

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-3660-2019 (O&M)
Date of decision: 04.03.2025****Robin****...Appellant(s)****Vs.****Subhash Chand and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Susheel Gautam, Advocate for the appellant.

*********NIDHI GUPTA, J.**

The present second appeal has been filed by the defendant No.2 against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiff/respondent No.1, for declaration with consequential relief of Permanent Injunction has been decreed by the learned trial Court; and appeal filed by defendant No.2, has been partly allowed with modifications to the decree.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'defendant No.2'; and respondent No.1 is the 'plaintiff'.

3. Brief facts of the case are that the plaintiff had filed the present suit seeking a declaration to the effect that he has become owner in possession of the land measuring 9 Kanals 0 Marla, being 1/3rd share of land measuring 26 Kanals 19 Marlas, comprised in Khewat No.280, 291min, Khata No.228, 374min, rectangle and Killa No.26//14/2 (5-0); 15/1 (3-0), 16



(8-0), 17 (7-12), 25/1 (3-7), situated in the revenue estate of village Nandnaur, Tehsil and District Sonipat (the “suit land”), on the basis of the registered mortgage deed No.9569 dated 25.02.2010; **and** the partition proceedings dated 14.6.2011 vide which the suit land was allotted in the name of defendant No.2 are wrong, illegal, null and void and are not binding upon the rights of the plaintiff; with consequential relief of permanent injunction restraining the defendants No.1 and 2 from alienating/transferring the suit land in favour of any other person illegally and forcibly.

4. It is the pleaded case of the plaintiff that the suit land was obtained by defendant No.1 in a mutual family settlement. Vide registered mortgage deed dated 25.02.2010 the defendant No.1 had mortgaged the suit land in favour of the plaintiff for a sum of Rs.17 lacs; and defendant No.1 had also delivered possession of the land comprised in rectangle and killa No. 26//17 (7-12) and 16 (1-8) min (West), which was in the possession of defendant No.1 to the plaintiff on the spot. Mutation bearing No. 1138 dated 21.06.2010 was also entered and sanctioned in favour of the plaintiff to this effect. It was agreed that the defendant No.1 will get redeemed the suit land from the plaintiff within 2 years after making the entire mortgage amount i.e. upto 24.2.2012; and in case defendant No.1 failed to redeem the suit land within stipulated period, the mortgage shall be treated as sale of land in favour of the plaintiff and plaintiff has right to get the sale deed of the land executed and registered from the defendant No.1 in his favour. However despite repeated requests from the plaintiff, defendant No.1 had



failed to get the suit land redeemed from the plaintiff despite expiry of 2 years. As such, plaintiff issued legal notice dated 29.02.2012 to defendant No.1 through his counsel under registered AD cover, but no response was received thereto by the plaintiff. Then the plaintiff discovered that defendants No.1 and 2 in collusion with each other had got partitioned the land and in collusion with the revenue officials got allotted the suit land in favour of defendant No.2 fraudulently. As such, as per the terms and conditions of mortgage deed dated 25.02.2010, defendants No. 1 and 2 were legally liable jointly and severally to execute and get registered sale deed of the suit land in favour of the plaintiff within the mortgage amount. Plaintiff issued another legal notice dated 11.5.2012 to defendants No.1 and 2 however, no response was received. The plaintiff even filed foreclosure proceedings under sections 7 and 8 of the Bengal Regulations Act before the learned District Judge, Sonipat and the Court served the defendants through notices and on 17.9.2012 allowed the petition of the plaintiff and one year prescribed period was given to them to get redeemed the suit land after making payment of the mortgage amount and the said period of one year had expired on 16.9.2013. The plaintiff requested the defendants No.1 and 2 several times to pay the mortgage amount but, to no effect. Thus, the defendants No. 1 and 2 had lost their right to get redeemed the suit land from the plaintiff and they finally refused to admit the claim of the plaintiff on 26.10.2013 and instead they threatened the plaintiff to alienate the suit land in favour of some other person forcibly and illegally. Hence, the present suit.



5. Upon notice, defendant No.1 appeared and filed written statement thereby admitting that defendant No.1 had mortgaged his share of the suit land in favour of the plaintiff for a sum of Rs. 17 lacs. It was however denied that defendant No.1 had mortgaged specific killa numbers in favour of the plaintiff. It was contended that defendant No.1 had never got specific killa numbers in the mutual family settlement; it was never agreed that defendant No.1 will get redeemed the suit land from the plaintiff within 2 years after making payment of Rs. 17 lacs; and dismissal of the suit was prayed for.

