



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

RSA No.527 of 1990 (O&M)

Reserved on : 28.02.2025

Pronounced on: 25.03.2025

Ch. Kesho Dass (deceased) through LRs

....Appellant

V/s

Lochan Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. M.L. Sarin, Senior Advocate with
Ms. Hemani Sarin, Advocate, for the appellant.

None for the respondents.

VIKRAM AGGARWAL, J.

Defendant No.1 (Ch. Kesho Dass) (since expired and now being represented by legal representatives) has preferred the instant appeal against the judgment and decree dated 24.01.1990 passed by the Court of learned Addl. District Judge, Gurdaspur allowing the appeal filed by the plaintiff (Lochan Singh) against the judgment and decree dated 29.07.1988 passed by the Court of learned Addl. Senior Sub-Judge, Pathankot, vide which the suit filed by the plaintiff for declaration and possession by redemption was dismissed, thereby decreeing the said suit.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Ch. Kesho Dass, as noticed by the first appellate Court, was a big landlord and essentially an influential person of the area. The issue pertains to 227 *kanals* 3 *marlas* of land (fully described in the plaint)

situated in Village Daulatpur, Tehsil Pathankot, District Gurdaspur (at the relevant time Pathankot was in District Gurdaspur) (hereinafter referred to as the “suit land”).

4. Plaintiff (Lochan Singh) instituted a suit for declaration to the effect that he was the owner of the suit land and that defendant No.1 (Ch. Kesho Dass) (hereinafter referred to as the “defendant”) had no right, title or interest in it. He also prayed for the relief of possession by redemption of the suit land on payment of Rs.100/- as mortgage amount alleging that the same was mortgaged with defendant No.2 (Smt. Vidya Devi).

5. The case set up by the plaintiff was that the suit land had been alienated by the defendant to the father of the plaintiff namely Sh. Kohar Singh on 25.08.1952 by way of an oral sale for a total sale consideration of Rs.35000/- Mutation No.949 was sanctioned in favour of Kohar Singh in 1952. Kohar Singh expired on 10.10.1962, after which the suit land was mutated in favour of the plaintiff vide Mutation No.2006 sanctioned on 10.02.1965. It was averred that since then the plaintiff was the owner of the suit land and the same was under mortgage with possession with defendant No.2 (Smt. Vidya Devi) for a mortgage amount of Rs.100/-. It was averred that the defendant had wrongly started asserting to be the owner of the suit land on the basis of certain wrong entries in the revenue record which had been procured by him collusively which had cast a cloud over the title of the plaintiff. Under the circumstances, the relief of declaration was sought. As regards the mortgage, it was averred that the land was under mortgage with Vidya Devi and that the same was not redeemable for a period of 30 years, being a usufructuary mortgage with possession. Since defendant No.1 did not admit the claim of the plaintiff nor did defendant No.2 deliver the possession on payment of the mortgage amount, the suit was instituted.

6. Smt. Vidya Devi did not contest the suit and did not appear as a result of which she was proceeded against *ex parte*. The defendant (Ch. Kesho Dass) opposed the suit by way of a written statement. It was denied that the plaintiff was the owner of the suit land. It was averred that it was the defendant who was the owner in possession of the suit land, as recorded in the *Jamabandi* for the year 1976-77. It was averred that the suit land was never sold to Kohar Singh nor any amount had been paid by him to the defendant. It was averred that Kohar Singh was a tenant of the defendant and had got a fictitious mutation entered in his name which was later got cancelled. As regards the mortgage, it was averred that the plaintiff was not the mortgagor.

7. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

8. From the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether plaintiff’s father purchase the land in suit vide oral sale dated 25.08.1952 from defendant No.1?OPP

2. Whether the entries in the revenue record in favour of defendant No.1 was collusively produced and are illegal and incorrect and are not binding on the plaintiff?OPP

3. Whether the suit land was mortgaged with defendant No.2 by defendant No.1 and he is entitled to redeem the same. If so on what terms and conditions and on what amount?OPP

4. Whether the plaintiff is entitled to declaration and for possession by means of redemption of the suit land as prayed for?OPP

5. Relief.”

9. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff. However, the said judgment and decree was set aside by the first Appellate Court in appeal, filed by the plaintiff, leading to the filing of the present second appeal by the defendant.

