



RSA-2850-1996 (O&M) -1-

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

RSA-2850-1996 (O&M)

**Judgment reserved on 07.08.2025
Judgment pronounced on 03.09.2025**

RAJ KUMAR AND OTHERS**... APPELLANTS**

VERSUS

ROOP RAM AND OTHERS**...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. R.D. Bawa, Advocate and
Mr. Rishabh Rana, Advocate
for the appellant.

Mr. Pritam Singh Saini, Advocate,
Mr. Deepak Singh Saini, Advocate and
Ms. Vamika Johar, Advocate
for the respondents.

PARMOD GOYAL, J.

Plaintiffs-appellants being aggrieved by judgment and decree dated 10.09.1994 passed by the Civil Judge, Kurukshetra and judgment and decree dated 14.05.1996 passed by the Court of Additional District Judge, Kurukshetra have preferred present appeal.

2. Plaintiffs-appellants had filed a suit for declaration with consequential relief of possession asserting that land measuring 8 Kanals comprised in khewat no. 1 min, Khatoni No. 5, Khasra No. 19/20(8-0) situated at village Chhapra, Tehsil Thanesar, District Kurukshetra. was mortgaged with defendant for a sum of Rs. 5,000/- vide mortgage-deed dated 22.07.1981. The land was subsequently purchased by plaintiffs vide sale-deed dated 22.03.1989,



however, same was sought to be pre-empted by the defendant by filing a suit on the ground that he being co-sharer, is entitled to seek pre-emption of sale. However, suit preferred by defendant was dismissed. Plaintiffs vide their application under Section 4 of the Punjab Redemption of Mortgages Act sought for redemption of suit land after depositing a sum of Rs. 5,000/-. The application preferred by plaintiffs-appellants for redemption of land was allowed by Collector vide order dated 12.01.1993. Defendant, however, also claimed possession of suit land being tenant. Plaintiff could not seek physical possession as collector had held possession of defendant that of tenant. The plaintiff, by way of present suit, has challenged the order dated 12.01.1993 passed by the learned Collector, Kurukshetra holding possession of defendant over the suit land to be of tenant and assailed the same to be illegal, null and void and without jurisdiction on the following grounds: -

- (a) That plaintiffs were not heard prior to passing of impugned order.
- (b) That lease of 2 years from 1977 to 1979 surrendered when suit land was mortgaged, therefore at the time of mortgage, no tenancy existed in favour of defendant and defendant were mortgagee with possession. They were liable to surrender possession on redemption of mortgage.
- (c) That in suit for pre-emption defendant never claimed himself to be a tenant.
- (d) That defendant in pre-emption proceedings, which concluded vide order dated 08.05.1991 claimed his possession to be of mortgagee and accordingly order dated 12.01.1993 passed by Collector holding defendant to be tenant over the land was



challenged. Mesne profit of Rs. 5,000/- per year was also sought by the plaintiffs in their suit.

3. Suit was contested by the defendant by filing detailed written statement taking number of preliminary objections regarding locus standi and maintainability etc. of suit preferred by plaintiff. It was asserted that original owner had leased out the land to the defendant at the rate of Rs.1200/- per annum vide mutation No. 488 dated 04.05.1977 from Kharif 1977 to Rabi 1979. The tenancy continued thereafter and defendant is cultivating suit land as tenant and during the period of tenancy, original owner had mortgaged the suit land to defendant. After redemption of mortgage, the tenancy rights had revived and defendant is entitled to possession. It was asserted that during the mortgage, tenancy rights had not come to an end and remained in existence throughout and after redemption of mortgage, he continued as a tenant over the suit property. Accrual of mesne profit was also denied. Replication was preferred by plaintiffs-appellants reiterating facts stated in suit and denying assertions made by defendant in written statement.

4. From the pleadings of the parties, following issues were framed:-

- “1. *Whether the plaintiffs are entitled to a decree for declaration to the effect that the order dated 12.1.1993 passed by the Collector, Thanesar is illegal, null, void, inoperative, ineffective, uneffective, ultravires and passed without application of mind? OPP*
2. *whether the plaintiffs are entitled to possession of the suit land alongwith mesne profit from 12.1.93 onwards if so how much? OPP*
3. *Whether the plaintiffs have got no locus standi to file and maintain the present suit? OPD*
4. *Whether plaintiffs are estopped from filing the present suit by their own act and conduct? OPD*



5. *Whether the suit is not maintainable ? OPD*
6. *Whether the defendant is a tenant over the suit land? OPD*
7. *Whether the plaintiffs have no cause of action? OPD*
8. *Relief.”*

5. Learned Court of first instance, decided issue No. 1 in favour of plaintiff. Issue No. 2 was also decided in favour of plaintiff and against the defendant. Issue Nos. 3,4,5 and 7 were decided against the defendant in favour of plaintiffs.

