

115

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**RSA-5424-2019 (O&M)
Date of decision: 29.11.2023

Balraj

...Appellant

Versus

Sheela

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Narinder Singh Lucky, Advocate for the appellant.

KARAMJIT SINGH, J. (ORAL)

1. By way of present appeal, challenge has been made to judgment dated 15.01.2018 passed by the Civil Court, Junior Division, Jalandhar and judgment dated 02.05.2019 passed by the Court of Additional District Judge, Jalandhar, whereby suit for possession by redemption of mortgage of the suit property filed by respondent/plaintiff Sheela was decreed and the appeal filed by the appellant/defendant was dismissed by the First Appellate Court, respectively.

2. The brief facts of the case of respondent/plaintiff are that respondent is owner of the plot in dispute situated in area of Village Choggittee, Tehsil and District Jalandhar and she mortgaged the same with possession to appellant vide registered mortgage deed dated 15.03.2010 for consideration of Rs.50,000/- and the same was received by respondent and she handed over the possession of the mortgaged plot to appellant. The interest on the mortgage money was equal to the produce of the plot, with

right to the respondent to redeem the said plot by paying mortgage money worth Rs.50,000/- to mortgagee. That respondent made payment of said mortgage money to the appellant vide cheque No.078851 dated 18.08.2010 drawn on Punjab National Bank, Jalandhar and the said cheque was got encashed by appellant. On this respondent requested the appellant to handover the vacant possession of mortgaged plot to her but the appellant refused to do so. Hence, the suit for possession by way of redemption of mortgage of suit property was filed by respondent.

3. The suit was contested by appellant and he filed written statement wherein the execution of mortgage deed was admitted. However, it was denied that mortgage money worth Rs.50,000/- was ever paid by respondent vide cheque dated 18.08.2010 to the appellant. Rest of the averments of plaint were denied being wrong and it was pleaded that the suit be dismissed.

4. Respondent/plaintiff filed replication controverting the averments made by the appellant/defendant in his written statement with regard to non payment of mortgage money.

5. From the pleadings of the parties, the learned trial Court framed the following issues:-

1. *Whether plaintiff is entitled to relief of possession by redemption of mortgage as prayed for? OPP*
2. *Whether plaintiff has no cause of action to file the present suit? OPD*
3. *Whether plaintiff has not paid the mortgage amount? OPD*
4. *Relief.*

6. In order to prove its case, the counsel for the respondent examined PW-1 Gulshan Kumar who proved the bank account statement

Ex.P-1 as per which cheque bearing No.078851 dated 18.08.2010 worth Rs.50,000/- was encashed by appellant Balraj on the same very day and attested copy of the cheque is Ex.P-2 and there were signatures of appellant Balraj on the back side of cheque. PW-2 Paramjit Singh produced the summoned record regarding mortgage deed dated 15.03.2010 and the copy of the same is Ex.P-2/A. PW-3 Paramjit Singh Mulati also produced summoned record regarding entry of mortgage deed at Sr. No.93 dated 15.03.2010 and copy of the same is Ex.P-3/A. PW-4 Rajinder Singh proved the execution of mortgage deed dated 15.03.2010 Ex.PW-4/A being its attesting witness. Respondent/plaintiff herself appeared in the witness box as PW-5 to prove her case.

7. On the other hand, counsel for appellant/defendant examined DW-1 Balraj (defendant) who stated on oath that he never received amount of mortgage worth Rs.50,000/- from plaintiff. He further stated that he has raised certain construction in the plot in question and also produced photographs mark A-1 to mark A-12 in this regard. DW-2 Chetan Thakur deposed that certain construction has been raised by appellant/defendant in the suit property.

8. After hearing the counsel for the parties, the learned trial Court came to the conclusion that there is no dispute with regard to execution of mortgage deed dated 15.03.2010 and that it also stands proved that mortgage money worth Rs.50,000/- has been paid by respondent/plaintiff to appellant/defendant vide cheque dated 18.08.2010 which was encashed by appellant/defendant and consequently, the suit filed by the respondent/plaintiff was decreed.

9. The appeal filed by the appellant/defendant against the judgment and decree of the learned trial Court was also dismissed by the Court of Additional District Judge, Jalandhar vide judgment and decree dated 02.05.2019.

10. Being aggrieved, the appellant/defendant has filed the present appeal.

11. The counsel for the appellant has submitted that there is no dispute between the parties with regard to execution of registered mortgage deed dated 15.03.2010. However, the dispute is with regard to payment of mortgage money worth Rs.50,000/- which was never received by the appellant/defendant and further the appellant/defendant came into possession of the suit property on the basis of aforesaid mortgage deed and thereafter, he raised construction therein which is visible in photographs mark A-1 to mark A-12. The counsel for the appellant has further submitted that in case the respondent/plaintiff intends to get back possession of the suit property, she should pay mortgage money worth Rs.50,000/- and should also compensate appellant/defendant by making payment of cost of construction raised by appellant/defendant in the suit property.

12. I have considered the submissions made by counsel for the appellant/defendant. In the present case the execution of registered mortgage deed dated 15.03.20210 is not disputed by the appellant/defendant. From the perusal of the evidence which was recorded in the trial Court, its stands fully proved that mortgage money worth Rs.50,000/- was paid by respondent/plaintiff to appellant/defendant vide cheque No.078851 dated 18.08.2010 Ex.P-2 and encashment of said cheque on behalf of

appellant/defendant is also fully established from perusal of the testimony of PW-1.

13. Admittedly, there was no clause in the mortgage deed dated 15.03.2010 to the effect that in case appellant/defendant raises any construction in the mortgaged plot, the cost of the same will be reimbursed to him by respondent/plaintiff at the time when appellant/defendant will hand over the possession of the said plot to respondent/plaintiff at the time of redemption of the mortgage. So, in the present case the appellant/defendant cannot claim any compensation regarding cost of construction raised by him, in lieu of handing over the possession of plot in question to respondent/plaintiff who is its owner.

14. In view of the aforesaid discussion, I do not find any illegality or irregularity so as to interfere with the concurrent findings recorded by both the Courts below which are purely factual in nature and based on proper appreciation of evidence. Further, no question of law much less substantial question of law is involved in the present appeal warranting interference by this Court.

15. Accordingly, the present appeal is dismissed.

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

29.11.2023

Yogesh

**(KARAMJIT SINGH)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**