



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

RSA-2020-2022 (O&M)

Date of decision : 10.11.2025

Madan Lal (since deceased) thr. His LRs

..... Appellant

Versus

Heera Lal & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Mani Ram Verma, Advocate for the appellant.

PANKAJ JAIN, J. (ORAL)

1 LRs of plaintiff-appellant are in second appeal. For convenience parties hereinafter are referred to by their original position in the suit, i.e. the appellant as plaintiff and respondent No.1 as defendant.

2 Plaintiff filed suit for possession through foreclosure relying upon mortgage deed dated 28.09.1998 executed in his favour by the defendant. As per the case of the plaintiff, the suit property was mortgaged in his favour by defendant against consideration of Rs.1,15,000/-. As per the terms and conditions of the registered mortgage deed, the defendant agreed to pay mortgage money along with interest to the plaintiff up to 18.09.2000, as per the covenant contained in the same. In case the payment was not made by 18.09.2000, the parties agreed that the plaintiff would become owner of the suit property. Plaintiff claims to have served notice dated 05.10.1999 upon defendant calling upon him to pay back the mortgage money. The defendant having failed to pay the mortgage money on demand, plaintiff has become



owner in possession of the suit land by way of foreclosure. The suit was instituted on 30.10.2000.

3 Suit was contested by the defendant. Execution of mortgage deed is admitted. Defendant, however, denied execution of mortgage by conditional sale. As per defendant, the mortgage was with possession. Possession was delivered to the plaintiff. Defendant is thus liable to pay the mortgage money. Defendant further denied any agreement to the effect that in case the mortgage money is not paid till 18.09.2000, the mortgagee shall become owner of the property. Defendant claimed that he has a right to seek redemption of mortgage up to 30 years. His right of redemption cannot be curtailed by any agreement. Any such clause in the mortgage deed is illegal, null and void and amounts to clog on equity of redemption and is thus not enforceable.

4 Suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues:-

“1. Whether the plaintiff has become owner of the suit land by way of foreclosure as prayed for on the grounds mentioned in the plaint?

OPP

2. Whether the plaintiff is entitled to a decree as prayed for? OPP

3. Whether the suit is not legally maintainable in the present form?

OPD

4. Relief.”

5 The Court of the First Instance after analysing the mortgage deed came to conclusion that the mortgage in question was a usufructuary mortgage being mortgage with possession. Further reference was made to ratio of law laid down by Supreme Court in the case of ***Ganga Dhar Vs. Shankar Lal and***



others AIR 1958 SC 770 to hold that the condition restricting right of redemption of the mortgagor up to one-year amounts to clog on redemption and is not applicable. Court of the First Instance further held that the sale of land made by plaintiff to further transferees is hit by doctrine of *lis pendens* and is not binding upon the rights of the mortgagor.

6 The aforesaid findings stand affirmed by the Lower Appellate Court in appeal preferred by the plaintiff.

7 Learned counsel appearing for the plaintiff has assailed the findings recorded by the Courts below. He submits that the Courts below erred in misconstruing the mortgage deed as the usufructuary mortgage, whereas in fact it is a mortgage by conditional sale. He submits that since in the mortgage deed itself it was agreed by the parties that in case the mortgagor fails to pay back mortgage money within one year, the mortgage deed shall be deemed to be a document *bai-bil-wafa patar*. Reliance is being placed upon law laid down by this Court in *Satpal Vs. Vinod Kumar and another, 2011 (1) PLR 463* wherein this Court observed as under :-

“7. In fact, the defendant-mortgagor availed of four opportunities for redemption, but did not pay the mortgage money i.e. principal mortgage amount and interest accrued thereon. Admittedly, according to the mortgage deed, agreed rate of interest was 2% per month. However, in redemption application filed by defendant-mortgagor under the Act, counsel for mortgagees agreed to interest at reduced rate of 18% per annum, but the defendant-mortgagor did not deposit interest even at the said reduced rate. The defendant thereafter filed suit for redemption of the mortgage, but still the defendant did not redeem the mortgage and rather got the suit dismissed as withdrawn even before mortgagees could put in appearance in the said suit. Third opportunity for the defendant to



redeem the mortgage was when the mortgagees filed petition under the Bengal Land Act. Even then the defendant did not avail of opportunity to redeem the mortgage. Thereafter, fourth and last opportunity to redeem the mortgage was to offer the mortgage money in the instant suit filed by the mortgagees. However, at no stage, the defendant-mortgagor agreed to pay the mortgage money in terms of mortgage deed or even at reduced rate of interest i.e. 18% per annum instead of agreed rate of interest i.e. 2% per month or 24% per annum. Consequently, the contention regarding clog on equity of redemption is completely unsustainable and devoid of merit because defendant himself never wanted to redeem the mortgage.