6. Defendant No.2 filed written statement resisting the suit along similar lines as that of defendant No.1 *inter alia* stating that defendant No.1 was co-sharer in the land and suit land was not partitioned at that time; defendant No.1 was not in possession of the suit land; and was partitioned by the Assistant Collector First Grade vide order dated 14.6.2011 and in the partition proceedings, defendant No.2 became owner in possession of the land comprised in rectangle and Killa No.23//25/1 (4-14), 26//16 (8-0), 17 (7-12), 25/1 (3-7), total measuring 23 Kanals 13 Marlas and the mutation has also been entered and sanctioned in his favour. The terms of mortgage have no bearing on the rights of defendant No.2. The defendant No.2 is not liable to execute any sale deed in favour of plaintiff. Remaining averments of the plaint were denied and the dismissal of the suit was prayed for.

7. Defendant No.3 filed separate written statement denying the family settlement or that the defendant No.1 had obtained suit land in the



mutual family settlement. Defendant No.3 also expressed ignorance about the fact that defendant No.1 had mortgaged any land in favour of the plaintiff for Rs.17 lacs; and stated that even if the said land was mortgaged by defendant No.1, he had no right to mortgage the land of particular killa numbers without partition of the land by metes and bounds; it was denied that defendants No. 1 and 2 had got the suit land partitioned in collusion with revenue officials; or that rectangle and killa No. 26//16 and 17 was allotted to defendant No.2 rightly and legally; and prayed for dismissal of the suit.

8. No replication was filed by the plaintiff.

9. On the basis of the pleadings of the parties, following issues were framed vide order dated 05.04.2016:-

1. Whether the plaintiff is entitled to a decree for declaration to the effect that the plaintiff has become owner in possession of the suit land measuring 9 Kanals 0 Marla as detailed in para No.2 of the plaint on the basis of registered mortgage deed No.9569 dated 25.02.2010 and partition proceedings dated 14.06.2011 are illegal, null and void as prayed for? OPP.
2. Whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form as prayed for? OPD.
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD.
5. Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts from the Court? OPD.
6. Relief.



10. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 in favour of the plaintiff and against the defendants; issues No.3 to 5 in favour of the plaintiff and against the defendants. Accordingly, vide judgment and decree dated 08.03.2018, the suit of the plaintiff was decreed with costs to the effect that *“the plaintiff has become owner in possession of the suit land on the basis of mortgage deed No.9569 dated 25.2.2010 Ex.P.1; and the partition proceedings dated 14.6.2011 passed by the Assistant Collector First Grade, Sonipat are illegal, null and void and are not binding upon the rights of the plaintiff and accordingly, same are set aside. The defendants No. 1 and 2 are restrained permanently from alienating/transferring the suit land in favour of any other person in any manner.”*

11. The appeal filed by the appellant/defendant No.2 was partly allowed by the learned Additional District judge, Sonapat vide judgment and decree dated 10.12.2018 modifying the findings with respect to issues No.1 and 2 and *inter alia* holding that defendant No.1 did not have exclusive possession over killa No. 26//16 and 17 and he was not competent to deliver its possession to the plaintiff vide the mortgage deed dated 25.02.2010 and that the plaintiff has become co-owner and co-sharer to the extent of 9 Kanal in the land measuring 26K 19M as detailed in para 1 of the plaint as defendant No. 1 had failed to get his share redeemed within stipulated time. Hence, the present second appeal.

12. Leaned counsel for defendant No.2 inter alia submits that the appellant has now challenged the impugned judgment and decree only to



the extent that land received by him in the partition proceedings executed by the Assistant Collector First Grade vide order dated 14.06.2011 should not be disturbed and plaintiff should take his share from the property of defendant No.1 i.e. Satish Kumar, which he received in the partition proceeding (Supra). It is submitted that once learned lower appellate Court rightly held that the appellant Robin, the plaintiff Subhash Chand, and the defendants No.1 and 3 namely Satish and Jagbir respectively, are the co-sharers, and that Subhash Chand/plaintiff is the co-sharer to the extent of 9 Kanal of the land and has derived his title from Satish Kumar/defendant No.1, from whose share this 9 kanal land will be taken.

13. It is further submitted that the learned lower Appellate Court has proceeded on the assumed facts and has also ignored the material evidence led by the appellant which fact has occasioned failure of justice to the appellant. It is submitted that issues regarding setting aside partitioned proceeding dated 14.06.2011 by the trial Court deserve to be set aside and partition proceedings 14.06.2011 be maintained.

14. It is accordingly prayed that the present appeal be allowed, and the impugned judgment and decree passed by the learned trial Court as well as lower appellate Court may be set aside only to the extent vide which partition proceeding dated 14.06.2011 by the Assistant Collector, First Grade were set aside by both the Courts below, being illegal, arbitrary, null and void and the appellant be given his share as received by him, in the partition proceeding mentioned (supra), in the interest of justice.



