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

Date of decision : 24.01.2025

1

RSA-1518-1993 (O&M)

Rawat Ram (since deceased) through his LRs.Appellants

Versus

Indraj & ors.

....Respondents

2

RSA-1519-1993 (O&M)

Rawat Ram (since deceased) through his LRs.Appellants

Versus

Prithi & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

Mr. Sanjiv Gupta, Advocate
for the respondents.

PANKAJ JAIN, J.(ORAL)

1 These two appeals arise out of single suit filed by the appellant-
plaintiff.

2 Appellant-plaintiff is in second appeal. For convenience parties
hereinafter are referred to by their original position in the *lis* i.e. the
appellant as plaintiff and the respondents as defendants.

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3 Plaintiff filed suit seeking decree of declaration to the effect that he is owner in possession of the suit land as described in the plaint. Plaintiff also claimed ownership on the basis of adverse possession apart from a registered mortgage deed dated 30.05.1950.

4 Pleaded case of the plaintiff is that Hazari (father of defendants No.1 to 3) mortgaged the suit land in his favour by a registered deed dated 30.05.1950 for Rs.750/-. Hazari while executing the mortgage deed acted on behalf of his minor sons i.e. defendants No.1 and 2 also. Sum of Rs.250/- was paid to Hazari before Sub Registrar. Remaining amount of Rs.500/- was to be paid to Khayali (brother of Hazari) in whose favour the land was already mortgaged. Plaintiff further claimed that Hazari gifted rights of redemption in favour of his minor sons i.e. defendants No.1 & 2. Mutation was sanctioned. Rs.500/- were paid to Khayali by the plaintiff. The property was got redeemed from Khayali. Mutation bearing No. 531 with respect to suit property was sanctioned in favour of the plaintiff. Plaintiff claimed that defendants having failed to get the land redeemed he has become owner. Plaintiff further pleaded in alternate that he has become owner by way of prescription being in continuous uninterrupted possession. Further it was claimed that defendants No.1 & 2 wrongly transferred 1/4th share of the suit property in favour of defendant No.4 by a Civil Court judgment and decree dated 05.09.1973. Plaintiff further pleaded that defendant No.2 has unlawfully sold part of the suit property in favour of

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defendants No.4 to 8 vide registered sale deed dated 25.06.1973 which is not binding on the rights of the plaintiff.

5 Suit was contested by the defendants. In the written statement filed by defendant No.1 *locus* of the plaintiff to maintain suit was questioned. It was denied that the suit land was ever mortgaged by Hazari in favour of the plaintiff. It was further claimed that defendants No.1 to 3 being minors at the time of alleged mortgage deed dated 20.05.1950, the mortgage deed has no effect on the rights. Possession of the plaintiff over the suit land was disputed. His plea of adverse possession was contested claiming that he being not in possession, cannot claim ownership by way of prescription. In written statement filed by defendants No.4 to 8 it was claimed that they are owners in possession of the suit property being bona-fide purchasers. It was further claimed that on 20.05.1950 Hazari gifted land-in-suit to the defendants No.1 & 2. On the day Hazari executed mortgage deed in favour of plaintiff, he has no right, title or interest over the property. Mutation bearing No.531 was incorporated in the Revenue record on the basis of order dated 12.08.1950 passed by Assistant Collector I Grade, Sirsa. The same was set aside by Collector in appeal vide order dated 12.10.1951. The mortgage money, if any deposited by Hazari was refunded. Plaintiff earlier also filed Civil suit bearing No.77 dated 22.06.1952 against Khayali and Hazari seeking possession of the suit land. The same was dismissed vide judgment and decree dated 27.03.1953.

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6 During the pendency of the suit, the plaintiff amended plaint and incorporated para 2(A) in the plaint propounding another mortgage deed in his favour alleged to have been executed by Smt. Dakhan mother and guardian of minors Indraj and Chet Ram. It was claimed that it was an oral mortgage. Dakhan mother of defendants No.1 to 3 appeared before Patwari in presence of Lambardar of village Madho Singhana, Tehsil & District Sirsa and admitted the factum of creation of mortgage in favour of the plaintiff. The possession was delivered on the spot after the plaintiff paid her mortgage money.

7 On the basis of the pleadings, Trial Court framed the following issues :-

“1. Whether the plaintiff is owner in possession of the suit land as alleged in the plaint OPP.

2. Whether the plaintiff has no cause of action? OPD

3. Whether the suit of the plaintiff is not within limitation?OPD.

4. Whether the plaintiff has no locus-standi to bring the present suit OPD.

5. Whether the suit is frivolous and has been filed just to harass the defendant?OPD.

6. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

7. Whether the suit of the plaintiff is barred U/S 11CPC?OPD

8. Whether the mortgaged of land by Hazari is null and void as alleged in para no.2 of the written statement? OPD.

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9. Whether the answering defendants are owners-in-possession of the suit land as alleged in para no.5 of preliminary objection of the written statement? OPD

10. Whether the suit of the plaintiff is bad for non-joinder or mis-joinder of necessary parties? OPD

11. Whether the plaint is full of wrong dates and is liable to be dismissed?OPD.

12. Relief.”

8 While returning findings on issues No.1, 8 & 9 Trial Court disbelieved the mortgage deed dated 30.05.1950 propounded by the plaintiff relying upon judgment and decree dated 27.03.1953 Ex. D-4 and D-5 passed in Civil Suit No.77 dated 27.02.1952 titled as *Rawat Vs. Khayali*.

