

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.437 of 2020 (O&M)
Reserved On: 29.02.2024
Date of Order:20.03.2024

Sohan Singh (Deceased) through Lrs

.Appellant

Versus

Rachhpal Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pankaj Bains, Advocate, for
Mr. Ashish Handa, Advocate
for the appellant.

Mr. Sukant Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. This regular second appeal has a checkered history as the Supreme Court on two different occasions has set aside the judgments and decrees passed by the courts below and remanded the case back to the courts for a fresh decision. Hence, it is considered appropriate to give factual background.

2. This appeal has been filed by the legal representatives of Sh. Sohan Singh, who was the defendant in the suit filed by Sh. Rachhpal Singh for possession by redemption of land measuring 25 kanals and 5 marlas, situated in village Bhatoya. The suit was dismissed on 20.11.1973, which was affirmed in the first appeal by the judgment and decree dated 20.09.1975. During the pendency of the regular second appeal, an application under Order XIII Rule 3 CPC was filed for permission to settle

the dispute amicably. The application as well as the regular second appeal filed by the plaintiff was dismissed on 22.01.1985. Against the aforesaid judgment, the plaintiff filed Civil Appeal No.5205 of 1993, which was allowed on 24.09.1993. The relevant portion of the order is extracted as under:-

“It is obvious that on that conclusion reached by the High Court, after rejecting the application under Order 23 Rule 3CPC, the Second Appeal had to be heard and decided on merits. However, that was not done and after rejecting the application under Order 23 Rule 3 CPC, because it was based on a receipt found to be forged, the High Court proceeded to dismiss the appeal itself without considering the merits of the appeal. This was an obvious error on account of which the impugned judgment dismissing the appeal in this manner has to be set aside.

Consequently, the appeal is allowed. The High Court's judgment, in so far as it relates to the dismissal of the Second Appeal, is set aside. The Second Appeal be now heard on merits and decided afresh by the High Court. No costs.”

3. The High Court once again dismissed the appeal on 25.04.2007. Then, the Supreme Court once again by a detailed judgment passed in Civil Appeal No.5210 of 2009, allowed the appeal on 26.10.2017, by an elaborate order which is extracted as under:-

1. *The judgment of the High Court of Punjab and*

Haryana in Civil Regular Second Appeal No. 465 of 1976 dated 25th April, 2007 is under challenge in this appeal.

2. *The father of the appellant mortgaged the property in the form of usufructuary mortgage to one Mr. Beliram. The property was situated in Pakistan. After partition, the parties shifted to India. Since the appellant and his family were displaced from Pakistan, entire family was rehabilitated by providing alternative agriculture land in Village Bhatoya in favour of the father of the appellant. However, Beliram, the mortgagee also shifted to India and stayed in the same village and continued to hold the property which was provided to appellant's father in India for the purpose of rehabilitation as the mortgagee. Beliram transferred his mortgaged rights, in respect of the mortgaged property situated in India in favour of one Mr. Sohan Singh-respondent. After demise of appellant's father, the appellant filed the suit for redemption of mortgage. The Courts below including the High Court have dismissed the suit on the ground that no adequate material is produced by the appellant to show that he is the owner of the property and that he has mortgaged the property in favour of either Beliram or Sohan Singh.*

3. *It is relevant to note here itself that the appellant's father had owned another property in Pakistan which also was mortgaged in favour of one Inder Singh and one Jagat singh. Almost similar facts as mentioned supra regarding shifting to India after partition, rehabilitation, allotment of land & mortgage etc. are applicable to the case of Inder singh & Jagat Singh also. The appellant filed suit for redemption of mortgage in respect of the mortgaged land situated in India against Inder Singh & Jagat singh and the said suit came to be decreed throughout. During the pendency of the said suit, the appellant herein went to Pakistan and obtained all the*

relevant records pertaining to the property in the said case and the same were produced. Ultimately based on such documents, the Courts including this Court held that the appellant's father and thereafter the appellant was owner & mortgagor of the said property and thus are entitled to redemption of mortgage. As mentioned supra, suit for redemption filed against Inder Singh & Jagat Singh was decreed.