10. The trial Court dismissed the suit filed by the plaintiff holding that the factum of oral sale had not been proved. Reliance was placed upon cancellation of the mutation which had been effected in favour of Kohar Singh. It was held that the suit land had been mortgaged by the defendant to Smt. Vidya Devi and that the same was got redeemed by the defendant from Smt. Vidya Devi. It was also held that the suit was barred by limitation. The first appellate Court, however, reversed the judgment of the trial Court and decreed the suit, leading to the filing of the present appeal.

11. Learned Senior Counsel for the appellant was heard.

12. It would be relevant to add here that no one appeared on behalf of the respondents at the time of arguments. Earlier also, arguments in the matter had been concluded on behalf of the appellant before a coordinate Bench but there was no representation on behalf of the respondents. On 02.04.2024, it was informed that the learned counsel representing the respondents had expired and it was prayed that the notice be issued to the respondents. Thereafter, on 16.09.2024, learned counsel for the respondents appeared and stated that respondents had expired and prayed for time to bring on record the legal representatives of the respondents. However, the same was not done. On 17.12.2024, the coordinate Bench passed the following order:

“Learned counsel appearing on behalf of the respondents contends that he has not been able to contact legal representatives of the respondents since they are residents of Himachal Pradesh, and seeks more time for the purpose.

Learned senior counsel contends that in terms of Order XXII Rule 2A and Rule 2-3 CPC (as amended by High Court), it is the duty of the heirs of the deceased to bring on record the legal representatives of the deceased-defendant and not of the person who is dominus litis. Accordingly, the matter is not to await impleading of LRs of the deceased and is to be heard de hors.

Adjourned to 17.02.2025 for arguments.”

Thereafter, the matter was fixed for arguments.

13. Mr. M.L. Sarin, learned Senior Counsel representing the appellant submitted that the first appellate Court had set aside the well reasoned judgment passed by the trial Court without examining the matter from the correct perspective. Learned Senior Counsel referred to the pleadings and the entire oral and documentary evidence led on the record of the case. He submits that the suit was hopelessly time barred as under Article 58 of the Limitation Act, 1963 (for short the “Limitation Act”), a suit for declaration could have been filed within a period of three years from the date when the cause of action arose. Learned Senior Counsel submitted that the alleged oral sale was of 25.08.1952 and Kohar Singh had expired on 10.10.1962, after which the mutation in favour of Kohar Singh was cancelled on 10.02.1965, whereas the suit was filed on 31.03.1984. Learned Senior Counsel submitted that the learned trial Court duly noticed this fact and held that the suit was barred by limitation, whereas the learned first appellate Court did not discuss about the limitation for a suit of declaration and only held that since the mortgage had taken place in 1952, the right to redeem has arisen in 1956 and 30 years from 1956 expired in 1986 and that since the suit had been filed in 1984, it was within limitation. Learned Senior Counsel also submitted that even a suit for possession could have been filed within a period of 12 years as per the provisions of Article 65 of the Limitation Act. It was submitted that the relief of redemption could not have been included with a relief of declaration and possession and only when a declaration was issued, could a suit for redemption have been filed. It was submitted that both reliefs could not have been joined in one suit.

14. On merits as well, it was submitted that no evidence had been

led to prove that the suit land had been alienated by way of an oral sale. Learned Senior Counsel submitted that the Mutation (Ex.P3) referred to an unregistered sale deed dated 25.08.1952, whereas the case of the plaintiff was that it was an oral sale. Learned Senior Counsel submitted that (Ex.D1), which was the order of the Assistant Collector 2nd Grade clearly showed that the mutation had never been sanctioned and the entry was cancelled yet, the first appellate Court held that the sale had taken place. Learned Senior Counsel submitted that though both PW1 and PW2 had admitted that Kohar Singh was managing the suit land on behalf of the defendant, the first appellate Court did not consider that such a sale by manager in his own favour was fraudulent.

