 appears to be a fictitious affair. It is observed in para 11 that mere existence of the relationship of mortgagor and mortgagee on the basis of the revenue record, is not sufficient to decree the suit, in the absence of pleading and proof of a specific mortgage. It was held that on their failure to prove the said relationship, the plaintiffs' suit must fail leaving them with the alternate to bring a fresh suit proving the specific mortgage, if at all. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants argued that there is clear,

cogent and sufficient evidence on record to indicate execution of the mortgage by the predecessor-in-interest of the appellants in favour of Nazar Singh. It is further contended that respondents – defendants have denied the execution of the mortgage in favour of Nazar Singh. They have claimed to be the owners in possession. Therefore, it is not open to the defendants to now take a plea of the specific mortgage deed not being proved by the plaintiffs. It is further submitted that it is a clear cut case of the plaintiffs that the mortgage deed was with the mortgagee and he was not revealing the details thereof. The so-called discrepancy pointed out by the learned Additional District Judge in respect to the time and date of execution of the mortgage deed or the amount, is clearly not relevant in the wake of the revenue record produced by the plaintiffs. It is, thus, prayed that this appeal be allowed, judgment and decree dated 26.02.1983 passed by the learned Additional District Judge, Amritsar be set aside and judgment and decree dated 30.09.1977 passed by the learned Subordinate Judge First Class, Patti be upheld.

Learned counsel for the respondents while refuting the above said arguments submits that no question of law is involved for adjudication in this appeal. Learned Additional District Judge has correctly dismissed the suit filed by the plaintiffs – appellants. It is submitted that there is a material discrepancy in the land mentioned in Exs. P12 and P13. Moreover, the period is not mentioned therein. It was incumbent upon the plaintiffs to have proved the mortgage deed. Insofar as Ex. P12 is concerned, there is only one khasra number which is mentioned. The mortgage amount is also not clearly mentioned. The evidence led by the plaintiffs is contended to be beyond pleadings, therefore, liable to be ignored. It is, thus, prayed that judgment

Amritsar be upheld wherein judgment and decree dated 30.09.1977 passed by the learned Subordinate Judge First Class, Patti has been rightly set aside.

I have heard learned counsel for the parties at length and have gone through the record with their assistance.

The plaintiffs – appellants have relied upon the revenue record wherein the plaintiffs' predecessor is clearly and specifically mentioned to be the mortgagor and Nazar Singh the mortgagee. Ex. P13 is the mutation wherein khasra No. 711, 538, 545 and 632 are reflected and mutation Ex.P12 reflects khasra No. 710. The plaintiffs produced Ex.P5 jamabandi for the year 1936-37 reflecting the khasra Nos. 711, 538, 545 and 632. The new khasra numbers had replaced the old ones and are duly reflected in Ex.P5. Ex.P4 is the jamabandi for the year 1944-45 in respect to the said khasra numbers wherein the plaintiffs' predecessor-in-interest is reflected to be the mortgagor and Nazar Singh the mortgagee. Entries regarding the khasra numbers are reflected in the jamabandi Ex. P1 which was prepared after consolidation relating to the year 1966-67. The plaintiffs also produced the Naksha Haqdarwar (Ex.P3). The jamabandies for the year 1936-37(Ex.P5), 1932-33 (Ex.P6), 1924-25 (Ex.P7) and 1916-17 (Ex.P8) are also on record. It is correctly observed by the learned trial Court that the suit land of which the mortgage was created has been clearly connected with the khasra numbers and is consistently so reflected in the jamabandies placed on record. The new khasra numbers, which were assigned after the consolidation, are duly proved and linked to the land which was mortgaged.

It is undeniable that in the entire revenue record produced on record, relationship between the parties is clearly mentioned to be that of

mortgagor and mortgagee. Suit, in this case, was filed on 29.11.1970 with

the pleading that the land was mortgaged about 40 years prior thereto. This clearly coincides with the evidence on record. Far from the evidence being beyond the pleading, it in fact gives exactitude to the approximate year mentioned in the plaint. The existence of the mortgage is clearly brought out by the plethora of documentary evidence on record, the genuineness of which is not under cloud. The argument, which is vociferously urged on behalf of the respondents that it is only one mortgage which was pleaded but the evidence on record reflects two and, therefore, the suit has been correctly dismissed, is clearly devoid of any merit. It is correctly held by the learned trial Court that the land in question stood mortgaged and there is no question of two mortgages. Exs. P12 and P13 are the mutations in respect to the land. It is apparent that the land in question stood mortgaged. Similarly, the argument that the pleading regarding the mortgage amount was ₹400/- but the evidence on record reflects the same to be ₹1409/- cannot by itself be a ground for dismissal of the plaintiffs' suit. This argument on behalf of the defendants in respect to the bogey of the original mortgage deed not being produced and that in the alternate, permission of the Court should have been sought to lead secondary evidence stands negated rightly. This argument is indeed illusory as the mortgage deed is alleged to be in possession of the defendants whereas the defendants have denied the very factum of mortgage or the execution of a mortgage deed. Therefore, question of serving notice upon the defendants to produce the mortgage deed was meaningless. The plethora of evidence on record clearly and cogently proves the relationship of mortgagor and mortgagee between the parties. There is not an iota of evidence on record to negate the same.

No observation/opinion need be expressed in respect to the

appellants-plaintiffs being the legal heirs of the mortgagors or in regard to the suit being within limitation as both the learned courts below have correctly rendered concurrent findings in the plaintiffs' favour, on these issues. The mortgage is a usufructuary mortgage. The plaintiffs' right to redeem the property cannot be negated as the defendants are clearly reflected to be in possession of the suit property as mortgagees. Reference can gainfully be made to the decision of a Full Bench of this Court in **Ram Kishan and others vs. Sheo Ram and others 2008 (1) PLR 1**. The substantial questions of law already framed on 16.12.2011 are, thus, answered in favour of the appellants and against the defendants – respondents. It is further observed that there are sufficient grounds for interference by this Court in terms of Section 41 of the Punjab Courts Act.

No other argument was addressed.

Keeping in view the facts and circumstances as above, judgment and decree dated 26.02.1983 passed by the learned Additional District Judge, Amritsar is set aside and judgment and decree dated 30.09.1977 passed by the learned Subordinate Judge First Class, Patti is upheld.

This appeal is, accordingly, allowed.

February 18, 2020  
rts

**(Lisa Gill)**  
**Judge**

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| Whether speaking/reasoned : | Yes/No |
| Whether reportable :        | Yes/No |