4. *Coming back to the case on hand, during the pendency of the matter before the High Court it seems, after the disposal of the matter by the first appellate court, as mentioned supra, the appellant herein went to Pakistan in 1985 and secured all the relevant records in respect of the property which was mortgaged in favour of Beliram and also the subsequent records pertaining to allotment of property by the Government of India after rehabilitation. All such records were produced by the appellant before this Court during the pendency of the special leave petition i.e. SLP(C) No. 7531 of 1985. Ultimately this Court remitted the matter to the High Court in the year 1993 for fresh disposal in accordance with law. During the pendency of the matter on hand before the High Court, the appellant filed an application for production of additional evidence i.e. basically for producing the relevant records obtained by him from Pakistan pertaining to the property which were produced by the appellant during the pendency of special leave petition. The High Court, strangely, took a hyper-technical view and rejected such application and thereafter proceeded to confirm the Judgment of dismissal of the suit.*

5. *The learned counsel appearing for the appellant has taken us to the material on record and the documents which are sought to be produced before the High Court.*

We find that such documents were necessary before the High Court for just decision of the case. Almost very documents were produced in the case of Inder Singh & Jagat Singh which were accepted & relied upon.

6. *In our considered opinion, rejection of the appellant's application by the High Court for producing the additional evidence has led to mis-carriage of justice. The documents that the appellant has subsequently with great difficulty retrieved from the Government of Pakistan prima facie show that the appellant's family was owning the land which was originally mortgaged & that the appellant's family was subsequently allotted another agricultural land for the purpose of rehabilitation in India, and the same is held by the respondent. Since the records sought to be produced by the appellant before the High Court are very much necessary to decide the matter in an appropriate and fair manner, the judgment of the High Court is liable to be set aside. So also the application for amendment of plaint needs to be allowed inasmuch as amendment is necessary, in view of the additional documents which are sought to be produced.*

7. *Accordingly, the application for leading additional evidence as well as the application filed for amendment of plaint produced before the High Court are hereby allowed. The matter is remanded to the High Court for fresh decision in accordance with law. We place on record that it will be open for the High Court to get the evidence and the findings recorded both oral & documentary by the first appellate court. After getting such findings, the second appeal shall be decided by the High Court. We hope that the High Court will make endeavour to decide the second appeal as early as possible.*

8. *The appeal is allowed as mentioned supra. No*

order as to costs.”

4. On 07.02.2019, the matter was remitted back to the First Appellate Court, for deciding afresh, with the following order:-

“CM No.2256-C of 2019

Replication to the amended Written Statement dated 5th December, 2018 filed on behalf of the appellant/plaintiff is permitted to be taken on record.

Application stands disposed off.

RSA No.465 of 1976

The appellant has been already permitted to place on record the additional evidence and to amend the plaint in terms of the direction of the Hon'ble Supreme Court in Civil Appeal No.5210 of 2009.

2. The matter now involves comparison of the documents so led by way of additional evidence, which would require closer scrutiny with the original/amended pleadings in view of a specific objection raised on behalf of the respondent to the effect that some of the figures by way of mortgaged amounts and disputed areas of land claimed by the appellant do not tally with the original/amended claim. In these circumstances, it appears fit and proper to refer the matter back to the First Appellate Court to get any additional oral evidence to be recorded, in view of the additional documents permitted to be led into evidence and pronouncement of a fresh finding, which shall thereafter be considered again by this Court, for which purpose, the Hon'ble Apex Court had itself left it open for this Court to get the same done through the Ld. First Appellate Court, which is accordingly directed to

pronounce a fresh finding in the light of the additional evidence and additional documentary evidence already led, and any additional oral evidence as a consequence thereof which the parties may now desire to lead, and thereafter to decide the appeal afresh as expeditiously as possible, and preferably within four months from the date of communication of this order. Additional documents led into evidence be also sent along with records of the Lower Courts.