9 Regarding the second mortgage claimed by the plaintiff to have been executed by Dakhan mother of defendants No.1 to 3, Court of the first instance held that Ex.P-2 relied upon by the plaintiff shows that the same relates to land situated in village Baruwali and not to the suit land. However, relying upon jamabandi for the year 1952-1953 Court of First instance found that the plaintiff has successfully proved his possession over the suit land since 27.03.1953. The limitation for getting the land redeemed stands expired. The plaintiff having been proved to be in possession for more than 12 years has acquired the right of ownership by way of adverse possession. Thus, Trial Court found that defendant No.1 ought not have alienated suit property in favour of defendants No.4 to 8 vide sale deed dated 26.06.1973 (Ex.D-2). Suit filed by the plaintiff was accordingly decreed.

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10 Two different sets of appeal were filed by the defendants. Defendants No.1 and 3 filed Civil Appeal No.70 of 1991. Plaintiff filed cross objections therein bearing cross objection No.7 of 1991. Civil appeal No.72 of 1991 was filed by defendants No.4 to 8. In that appeal also plaintiff filed cross objections No.9 of 1991. While defendants were aggrieved of judgment and decree passed by the Court of the First instance Cross objector-plaintiff, preferred the cross objections against the findings recorded by the Court of the First instance disbelieving mortgage deed dated 30.05.1990.

11 Lower Appellate Court re-appreciated the entire evidence on record threadbare. Lower appellate Court affirmed findings of the trial Court with respect to mortgage transactions propounded by the plaintiff holding that on 30.05.1990 when Hazari executed mortgage deed (Ex.P-1) in favour of the plaintiff he had no interest whatsoever in the suit land. The said fact stands admitted by the plaintiff in his testimony that on the day mortgage deed was executed by Hazari, he had already gifted his land in favour of his sons. Lower Appellate Court further reiterated the finding recorded by the Court of the first instance that the oral mortgage claimed to have been executed by Dakhan by making statement before village Patwari vide Ex.P-2, relates to estate situated in the Revenue estate of Village Baruwali and not the suit property.

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12 While reversing the findings recorded by the Trial Court on issues No.1 and 9, Lower Appellate Court found that from the perusal of judgment and decree Ex.D-5 passed in Civil Suit No.77 of 1952 it is evident that plaintiff never came in possession of the suit property. Plaintiff filed suit claiming possession on the strength of mortgage deed dated 30.05.1950 and claiming that the previous mortgage in favour of Khyali stood redeemed vide order dated 12.08.1950 passed by Assistant Collector I Grade Sirsa. Appellate Court found that in terms of the aforesaid judgment Ex.D-5 the suit filed by plaintiff was dismissed. The judgment has attained finality as no further appeal was preferred. Thus, lower appellate Court held that possession of the plaintiff recorded in Revenue records on the strength of order dated 12.08.1950 which was quashed in appeal vide order dated 12.10.1951 cannot be relied upon to hold that he is in possession of the suit property. Plaintiff not being in possession of the suit land cannot claim ownership by way of adverse possession.

13 The appellate Court thus allowed the appeals filed by the defendants and dismissed the cross objections preferred by the plaintiff.

14 Learned senior counsel appearing for the plaintiff submits that the lower appellate Court has wrongly reversed the findings recorded by the Trial Court regarding continuous un-interrupted possession of the plaintiff. He submits that the possession of the plaintiff has been recorded in the Revenue record for last more than 40 years, thus trial Court rightly held him to be entitled for claiming ownership by way of prescription.

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15 *Per contra* counsel for the respondents submits that the entire case of the plaintiff stands demolished from judgment and decree Ex. D-5. Plaintiff in the present suit claims decree of declaration to the effect that he is owner in possession on the strength of mortgage deed dated 30.05.1950 whereas he himself filed suit in the year 1952 against Hazari and Khayali the predecessor-in-interest of the defendants seeking possession. The said suit was dismissed. There is no plea or averment as to how and when plaintiff came in possession of the suit land after dismissal of Civil suit No.77 of 1952 on 27.03.1953.

16 I have heard learned counsel for the parties and have carefully gone through records of the case.

17 Plaintiff in order to seek decree of declaration to the effect that he is owner in possession of the suit property has raised threefold plea. He claims to have come in possession on the strength of mortgage deed Ex.P1 dated 30.05.1950 executed by Hazari in his favour. Thereafter, he claims mortgage deed on behalf of defendant Nos.1 & 3 executed by their mother, Dakhan, as per rapat roznamcha Ex.P-2. It has been further claimed by him that defendants having failed to get the land redeemed within 30 days he has become owner in possession of the same. In alternate he claims adverse possession over the suit property.