6. Suit of plaintiffs was decreed. Order dated 12.01.1993 passed by Collector was set-aside. It was possession of defendant is not of tenant. Plaintiffs were held entitled to possession of suit land and further entitled to seek mesne profit at the rate of Rs. 2,000/- per annum from 12.01.1993 till possession is given.

7. Aggrieved by conclusion drawn by the Court of first instance, defendant had preferred an appeal. Learned First appellate Court concluded that defendant had never surrendered his possession during mortgage, therefore, order dated 12.01.1993 passed by Collector was correct holding defendant to be tenant over the suit land. Accordingly, appeal was accepted. Judgment and decree dated 10.09.1994 was set-aside. Suit of plaintiffs was dismissed.

8. Following facts are not in dispute in the present case:

- (i) The suit land was originally owned by one Bichha son of Jiwan, who in the year 1977-78 had inducted defendant to be tenant over the suit land for two years from Kharif 1977 to Rabi 1979.
- (ii) That original owner Bichha on 22.07.1981 had mortgaged the suit land with defendant for an amount of Rs. 5,000/-.
- (iii) That suit land was sold by Bichha to plaintiffs vide sale-deed dated 22.03.1989.



- (iv) Defendant had filed a suit for pre-emption claiming himself to be a co-sharer, however, said suit for pre-emption preferred by defendant was dismissed.
- (v) Thereafter plaintiffs filed an application under Section 4 of Punjab Redemption of Mortgages Act for redemption of suit land, after depositing Rs.5,000/-. The said application was partly allowed by Collector, Kurukshetra, vide order dated 12.01.1993 allowing redemption, however, denying physical possession of suit land to plaintiffs holding defendant to be tenant over the suit land.

9. In set of above-noted duly established facts, plaintiffs-appellants had sought declaration that order dated 12.01.1993 passed by learned Collector is null and void to the extent that defendant is tenant over the suit land and had sought possession of suit land.

10. The main question which arises for determination is present appeal is whether on redemption of mortgage, the tenancy rights in favour of defendant would revive and possession of defendant would be that of tenant and not of mortgagee, liable to be evicted on redemption of mortgage.

11. The claim of defendant is that he along with his brother Harkesh after expiry of lease period in Rabi 1979 became tenant holding over and a tenant holding over continues to be in possession unless he ejected in due course of law or he surrenders tenancy rights. It is the claim of defendant-respondents that since no ejectment orders were ever passed, therefore, he continues to remain in possession as tenant holding over.

12. Learned First Appellate Court after duly noticing Section 17(B) of the Punjab Security of Land Tenure Act, 1953 concluded that tenancy continues,



despite redemption of mortgage. Section 17(B) is being reproduced for ready reference:-

Where after the commencement of this Act; land comprising the tenancy of a tenant is mortgaged to him with possession by the land owner and such land is subsequently redeemed by the land owner, the tenant shall not standing such redemption or any other law for the time being in force, be deemed to be the tenant of land owner in respect of such land on the same terms and conditions on which it was held by him immediately before the execution of the mortgage as if the mortgage had never been executed.”

13. Learned counsel for the appellants-plaintiffs has argued that the tenancy rights were duly surrendered by the defendant-tenant on entering upon mortgage and has accordingly referred to conduct of parties i.e. pre-emption suit, mutation of end of tenancy as well as mutation of mortgage to argue that in the present case, tenancy stood surrendered specifically upon execution of mortgage with possession and, therefore, on redemption respondent-defendant was liable to be evicted from suit land and section 17 (b) of Land Tenure Act, 1953 has no applicability.

14. Learned Court of first instance, concluded surrender of possession after considering mutation Ex. P-3, which was entered with regard to release of land from lease an execution of mortgage-deed on 22.07.1981 and fact that defendant while claiming his right of pre-emption over the suit land, has not sought pre-emption on the basis of his tenancy but claimed only on the basis of ground that he is a co-sharer clearly showing that he has already given up his rights as a tenant. On the other hand, learned First Appellate Court concluded that mutation Ex. P-3 is of no help to the case of plaintiffs as mutation Ex. P-2



regarding mortgage of land was entered on the same day. Mutation Ex. P-3 and Ex-2 were only for correction of revenue records in no way amounts to surrender of tenancy. It was held that since mortgage-deed stood executed on 22.07.1981, therefore, mutation dated 09.12.1981 cannot take away legal rights of defendants as tenant as it was not only defendant but his brother, who was also tenant. The learned First Appellate Court also concluded that filing of pre-emption suit claiming to be co-sharer does not show that he had surrendered the possession because at the time of filing of suit, his rights of tenancy was under abeyance being a mortgagee.