3. Accordingly, parties are directed to appear before the Ld. First Appellate Court on 28th February, 2019.

4. List the matter on 28th August, 2019 for awaiting intimation from the Lower Appellate Court.”

5. Pursuant thereto, the First Appellate Court has allowed the plaintiff's appeal vide judgment and decree dated 17.10.2019. In this regular second appeal, the legal representatives of the defendant assailed the correctness of the judgment and decree passed by the First Appellate Court.

6. The Supreme Court has permitted the plaintiff to substantively amend the plaint.

7. Originally, Sh. Rura son of Sh. Roda and Sh. Sansar Singh son of Sh. Bachittar Singh and Sh. Beli Ram son of Sh. Roda mortgaged their land located in the area now falling in Pakistan, in the year 1939, for Rs.5500/- in favour of Sh. Anant Ram, Sh. Diwan Chand, Sh. Kanshi Ram, Sh. Mukand Lal and Sh. Jawanda Mal sons of Sh. Gobind Ram.

Subsequently, the mortgagees sold their rights in favour of Sh. Inder Singh

and Sh. Jagat Singh. Subsequently, Sh. Inder Singh and Sh. Jagat Singh sold some part of the mortgagee rights in favour of Sh. Sohan Singh (predecessor of the appellant), for Rs.1300/-. After partition of the country, in lieu of the previous land owned by the owners, namely, Sh. Rura son of Sh. Roda and Sh. Sansar Singh son of Sh. Bachittar Singh and Sh. Beli Ram son of Sh. Roda, the land was allotted to them. However, the suit land measuring 25 kanals and 5 marlas was allotted to Sh. Sohan Singh as the mortgagee, whereas, the owners were recorded as mortgagors. There has been various rounds of litigations between the parties. Sh. Rachhpal Singh son of Sh. Sansar Singh filed a suit for redemption of mortgage of land measuring 66 kanals and 14 marlas against Sh. Inder Singh and Sh. Jagat Singh which was dismissed on 30.10.1982. However, the first appeal was allowed on 15.03.1986, resulting in setting aside the judgment and decree dated 30.10.1982. The Regular Second Appeal No.1193 of 1986, was dismissed on 10.11.1986, whereas Special Leave Petition No.15861 of 1986, was dismissed on 24.09.1993. Thereafter, heirs of Sh. Inder Singh and Sh. Jagat Singh filed Civil Suit No.445 dated 16.10.1993, seeking decree of declaration and possession with respect to land measuring 111 kanals and 14 marlas against Sh. Rachhpal Singh son of Sh. Sansar Singh. The said suit was dismissed on 24.10.1997. Thereafter, heirs of Sh. Inder Singh and Sh. Jagat Singh filed another Civil Suit No.2001 of 27.05.2003, for grant of decree of declaration that they are owners of 66 kanals and 14 marlas land against Sh. Rachhpal Singh, which was also dismissed on 24.08.2009.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record of the First Appellate Court, wherein

substantive evidence has been led after the order passed by this court in the previous round on 07.02.2019. The learned counsel representing the appellant has also filed synopsis. The operative part of the synopsis containing the gist of his arguments, is extracted as under:-

1. *That the present amendment amounts to a denovo trial in as much as the allegations in the plaint stand totally changed. In fact earlier the plaintiff-respondent had alleged that the mortgage was in 1939 for an amount of Rs. 370/- and to that effect oral evidence was also lead. The stand would amount to denovo trial In any case, the documentary evidence now lead by the plaintiff-respondent by way of additional evidence is not supported by the oral evidence produced by the plaintiff-respondent.*
2. *That after litigating for over a period of 47 years plaintiff/respondent has sought for a denovo trial, infact knowing fully well that the case now set-up by the plaintiff-respondent is not even supported by the plaintiff-respondents 's own oral evidence.*
3. *That the plaintiff by way of filing the amended plaint has sought to change the very basic nature of 3 the suit in as much as the name of the mortgagee has been changed, the date of mortgage had been changed and the amount of mortgage has also been changed. That being so, the present suit ought to be dismissed in as much as the same would amount to denovo trial after 47 years. That in additional evidence the plaintiff/respondent stated that he has obtain the documents from the Pakistan after obtaining the permission from the Hon'ble Court but in his cross examination he has failed to produced and document with regard to permission taken by him from the Hon'ble Court and even he has failed to produce the Visa and passport which shows that he visited the*

Pakistan.