8. Learned counsel for the appellant also contended that impugned mortgage deed is agreement to sell and plaintiffs could seek specific performance thereof as it is mentioned in the mortgage deed that if the mortgagor failed to get the mortgage redeemed within two years, the mortgagees shall be entitled to get the sale deed of the suit land executed in their favour. Again, the contention although apparently attractive, is without any substance. Admittedly, the transaction was a mortgage. Even in the written statement, the defendant admitted that it was a mortgage. Consequently, the plaintiffs had a right to file suit for foreclosure of the mortgage. In the instant case, as already noticed, the defendant failed to redeem the mortgage in spite of four opportunities. Consequently, in terms of the mortgage, the plaintiffs-mortgagees have become owners of the suit land and there is no legal requirement to execute any sale deed in their favour nor they were required to file a suit for specific performance of the agreement.

*9. Learned counsel for the appellant also contended that there is no period for redemption of mortgage as held by Full Bench of this Court in the case of **Ram Kishan and others v. Sheo Ram and others**, reported as 2008(1) RCR (Civil) 334 : (2008- 1) P. L. R. 1. The contention is again untenable. The said judgment relates to period of redemption of usufructuary mortgage, whereas in the instant case, it was simple mortgage without possession. Even otherwise, in the case*



of usufructuary mortgage also, the mortgagor retains the right of redeem, but the question of foreclosure has to be adjudicated upon. In the instant case, the mortgage was without possession and not usufructuary mortgage. The plaintiffs of course pleaded that vide affidavit dated 04.10.2002, the defendant had delivered possession of the suit land to the plaintiffs. However, this was almost after three years of the creation of mortgage and consequently, it cannot be said to be usufructuary mortgage. Moreover, the plaintiffs claimed relief of possession and even the defendant pleaded that possession was never delivered to the plaintiffs. Consequently, by no means, it can be said that it was usufructuary mortgage.”

8 I have heard learned counsel for the appellant and have gone through the records of the case.

9 Mortgage is not in dispute. Mortgage deed dated 28.09.1998 is a registered document available on record as Ex.P1. The relevant extract of the mortgage deed when translated reads as under :-

“Translation of deed dated 28.09.1998 executed between Sh. Hira Lal and Sh. Madan Lal.

Therefore, I have with my self-knowledge, consent and without any pressure has mortgaged with possession the abovementioned land measuring 10 marla with all rights in lieu of amount Rs. 1,15,000/- one lakh and fifteen thousand, prevailing currency half of which is amount Rs.57,500/-, fifty seven thousand and five hundred, in favour of Sh. Madan Lal s/o Sh. Lakhmichand s/o Sh. Motiram resident of Model Town, Rewari, Tehsil and District Rewari. Total mortgaged amount has been received. Nothing stands due now. Possession of mortgaged land has been given to mortgagee. Interest and income from the mortgaged land has been decided to be equal. It has been agreed that mortgaged land shall be redeemed after paying the full amount within one year. If I fail to do so, this document will be treated as illegible and I will have no objecting or claim of any kind. I and my heirs will be bound by the terms written here in every way. Until the entire amount is paid, the mortgagor will remain in possession of the land.



Therefore, I have got this mortgage deed with possession scribed so that it may serve as an authority at the time of need.

.....
Date: 28.09.1998

Hiralal Mortgager

Madan Lal Mortgagee

Sd/- in hindi

Sd/- in urdu

Witness Sh. Dhaniram Numberdar Budana

Thumb impression

Witness Sh. Om prakash s/o Sh. Dhanna Ram r/o Rewari Sd/-in english

10 A bare perusal of the aforesaid covenant contained in the mortgage deed would reveal that in fact there is no ostensible sale in favour of mortgagee by mortgagor and thus the question of there being any reciprocal promise to transfer back the land by mortgagee in favour of mortgagor does not arise. The only covenant that is being relied upon by the counsel for the plaintiff is the undertaking of the mortgagor recorded that in case he failed to pay back the mortgage money within the stipulated period of one year, the deed shall be deemed to be *bai-bil-wafa patar* i.e. mortgage by conditional sale.

11 This Court finds that the Courts below have rightly held the mortgage in question to be a mortgage with possession i.e. usufructuary mortgage and the condition of the deed being deemed to be mortgage by conditional sale in the event of failure of mortgagor paying mortgage money within one year as a clog on redemption.

12 The matter needs to be analysed from another angle. The best case of the plaintiff is that the mortgage is a mortgage by conditional sale as



contemplated under Section 58 (c) of Transfer of Property Act, 1882 (for short, 'the 1882 Act'). The provisions of the 1882 Act are not applicable to State of Punjab. It is on account of the fact that Section 69 of the 1882 Act is not applicable to the State of Punjab that ***The Bengal Land (Redemption and Foreclosure) Regulation, 1806 (for short, 'the 1806 regulation')*** was extended to State of Punjab. Sections 7 and 8 of the 1806 regulation read as under :-