15. Learned Senior Counsel submitted that reference to Ex.P5 which was a decree in a suit filed by the son of the defendant (Ch. Kesho Dass) against the defendant would not be relevant as the same pertained to Village Laddochak and not Daulatpur, where the suit land is situated. Learned Senior Counsel also submitted that once the mortgage had been redeemed in 1980 itself and document (Ex.D2) in this regard was duly produced, there was no occasion for the first appellate Court to order redemption of the land in favour of the plaintiff. In support of his contentions, learned Senior Counsel placed reliance upon a judgment of the Supreme Court of India in the case of *Smt. Bhatori vs. Smt. Ram Piari*, AIR 1996 SC 2754.

16. I have given my thoughtful consideration to the entire issue and have also perused the record.

17. In the considered opinion of this Court, the following issues would arise for consideration.

i) Whether the factum of oral sale of the suit land was

proved?

ii) Whether the factum of mortgage of the suit land to Vidya Devi and its subsequent redemption was proved and

iii) Whether the suit was barred by limitation?

18. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others***, (2016)6 SCC 157, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others***, (2019) 11 SCC 317 and ***Satender and others V/s Saroj and others***, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed.

Thus, wherever the issue relates to the construction of a document which is germane to the rights of the parties to the *lis*, it involves a question of law which falls within the scope of a regular second appeal. Therefore, this Court shall proceed to decide the present appeal without framing a substantial question of law.

Issue No.1

19. As regards the first issue, it was the case of the plaintiff that the suit land had been sold by the defendant to Kohar Singh by way of an oral sale dated 25.08.1952. The mutation number is mentioned as '949' in the plaint, whereas the record produced shows that it was '969'. The excerpt (Mark D1) (though not proved in accordance with law) also mentioned about the same and Ex.P3 is the mutation dated 17.09.1952, which was sanctioned qua the same. It was cancelled on 29.09.1952 and document dated

22.12.1966 (Ex.D1) shows that the Assistant Collector 2nd Grade held that the said mutation had not been attested. It is not in dispute that at the relevant time oral sale was permissible, for, the provisions of Section 54 of the Transfer of Property Act, 1882 were enforced in Punjab w.e.f. 01.04.1955 vide notification dated 26.03.1955. However, in the considered opinion of this Court and as rightly held by the trial Court, there was no oral or documentary evidence to prove the factum of oral sale. The original mutation was not produced. Only the *Parat Patwar* was produced which could not have been read into evidence in the absence of *Parat Sarkar*, which in fact is the original mutation. *Parat Patwar* is only meant for the record of *Halqa Patwari* and the subsequent entries in the revenue record are only taken from the *Parat Sarkar*. It was only on this account that no subsequent entry of this mutation was carried out in the subsequent revenue record. It appears that since Kohar Singh was the manager of the land Ch. Kesho Dass, who was a big land owner, he managed an entry in his favour, which, upon having been revealed, was corrected. This apart, absolutely no oral evidence to prove the factum of the oral sale was produced barring the bald statement of the plaintiff. Even the excerpt (Ex.P1) was silent about the sanctioning of the mutation on the basis of the oral sale. The *Naib Sadar Kanungo* PW1 (Desh Raj) also could not prove the case of the plaintiff. It has to be borne in mind that when it was asserted that such a huge chunk of a land was alienated by way of an oral sale, which, on the face of it, seems to be little unbelievable, heavy onus lied on the plaintiff to prove the same. No evidence was led to prove the payment of Rs.35000/- as well. It is again to be borne in mind that at the relevant time, Rs.35000/- was an enormous amount and somebody would not give or take such a huge sum without execution of any document whatsoever. These facts are being gone into in

second appeal because the misreading of evidence and reversal of a judgment on that basis is also a question of law.