4. *That the area alleged to have been mortgaged is not mentioned. It is further stated that mutation No. 452(Ex AX/A10) relied upon does not refer to the parentage of Sohan Singh and infact there is no area/Khasra nos./Khewat Khatauni mentioned in the said document. A Perusal of Ex AX/A10 clearly reveals that the said document nowhere states that parentage of Sohan Singh and cannot by any stretch of imagination be correlated to the land involved in the present lis. Totally vague and baseless allegation has been made by the plaintiff without so much even giving a single detail regarding the land. The Fard/Jamabandi Ex AX/A11 has no correlation to the land involved in the present lis.*

5. *That there is no evidence brought on record either oral or documentary with respect to the creation of alleged mortgage in dispute nor is there any evidence regarding the alleged sale of mortgagee rights of suit land in favour of appellant. There is also no pleading to the effect whether the alleged mortgage was oral one or created through an mortgage deed. The averments in the plaint are silent in this matter. The mortgage is always a bilateral contract. The perusal of alleged mutation No. 452(ExP3) translation Ex P3/A would show that the appellant Sohan Singh never appeared before the revenue officer to admit the transfer of alleged mortgagee rights or admit the mortgage in question. Moreover as per column No. 15 of mutation No. 452, it is shown that Sh. Jagat Singh and Inder Singh purchased mortgagee rights of the land vide mutation No. 248 dated 19-02-1930 Ex P2, translation Ex P2/A against Rs. 1300. Whereas in mutation No. 248, the consideration amount of the sale of mortgagee rights to Inder Singh and Jagat Singh mentioned as Rs. 5,500/- Both these documents of*

mutation run counter to each other Neither the mutation No. 452. mutation No. 248 show the detail of the land mortgaged such as the area, Khata. Khatoni No's or even the Khasra number are not mentioned with respect to which the alleged mortgage was created in favour of Inder Singh, Jagat Singh thereafter by Inder Singh Jagat Singh in favour of Sohan Singh. It is well established law that plaintiff has place on record merely copies of mutation Nos 248 and 452. The mutation entry do not prove mortgage nor does it create any right or title in the suit property nor these mutation extinguish the title. The mutation entries are only relevant for fiscal purposes for the collection of land revenue. The plaintiff has failed to place on record the relevant Jamabandi entries pertaining for the year 1945-46 with which the alleged mutation No 452 is alleged to be attached. The plaintiff/respondent has also not placed on record any record any previous or subsequent revenue entries. Again the perusal of mutation No. 452 would show the transfer of mortgagee rights pertain to 1/3 share of Khata No. 2, 17,21 and 1/6 share of Khata No. 7 and 55 total area 386 Kanal 5 Marlas and the mortgage amount is Rs. 1,300/- the purchaser of the mortgagee rights is shown as Sohan Singh. But the mutation or order of mutation do not show the parentage of Sohan Singh and the place of his resident In this manner neither the identity of land regarding which the alleged mortgagee rights have been shown to be transferred is established on record nor the identity of the person in whose favour, the alleged mortgagee rights were transferred established on file. Beside this, the plaintiff/respondent has miserably failed to connect the land mentioned in the order of Revenue officer in mutation no 452 with the land in suit which measuring 25 Kanals 5 Marlas The perusal of Sanad

Takseem Azari Matryka Ex A1, translation Ex A1/A only shows that one Sohan Singh is shown to have been allotted 2 Kanals 4 Marlas (2-4) as mortgagee. The mutation enteries bearing no 452 do not connect Sohan Singh with Parchi allotment Ex P1. In which defendant/appellant shown as allottee mortgagee. There is also discrepancy regarding the amount of mortgage. In the original plaint, the amount of mortgage is shown as Rs. 370. Whereas in the mutation No as 248, it is shown as Rs 5,500/- and in mutation No. 452 the amount of mortgagee is mentioned as Rs. 1,300/-. The plaintiff/respondent has miserably failed to lead any credible, cogent and convincing evidence prove and establish the factum of alleged mortgage as well as the particulars of the mortgage on the Court file. The Hon'ble Punjab and Haryana High Court vide its order dated 07-02-2019 while remanding the cases to this Hon'ble Court observed in Para No. 2 of the order as under:-