18 So far as mortgage deed alleged to have been executed by mother Dakhan on behalf of defendants No.1 to 3 is concerned, from the

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perusal of Ex.P-2, it is evident that the same does not relate to the suit property but to a land situated in a different revenue estate.

19 Learned senior counsel for the plaintiff has not been able to dispute the same.

20 In view of above, this Court finds that Ex.P-2 does not help the cause of the plaintiff.

21 Coming on to the registered mortgage deed dated 30.05.1950 propounded by the plaintiff, the issue stands finally concluded in Civil Suit No.77 of 1952. Bare perusal of Ex.D-5 i.e. judgment and decree in Civil Suit No.77 of 1952 shows that plaintiff himself pleaded in the said case that Hazari gifted equity of redemption in respect of said land in favour of his minor sons Indraj and Chet Ram on 20.02.1950. Hazari thereafter mortgaged the land in favour of plaintiff on 30.05.1950 vide registered mortgage deed for Rs.750/-. Rs.250/- were paid to Hazari before the Sub Registrar. Rs.500/- were retained to be utilized to get the land redeemed from the previous mortgage in favour of Khayali. It was further pleaded by the plaintiff that Hazari applied to the Assistant Collector I Grade Sirsa for redemption of mortgage and deposited the mortgage amount of Rs.500/- which was paid by the plaintiff. The application was accepted and the suit land was redeemed in favour of Hazari vide mutation No.530. It was further claimed in the plaint that mutation of mortgage with possession was thereafter sanctioned in favour of the plaintiff on 16.01.1951 and the plaintiff obtained possession as mortgagee. Plaintiff further claimed that

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father of defendant Nos.1 & 3 i.e. Hazari in collusion with defendant Nos.1 & 2 again assumed possession of the suit land. With the aforesaid case plaintiff sought decree of possession. The Court framed following issues :-

- (1) *Whether the suit land was mortgaged with the plaintiff on behalf of Indraj and Chet Ram minors sons of Hazari?*
- (2) *If issue No.1 is not proved, was Hazari defendant competent to create mortgage on the suit land.*
- (3) *Whether the previous mortgage on the suit land in favour of khayali-def. had been redeemed, if so, when and by whom.*
- (4) *What is the effect of the previous suit filed by Indraj and Chet Ram against Khayali in respect of suit land in the present suit.*
- (5) *If issue No.3 is proved, was the mortgage money to redeem the previous mortgage advanced by the plaintiff.*
- (6) *Relief.”*

22 While answering issue No.3, the Court in the said suit observed as under :-

“Ex.P1, is the copy of the order dated 12.08.50 of Assistant Collector I Grade Sirsa redeeming the mortgage money to be paid to Khayali Mortgagee and redeeming the premises mortgage in favour of Hazari. Ex.P5 is the copy of mutation No.530 redeeming the suit land in favour of Indraj and Chet Ram on the basis of the order of the Asstt. Collector referred to above. This order was however, upset in appeal vide copy of the order dated 12.10.1951 Ex.D1 and the mortgage money was ordered to be refunded to the mortgagee. In this order it is mentioned that the mortgage sum has already been refunded to the mortgagor. Thus the previous mortgage in favour of Khayali def. was not redeemed. Infact, Indraj and Chet Ram in

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whose favour the equity of redemption has been gifted have paid the mortgage sum or was applied for redemption. Hazari, who applied for redemption in his own name had no locus standi to do so. No valid order for redemption could, therefore, be passed in Hazari's name. Mutation No.530 was not entered or sanctioned at the instance or even in the presence of Khayali mortgagee. It appears to have been sanctioned as a result of redemption order passed on Hazari application for redemption. Such an application was not maintainable and the orders passed there on or mutation sanctioned on the basis of such orders cannot stand. In this case, however the mortgage money was refunded to the mortgagor by order of the Collector and he admitted receipt thereof. No question of redemption therefore arises.

Issue found against the plaintiff.”

23 In view of aforesaid findings suit filed by the plaintiff was dismissed. The aforesaid findings have attained finality. In view of Ex.D-5 the Courts have rightly non-suited the plaintiff.

24 Mr. Amit Jain, Senior Advocate has not been able to point out as to how and when plaintiff came in possession of the suit property after passing of judgment and decree Ex.D-5 dated 27.03.1953. Neither is there any plea raised in the plaint pleading as to how plaintiff came in possession of the suit property. In view of above, this Court finds that the Lower Appellate Court has rightly held that the plaintiff has failed to prove his possession. Continuation of the name of plaintiff in the column of possession in the revenue record on the strength of order dated 12.08.1950 passed by Assistant Collector I Grade is of no relevance in view of judgment and decree passed by Civil Court Ex.D-5. Order passed by the Appellate

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Authority dated 12.10.1951, setting aside order dated 12.08.1950 and admission made by plaintiff himself in the earlier suit regarding having been dispossessed, the plaintiff cannot claim ownership by way of prescription until and unless he is able to show as to how he came in possession of the suit property and when his possession became hostile.

25 As a sequel of the aforesaid discussion held hereinabove, finding no merits in the present appeals, the same are ordered to be dismissed.

26 Photocopy of this order be placed on the connected file.

24.01.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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