20. The first appellate Court also noticed that Ex.P3 mentioned about an unregistered deed dated 25.08.1952. This has not seen the light of the day. The case of the plaintiff was that of an oral sale. From where this unregistered deed of 25.08.1952 came, is not known. The first appellate court on its own held that it appeared that Kohar Singh had the means to pay the sum of Rs.35000/- only because of the decree (Ex.P5) which was not relevant qua the suit land. Matters cannot be decided on conjectures and surmises. They have to be decided on the basis of evidence and law. The first appellate Court also erroneously held that from Ex.P3, the order of the Revenue Officer dated 29.09.1952 was not legible as to whether the mutation had been accepted or declined and at the top of the order mutation number '970' was mentioned, meaning thereby that the order effected mutation '970' and not '969'. The first appellate Court made out a totally different case, which was not the pleaded case of any side. The first appellate Court also held on the basis of conjectures that since the defendant was a big landlord and an influential person in the area, it appears that on the Parat Patwar of mutation No.969, he obtained the order of the revenue officer on 22.12.1966 without letting the plaintiff know about the same. Merely because in the written statement, the defendant Kesho Dass had stated that Kohar Singh was his tenant whereas in evidence, he stated that Kohar Singh was his manager would not affect his case, for, even the witnesses of the plaintiff admitted that Kohar Singh was the manager of the plaintiff. In view thereof, the mentioning of Kohar Singh as a tenant at one place would not be relevant.

21. The cumulative effect of the aforesaid discussion leads this

Court to the conclusion that the factum of oral sale did not stand proved and, therefore, the trial Court had rightly addressed the issue which was reversed by the first appellate Court by giving reasons which would not be acceptable.

Issue No.2

22. As regards the mortgage, the defendant duly stepped into the witness box and stated that he had mortgaged the suit land in favour of Vidya Devi for a sum of Rs.2000/- vide Mutation No.967. It is also proved on record that vide order dated 25.11.1980 (Ex.D2), the land was redeemed in favour of the defendant. On this account, issue No.3 was decided even by the first appellate Court in favour of the plaintiff holding that the suit land had been mortgaged by Ch. Kesho Dass in favour of Vidya Devi vide Mutation No.969 for a sum of Rs.2000/- and that it had been redeemed in his favour on 25.11.1980. However, it was held by the first appellate Court that since the land had been sold to Kohar Singh and the factum of the oral sale had been proved, the defendant could not have got the land redeemed. Once, this Court finds that the factum of the oral sale did not stand proved, this finding of the first appellate Court also falls to the ground and is not sustainable and, therefore, once the suit land had been redeemed by the defendant, there was no question of granting the relief of redemption in favour of the plaintiff. The fact that the defendant Kesho Dass did not take the plea of the suit land having been redeemed in the written statement may not affect his case, for, at the appellate stage, an application for additional evidence was moved wherein this fact was pleaded. The application was allowed and additional evidence was produced.

Issue No.3

23. Coming to the issue of limitation, admittedly the alleged sale

was effected on 25.08.1952. Mutation (Ex.P3) was entered on 17.09.1952. On 29.09.1952, it was cancelled. Kohar Singh expired on 10.10.1962. Mutation of inheritance was entered in favour of the plaintiff on 10.02.1965. Vide order dated 22.12.1966, the Assistant Collector 2nd Grade held that Mutation No.969 had not been attested in 1952. The suit was filed on 31.03.1984 by stating that few weeks back, the cause of action arisen. Once the mutation of inheritance in favour of the plaintiff had been entered into on 10.02.1965 and the order dated 22.12.1966 (Ex.D1) had been passed, it cannot be said that the plaintiff acquired the knowledge only few weeks before filing of the suit. A suit for declaration could have been filed within three years from the date of cause of action which arose at best on 22.12.1966. Absolutely, no evidence was led to even remotely prove that cause of action had arisen only few weeks before the filing of the suit. As regards the suit for possession, the same could have also been filed within a period of 12 years, which was also not done. Once the mortgage of the suit land by the defendant in favour of Vidya Devi and the subsequent redemption stood proved, the stand of the plaintiff failed and, therefore, the suit for possession was also barred by time. The trial Court, therefore, rightly held that the suit was barred by limitation which was also reversed by the first appellate Court by way of an unsustainable finding, as has been discussed above.

24. In view of the above, the present appeal succeeds. The judgment and decree dated 24.01.1990 passed by the learned Court of learned Addl. District Judge, Gurdaspur is set aside and the judgment and decree dated 29.07.1988 passed by the Court of learned Addl. Senior Sub-Judge, Pathankot, vide which the suit filed by the plaintiff for declaration and possession by redemption had been dismissed is upheld, meaning

thereby that the suit of the plaintiff stands dismissed. Decree sheet be drawn accordingly.

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

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 28.02.2025
Pronounced on: 25.03.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No