"The Matter now involves comparison of the documents, so led by way of additional evidence, which would require closer scrutiny with the original/amended pleadings in view of specific objections raised on behalf of respondent to the effect that some of the figures byway of mortgaged amounts and disputed areas of land claimed by the appellant do not tally with the original/amended claim."

Thus the present case has to be decided in the light of the observations of the Hon'ble High Court as mentioned above but the lower appellant court had failed to considered the above said observations. The land mentioned in Ex P1/A do not tally or connect with the land mentioned in the mutation No. 452 Ex AX/A 10T.

These mutations pertains to pre-partition period of India. Now in post partition period also, the plaintiff has failed to bring on file complete consolidation such as Khatoni Pamaish and pre-consolidation Jamabandies to connect the suit land with the land alleged to have been allotted as mortgagee to the defendants in lieu of the land left by him in West Pakistan. It was incumbent upon the plaintiff/respondent to produce or prove on record the pre-consolidation Jamabandies, Khatoni Istemaal, Khatoni Paimaish and Naksha Haqdarwar to connect the pre-consolidation Khasra numbers with the suit land. Even in the Khatoni Istemaal, the parentage of Sohan Singh is not mentioned as to who that Sohan Singh is to whom this entry pertains. Not only this Khatoni Istemaal Ex AX/A 11 T reveals that the land mentioned in this document is comprised in khewat no 30 but the plaintiff/respondent has not placed on record the previous jamabandi of khewat no 30 nor the plaintiff/respondent has placed on record Khatoni paimaish to connect this land with suit land. The plaintiff has not shown the detail and particulars of khewat no 30. Even in the consolidation jamabandi 1957-58 Ex AX/AB khewat no 30 is nowhere mentioned, and in the reference to this cannot be said that suit land was carrying Previously khewat/khata no 30 as mentioned in khataoni istemaal. The plaintiff/respondent has failed to prove that the defendant was ever mortgagee under the plaintiff/respondent.

6. *That the plaintiff has led oral evidence after the remand of this case and in his affidavit the plaintiff sh. Rachhpal Singh alleged that Sh. Arora and Sansar Singh Sons of Bachitter Singh and Beli Ram Son of Rura were owners of land in west Pakistan which they had mortgaged in favour of Inder Singh and Jagat Singh and*

thereafter Inder Singh and Jagat Singh sold mortgagee rights of part of the land under mortgaged with them in favour of Sohan Singh for consideration of Rs 1,300/-. In his cross-examination, the plaintiff states that the suit land is measuring 66 Kanals 14 Marlas which is contrary to the averments made by plaintiff/respondent in his plaint. He has further admitted that he cannot orally tell as to how much land Sohan Singh having as mortgagee in Pakistan and he further stated that he cannot tell the Khata Khatoni or Khasra number of suit land in Pakistan. He has also stated that suit land was never mortgaged in his presence nor its mortgagee rights were sold to any person in his presence. The plaintiff has based the present suit only on one mutation entry bearing No. 452 which has no relevancy and the same is vague, ambiguous and uncertain It is pertinent to mention over here that land measuring 66 Kanals 14 Marlas has already been ordered to be redeemed by the Civil Court. The Judgment and Decrees are already on record. The redemption of 66 kanal and 14 marla further leads to show that the suit land was never under mortgaged with Sohan Singh defendant/Appellant. It is well settled principal of law that integrity of mortgage can never be broken. The plaintiff had filed suit for redemption of land measuring 66 Kanals 14 Marlas against Inder Singh and Jagat Singh, but the plaintiff did not include the suit land in the previously instituted suit nor defendant was made party to that suit. Which fact again lead to prove that the suit land was, never under mortgage with Sohan Singh. There was no relation of mortgagor and mortgagee between the parties. Even it is assumed that the defendant has purchased the mortgagee rights of the land in dispute from Inder Singh and Jagat Singh In that event also, suit land would have been included in the previous suit and in

the name of Sohan Singh also would have been included in the array of defendants because a purchaser of mortgagee rights is also mortgagee and he steps into the shoes of 1 mortgagee. As the previous suit for redemption was only qua 66 Kanals 14 Marlas and the suit land was not included in the previous suit it further strengthen the stand of the defendants that it was never under mortgage with the defendant.