15. Learned First Appellate Court had also rejected plea raised on behalf of plaintiffs-appellants that delivery of possession on execution of mortgage at the spot was after surrender of possession as tenant. It was held that there is no evidence that defendant ever intended to surrender his possession. Implied surrender of lease cannot be inferred and doctrine of merger is not applicable in a case where land/suit property is mortgaged in favour of lessee. Reliance was placed upon judgment titled as **Narayan Vishnu Hendre Vs. Baburao Savalaram Kothawale since deceased by his heir Anant Baburao Kothawale, 1995 (6) SCC 608**, Section 17(B) of the Punjab Security of Land Tenure Act, 1953 and Section 117 of the Transfer of Property Act, it was concluded that there was no surrender of tenancy. That since two mutations on same day were entered regarding surrender of tenancy and creating of mortgage. It was held that defendant-tenant had never surrendered the possession as tenant and continued to be tenant holding over and accordingly appeal was allowed and suit of plaintiffs was dismissed.

16. Admittedly, in the present case the tenancy was upto Rabi 1979. Mortgage was created on 22.07.1981 and mutation Ex. P-2 regarding mortgage



and Ex. P-3 regarding surrender of possession as tenant were recorded on 09.12.1981 after execution of mortgage-deed.

17. In the present suit, in view of above-noted facts, the only question which is to be determined is whether defendant-tenant had surrendered his tenancy rights on execution of mortgage in his favour, in view of mutation regarding surrender of possession as tenant Ex. P-3 and fact that while seeking pre-emption, defendant has not claimed his right to be a tenant.

18. On consideration, I find that reasons given by Court of First Instance to conclude implied surrender of tenancy are in accordance with law and evidence placed on record. Learned First Appellate Court has erred in concluding non-surrender of tenancy in view of Section 17(B) of the Punjab Security of Land Tenure Act, 1953 and Section 117 of the Transfer of Property Act, 1882. A lease/tenancy can always be terminated by tenant by surrendering his possession. The moot question in the present case would be whether defendant had surrendered his possession as a tenant upon entering over suit land being mortgagee. In case there is no implied or express surrender of tenancy, section 17 (B) of Punjab Security of Land Tenure Act, 1953 would be applicable and if there is surrender of tenancy then section 17 (B) of the Punjab Security of Land Tenure Act, 1953 shall have no applicability. In the present case there is sufficient material to conclude surrender of possession by defendant-tenant in favour of land owner. Admittedly, tenant was holding possession as tenant holding over, his lease period has expired with end of Rabi 1979. Admittedly, he entered into mortgage with possession on 22.07.1981. Therefore, the mutation Ex. P-2 regarding mortgage and Ex. P-3 regarding surrender of possession as lessee is a fact duly acknowledged by defendant before the Revenue Authority. It is worth noticing that Ex. P-2 and Ex. P-3 were duly entered on the same day i.e. 09.12.1981.



19. Perusal of Ex. P-3 goes to show, same was entered in the presence of both the tenants namely defendant and his brother Harkesh who was also inducted as a lessee over the suit land along with defendant. Therefore, merely, because Ex. P-3 was entered subsequently then mortgage deed dated 22.07.1981 would not lead to the conclusion that defendant continued over the suit land as a tenant, despite mortgage-deed dated 22.07.1981. It is worth noticing that pre-emption is not only available to a co-sharer but also a tenant. The right of pre-emption vested in co-sharer has been taken away by legislature, however, right to seek pre-emption in favour of tenant was in existence on the date of filing suit pre-emption suit by defendant, however, by not taking ground of tenancy to seek pre-emption clearly shows that defendant had duly accepted to have given up his tenancy rights over the suit land and mutation Ex.-3, vide which it was duly recorded. The conclusion of learned First Appellate Court that defendant continued to be tenant holding over in view of Section 17(B) of the Punjab Security of Land Tenure Act, 1953, cannot be sustained as protection of section 17 (B) Punjab Security Act, 1953 is available only if tenancy rights have not been surrendered.

20. In the present case, the intention of defendant is clearly made out to surrender tenancy on entering upon mortgage, when he duly accepted the mutation of surrender of possession being tenant vide Ex. P-3. Ex. P-3 was duly entered upon in the presence of both the tenants namely present defendant as well as his brother Harkesh, to whom suit land was given on lease from 1977 to 1979. The subsequent conduct of defendant seeking pre-emption of land only on the basis his right as a co-sharer and not as a tenant in fact confirms that vide recital made in Ex. P-3, mutation tenancy rights by defendant stood surrendered with execution of mortgage. Therefore, learned Court of first instance has rightly concluded that tenancy stood surrendered on the date of execution of mortgage in



favour of defendant and, therefore, Collector vide his order dated 12.01.1993 had wrongly concluded that after redemption defendant’s right to hold possession as tenant has revived, since the tenancy rights stood surrendered. Therefore, upon redemption, plaintiffs have become entitled to possession and learned Collector had wrongly denied possession to the plaintiffs.

21. Accordingly, judgment and decree passed by learned Court of first instance is upheld. Judgment and decree dated 14.05.1996 passed by the Court of Additional District Judge, Kurukshetra is set-aside. Suit by plaintiffs is decreed. Appeal is allowed, accordingly.

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

03.09.2025
manoj

Whether speaking/reasoned
Whether reportable

(PARMOD GOYAL)
JUDGE

Yes/No
Yes/No