7. *What shall entitle mortgagor or his representative to redeem before final foreclosure, after application by mortgagee for foreclosure.- In addition to the provisions made in the Provinces of Bengal, Bihar, Orissa and Benares, by Regulation I, 1798, and in the Ceded and Conquered Provinces by [Regulation XXXIV, 1803] [Regulation 15 of 1793 was repealed by the Repealing Act, 1868 (8 of 1868) and Reg. 34 of 1803 by the Laws Local Extent Act, 1874 (15 of 1874), section 9 and Schedule VII, Part II (Unrepealed Central Acts, Vol. II).] for the redemption of mortgages and conditional sales of land, under deeds of bai-bil-wafa, kat-kabala or any similar designation, it is hereby provided that, when the mortgagee may have obtained possession of the land on execution of the mortgaged-deed or at any time before a final foreclosure of the mortgage, the payment or established tender of the sum lent under any such deed of mortgage and conditional sale, or of the balance due, if any part of the principal amount shall have been discharged, or when the mortgagee may not have been put in possession of the mortgaged property, the payment or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgagor and owner of such property, or his legal representative, to the redemption of his property, before the mortgage is finally foreclosed in the manner provided for by the following section; that is to say, at any time within one year [West Bengal, Fasli or Willaiti, according to the era current where the mortgage may take place] [Substituted for 'Bengal' by Indian (Adaptation of Existing Indian Laws) Order,*



1947.] from and after the application of the mortgagee to the zila or city Court of Diwani Adalat for foreclosing the mortgage and rendering the sale conclusive in conformity with section 8 of this Regulation :

Provided that such payment or tender be clearly proved to have been made to the lender and mortgagee or his legal representative; or that the amount due be deposited, within the time above specified, in the Diwani Adalat of the zila or city in which the mortgaged property may be situated, as allowed for the security of the borrower and mortgagor, in such cases, by section 2, Regulation I, 1798; and section 12, [Regulation XXXIV, 1803] [Regulation XXXIV of 1803 was repealed by the Laws Local Extent Act, 1874 (15 of 1874), section 9 and Schedule VII, Part II, General Acts, Vol. II.], the whole of the provisions contained in which sections, as applied therein to the stipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this Regulation.

8. Procedure for mortgagee or conditional vendee desirous to foreclose mortgage or render conditional sale absolute.- *Whenever the receiver or holder of a deed of mortgage and conditional sale, such as is described in the preamble and preceding sections of this Regulation, may be desirous of foreclosing the mortgage and rendering the sale conclusive on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower or his representative) apply for that purpose by a written petition, to be presented by himself, or by one of the authorised vakils of the Court to the Judge of the zila or city in which the mortgaged land or other property may be situated.*

The Judge, on receiving such written application shall cause the mortgagor or his legal representative to be furnished, as soon as possible, with a copy of it; and shall at the same time notify to him by



a parwana under his seal and official signature that, if he shall not redeem the property mortgaged in the manner provided for by the foregoing section within one year from the date of the notification, the mortgage will be finally foreclosed and the conditional sale will become conclusive.

13 This Court has framed Rules dealing with suits for redemption and foreclosure of mortgages. The Rules contained in Chapter 1 Volume 1 Part M of The Rules & Orders of Punjab & Haryana High Court (Practice & Procedure) read as under :-

(f) Suits for Redemption and Foreclosure of Mortgages

1. Notice to mortgagor, conditional sale in case of land not permitted.

The law regulating the procedure in cases where the mortgage whose mortgage- deed also contains a provision for conditional sale, desires to foreclose the mortgage is often misunderstood. Regulation XVII of 1806 is still the law on the subject. It will be seen that, whatever the terms of conditional sale the mortgagee cannot enforce them till he has by summary petition to the Court, caused notice to be served on the mortgagor to the effect that, if the latter does not pay the sum secured within one year, the mortgage will be held foreclosed. After the lapse of this year, and not till then, the mortgagee can sue for possession, as owner, or if in possession, to be declared owner in accordance with the terms of the mortgage.

2. Court competent to hear. *Only a District or Additional Judge can deal with ap-plications under Sections 7 and 8 of Regulation XVII of 1806. The procedure pre-scribed in the Regulation should be very strictly observed as otherwise the notice may have no legal effect.*

3. Dismissal for default. *According to order IX, Rule 9, of the Civil Procedure Code (as amended by the High Court), when a suit for redemption is dismissed in default un-der Order IX, Rule 8, the plaintiff is not precluded from bringing another suit for redemption of the mortgage.*

4. Summary procedure for redemption. *The Redemption of Mortgages (Punjab) Act, 1913, provides a summary procedure for redemption of*



land through the Collector in the State. But any party aggrieved by the decision of the Collector, can under certain circumstances institute a suit in a Civil Court to establish his right (see section 12 of that Act).”

14 A bare perusal of the Regulation 8 of the 1806 regulation, read with High Court Rules and Orders, makes it clear that dehors the terms of contract, the mortgagee cannot enforce mortgage by conditional sale till he, by summary petition filed before the Collector, has caused notice to be served on the mortgagor to the effect that if the mortgagor does not pay the sum secured within one year, the mortgage shall stand foreclosed. Once such notice is served upon the mortgagee and one year as provided in the notice has lapsed, it is only thereafter that the mortgagee can sue for possession as owner.

15 Admittedly, in the present case, the mortgagee has straightaway preferred a suit for foreclosure without resorting to the mandatory provisions contained under the 1806 regulation. Thus, the suit for foreclosure is not maintainable even if the mortgage deed is treated to be a mortgage with conditional sale.

16 In view of above, finding no merits in the present appeal, the same is ordered to be *dismissed*.

10.11.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No