7. *That the suit of the plaintiff is also barred by limitation. The period of redemption of mortgage is only 30 years. in the present case, the original mortgage is alleged to be of the year 1912 and the mortgagee rights of the land mortgaged are alleged to have been purchased by Inder Singh, Jagat Singh in the year 1930 vide mutation no 248. The present suit for redemption has been filed on 10-06-1971 beyond the period of limitation,. It is well settle preposition of the law that the alleged sale of mortgagee rights, do not extend the period of limitation in any manner.*

8. *That the plaintiff has heavily relied upon the decisions of the previous litigations. Copies of which are Ex P2 to ex P7 on the file. All these documents have no relevancy in the present case because the subject matter of the present suit is different than that of land mentioned in Ex P2 to Ex P7. Besides this the party in present suit land previous litigation were also different. The defendant was not party to the previous suit. Thus any judgment which is not inter parties is not relevant and the defendant is not bound by it. It does not have force of resjudicata nor these amendments have any relevancy under section 40 to 43 of the Indian Evidence Act.”*

9. This court has considered the submissions of the learned counsel representing the parties.

10. It is evident that the First Appellate Court has decided the matter afresh. The Hon'ble Supreme Court by detailed judgment dated 26.10.2017, has permitted the plaintiff to substantively amend the plaint. Hence, a *de-novo* trial of the case had become necessary. Now the defendant cannot make grievance that in a *de-novo* trial the plaintiff has totally changed his stand.

11. As regard the second part of the first submission, it may be noted that this case is based upon documentary evidence, hence, oral evidence is not of much significance. In any case, it is evident that the First Appellate Court has permitted the parties to lead oral evidence apart from documentary evidence. On 08.04.2019, deposition of one PW was examined. Similar opportunity was given to the appellant (respondent before the First Appellate Court), however, he closed his evidence. Thus, whether oral evidence the parties wanted to lead has been recorded by the First Appellate Court.

12. Hence, the first and second submissions have no substance.

13. With regard to the next submission, it may be noted that the case is required to be decided on the basis of material which has been produced. The production of Visa and passport of the plaintiff was necessary to prove that he visited Pakistan. The civil cases are required to be decided on preponderance of evidence. It has come on record that Sh. Sohan Singh was delivered possession of the disputed land as mortgagee while predecessors-in-interest of the plaintiff were recorded as mortgagors. Keeping in view the aforesaid facts, the submission of the learned counsel lacks substance.

14. With reference to the next submission, it may be noted that the

total mortgaged land has not been specified, however, a series of litigation between the parties clearly prove that a large chunk was mortgaged. However, in this case, the relevant documents have been produced. It is proved that Sh. Sohan Singh purchased mortgagee rights with respect to a part of the mortgaged property from Sh. Inder Singh and Sh. Jagat Singh. Subsequently, after partition of the country Sh. Sohan Singh was delivered possession as mortgagee of the suit land. Hence, sufficient evidence has been led to link the mortgage. Consequently, the total mortgaged land is not necessary particularly when the previous suit filed by Sh. Rachhpal Singh son of Sh. Sansar Singh with respect to land measuring 66 kanals and 14 marlas against Sh. Inder Singh and Sh. Jagat Singh has already been decreed by a separate suit.