15. No other argument is raised on behalf of the appellant/defendant No.2.

16. I have heard learned counsel for the appellant/defendant No.2 and perused the case file in great detail.

17. As per the record, the mortgage deed dated 25.02.2010 (Ex.P1) was duly proven from the evidence of PW1 Ajeet Kaur Assistant Revenue Collector (ARC), who has stated that mortgage deed is correct as per the record; PW2 Hazari, who admitted that payment of Rs. 17 lacs was made to the defendant No.1 in front of him; PW4 Karam Singh attesting witness to the mortgage deed proved the same; and PW5 Hemant Bhushan scribe of the said mortgage deed also proved the same. Moreover, the said mortgage deed is a registered document. Therefore, presumption of truth is attached to it.

18. It has been argued on behalf of the appellant/defendant No.2 that although defendant No.1 has received mortgage amount of Rs. 17 lacs however possession of specific killa number was never given to the plaintiff as the suit land was still joint between defendants No.1 and 2. However, as per the duly proven mortgage deed, possession of the suit land was handed over to the plaintiff on the spot; pursuant to which mutation No. 1138 (Ex.P3) was also sanctioned in favour of the plaintiff in respect of the said specific killa numbers which were stated to be in possession of the defendant No.1 as per the mutual family settlement. A perusal of the mortgage deed (Ex.P1) (at page 91 of the LCR); and a perusal of the mutation No. 1138 (Ex.P3) (available at page 116 of the LCR), both revealed



that killa numbers 26//16 and 17 are specifically mentioned therein. Clearly therefore, the assertions made on behalf of the appellant are not borne out from the record.

19. In this regard, it is also relevant to note that previously a suit for permanent injunction regarding the suit land was filed by defendant No.2 against plaintiff and the defendant No.1, which was dismissed vide judgment dated 17.12.2015 (Ex.P.6). It was held in the said judgment that the plaintiff therein/present defendant No.2, failed to show how suit land fell to his share and how the possession was taken by him from Subhash/plaintiff herein. In the said case, as in the present, the appellant was unable to prove the transition of possession of suit land.

20. It is not denied by the appellant that defendant No. 1 had failed to redeem the mortgage within the stipulated period of 2 years. Moreover, as the mortgage deed (Ex.P1) stood proven in accordance with law, as per which possession of the suit land was handed over to the plaintiff as duly reflected in the revenue record; as such partition proceedings dated 14.06.2011 between the defendants are illegal, null and void. I find no error in the said findings of the learned Courts below.

21. The learned lower appellate Court vide judgment and decree dated 10.12.2018 partly modified the above said judgment and decree of the learned trial Court to the extent that the plaintiff was held to have become owner of the suit land to the extent of 9K of land out of 26 K 19M. This was done in view of the fact that in the absence of any exclusive possession of defendant No.1 over killa No. 26//16 and 17, he was not



competent to deliver its possession to the plaintiff; and mortgage deed dated 25.2.2010 shall be deemed to be the mortgage of share of defendant No. 1 in favour of the plaintiff. In holding as above, the learned appellate Court took into account the fact that defendant No. 1 had mortgaged 1/3rd share to the extent of 9 Marla out of the total land described in para 1 of the plaint. The learned lower appellate Court also took into account the fact that on the date of mortgage deed i.e. 25.02.2010 property was joint and there was nothing to show that defendant No.1 had exclusive possession over killa No. 26//16 and 17. There was no revenue record to indicate that defendant No.1 is in exclusive possession of the said killa number. Even family settlement was not placed on record. Even as per the mutation No.1138 (Ex.P3), only 1/3rd share of defendant No. 1 in joint land, is mutated in favour of the plaintiff as mortgaged. Learned lower appellate Court accordingly, held that *“had the possession of the specific killa number been delivered to the mortgagee then a specific khatoni should have been prepared and tatima would have been prepared on the rear side of the mutation.”* It was in this background, that the learned lower appellate Court partly allowed the appeal of the appellant herein, in the manner as described above.

22. The relevant findings of the learned lower appellate Court as contained in the judgment and decree dated 10.12.2018 read as under:-

“19. In these circumstances, in the absence of any exclusive possession of Subhash Chand over killa No.26//16 and 17 he was not competent to deliver its possession and the mortgage deed dated 25.02.2010 shall be deemed to be the mortgage of



share of defendant Satish Kumar in favour of Subhash Chand. So the findings of learned Additional Civil Judge (Senior Division), Sonapat on issue No.1 is modified to the extent that the plaintiff Subhash Chand has become the co-owner and co-sharer to the extent of 9 kanal in the land measuring 26 kanal 19 marla as detailed in para No.1 of the plaint as the defendant No.1 has failed to get his share redeemed within stipulated time. So question No.1 posed before this Court stands answered accordingly.”

23. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.
24. No ground to interfere in the impugned judgments and decrees of the learned Courts below is made out. Accordingly, present regular second appeal is hereby **dismissed**.
25. Pending applications, if any, stand disposed of.

04.03.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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