15. With respect to the next submission of the learned counsel, it may be noted that sufficient material has been brought on record from Pakistan to prove that the mortgagee rights of the suit land were purchased by Sh. Sansar Singh. The plaintiff has produced copy of the mutation reflecting that there was a sale of mortgagee rights vide receipt dated 03.01.1930, in favour of Sh. Inder Singh and Sh. Jagat Singh. Thereafter, a detailed order has been recorded by the revenue officer on 19.02.2013, to prove that originally the land was mortgaged by Sh. Rura and Sh. Sansar Singh son of Sh. Bachhitar Singh and Sh. Beli Ram son of Sh. Roda in favour of Sh. Anant Ram etc., who subsequently transferred mortgage rights in favour of Sh. Inder Singh etc. It is also recorded that Sh. Inder Singh and Sh. Jagat Singh had also purchased a part of the property which was originally mortgaged.

16. Apart therefrom, the plaintiff has also produced Ex.P3, a copy

of an entry from the register of mutation of village Phukalian. The aforesaid entry again proves that Sh. Inder Singh and Sh. Jagat Singh have acquired mortgagee rights in part of the property. It is also recorded in the report and orders that on 20.08.1942, mutation was sanctioned on the basis of transfer of mortgagee rights against a sum of Rs.1300/- by Sh. Inder Singh and Sh. Jagat Singh in favour of Sh. Sohan Singh vide receipt dated 19.08.1942. Again a detailed order of the revenue officer is part of the mutation order. The plaintiffs have also produced a copy of khatauni Istemal as Ex. P4 which proves that Sh. Sohan Singh was allotted the land as mortgagee, whereas, the owner was Sh. Rachhpal Singh. The plaintiff has also produced copy of Naksha Haqdarwar (list of right holders in the village) which proves that the suit land was in possession of Sh. Sohan Singh as mortgagee. The jamabandi for the year 1957-58 has been produced as Ex.AX/13, equivalent to Ex.P5/B. A bare perusal thereof also proves that the mortgagee Sh. Sohan Singh adopted son of Sh. Beli Ram was in possession of the suit property. The plaintiff has also produced jamabandies for the years 1962-63, 1967-68, 1977-78, 1982-83, 1987-88, 1992-93, 1997-98, 2002-03, 2007-08 and 2012-13. Apart from that the judgments and decrees passed by various courts which have already been noticed have been produced.

17. In view of the aforementioned overwhelming evidences, the First Appellate Court has accepted the appeal. Hence, it is not appropriate for the appellant to contend that sufficient material has not been produced. It is, thus, evident that the plaintiff has produced evidence with regard to pre-partition period of India. He has also produced record with respect to post-partition period of the country. The plaintiff has also produced record of

khatoni istemal which is prepared at the time of consolidation of holdings. Thereafter, copies of jamabandies have been produced to link the suit land. Hence, there is no substance in the submission of the learned counsel representing the appellant.

18. Submission no.6 has no substance because the plaintiff in cross-examination got confused. In fact, the land measuring 66 kanals and 14 marlas has already been redeemed. Consequently, mistake in the oral evidence will not be sufficient to non-suit the plaintiff particularly when the sufficient documentary evidence has been produced to prove the plaintiff's case. One of the argument is with regard to breaking of integrity of the mortgage. It may be noted here that the attention of the court has not been drawn to any provision which debars redemption of mortgage in parts particularly when the mortgagee rights have been sold and transferred in favour of different persons. The total land mortgaged with Sh. Sohan Singh is 25 kanals and 5 marlas. The same has been permitted to be redeemed by the First Appellate Court.

19. With reference to submission no.7, the larger Bench of the Supreme Court has already decided this issue in **Singh Ram (deceased) through Lrs vs. Sheo Ram and others, 2014 AIR SC 344**. Hence, the period of limitation for redemption of the mortgage will not begin to run from the date of the mortgage. It will run from the date the mortgagor tenders the amount for redemption.

20. With reference to submission no.8, it may be noted that the plaintiff has produced these documents to prove that he was mortgagor and his suit with respect to part of the land has already been decreed.

21. Keeping in view the aforesaid discussion, there is no merit in

the appeal. Hence, the same is dismissed.

22. All the pending miscellaneous applications, if any, are also disposed of.

20th March, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO