



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

(214)

RSA-2720-2000 (O&M)Date of Decision:-**06.11.2025**

KARNAIL SINGH

... Appellant

Versus

JASWANT SINGH (SINCE DECEASED) THROUGH HIS LRs AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. S.K. Arora, Advocate
for the appellant.

Mr. Rai Singh Chauhan, Advocate
for the respondents.

VIRINDER AGGARWAL, J. (Oral)

1. The appellant-defendant has preferred the present Regular Second Appeal (here-in-after to be referred as 'RSA') under Section 41 of the Punjab Courts Act, 1918, impugning the judgment and decree dated 03.02.2000, passed by the learned Additional District Judge, Faridkot, in Civil Appeal No.135 of 29.07.1997. The appellant assails the same on the grounds of alleged errors of law and fact, contending that the learned Appellate Court failed to appreciate the evidence and material on record in a proper perspective and arrived at a conclusion contrary to the established principles of law. The appeal is filed seeking appropriate interference with the impugned judgment and decree, in the interest of justice, equity, and fair adjudication.



2. This appeal arises from a longstanding dispute concerning the mortgaged suit land, wherein the plaintiffs seek possession by way of redemption of a property that has remained under encumbrance for more than half a century. The property, fully delineated in the head-note of the plaint, was originally mortgaged with possession by Narain Singh on 30.11.1934, the mortgage being duly registered on 01.12.1934 for a sum of ₹200/- in favour of the predecessor-in-interest of the defendants. The defendants subsequently succeeded to the interest of Nazar Singh. It is averred that for a period of 56 years, the plaintiffs were precluded from exercising their right of redemption. Upon the lapse of this period, the plaintiffs, as lawful successors-in-interest to the original mortgagor, requested the defendants to permit redemption of the property by repayment of the mortgage sum. The defendants, however, refused or failed to comply with the said request, compelling the plaintiffs to invoke the jurisdiction of this Court for judicial intervention to secure redemption and recovery of possession of the mortgaged property.

3. In their joint written statement, the defendants interposed preliminary objections, challenging the maintainability of the suit and contending that the same was barred on the ground of non-joinder of necessary parties. It was further asserted that plaintiffs Nos. 4 to 11 lacked the requisite legal capacity to institute the suit, as the suit property had purportedly been transferred to defendant No.2. On the merits, the defendants denied the allegations set forth in the plaint and sought dismissal of the suit in its entirety.

4. In response, the plaintiffs filed a detailed replication, reaffirming the averments contained in the plaint while specifically denying and



controverting the contentions advanced by the defendants in their written statement. Having undertaken a meticulous scrutiny of the pleadings and the rival submissions, and in order to ensure a focused, comprehensive, and efficacious adjudication of the disputes between the parties, the Court has framed the following issues for determination:-

1. Whether the plaintiffs are entitled to redeem the suit property?
OPP
2. Whether the plaintiffs are legal heirs of Narain Singh deceased as described in the pedigree? OPP
3. Whether the suit is not maintainable framed? OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether defendant Nos. 1 to 3 are the legal heirs of Narain Singh deceased ? If so its effect? OPD
6. Whether defendant Nos.1 to 3 purchased land from heirs of Narain Singh deceased to what extent? If so its effect ? OPD
7. Whether the suit has become infructuous view of the sale of share of LRs of Narain Singh in favour of Karnail Singh defendant?
OPD2
8. Whether the suit is properly valued for purposes of Court fee and jurisdiction? OPD
9. Whether the right of redemption has become unenforceable in view of averments contained in the written statement ? OPD
10. Whether the suit of the plaintiffs is barred by the rule of equisance and is liable to be dismissed under the rule of Clog? OPD
11. Whether the suit is within limitation? OPP
12. Whether there remains the same suit property as alleged by the mortgagee ? OPP
13. Relief.



5. Both parties were afforded ample and effective opportunity to adduce evidence in support of their respective pleadings. Upon the close of evidence and after hearing elaborate submissions from the learned counsel for the parties, the learned Additional Civil Judge (Senior Division), Faridkot, by judgment and decree dated 10.06.1997, decreed the suit in favor of the plaintiffs. The Court granted a decree for redemption of the suit property, together with the existing structure, to the extent of 1/8th share, excluding the portion acquired by the State Government for road widening. The plaintiffs were accorded a period of six months to deposit the mortgage money, upon the expiry of which the contesting defendants were directed to deliver possession of the mortgaged property to the plaintiffs.

5.1. Aggrieved by the judgment and decree aforesaid, two separate appeals were filed before the learned First Appellate Court. Both sets of parties contended that the suit did not permit partial redemption. The learned First Appellate Court, however, by the impugned judgment and decree, allowed the appeal filed by Jaswant Singh and others, while dismissing the appeal preferred by the present appellant, thereby sustaining the impugned decree in part and setting the stage for the present RSA.

6. The appellant has instituted the present appeal impugning the concurrent judgments and decrees rendered by the Courts below, which were admitted to hearing. Following admission, notice was duly issued to the respondents, who appeared through their learned counsel and contested the appeal. The complete record of the subordinate Courts has been requisitioned, enabling this Court to undertake a thorough and comprehensive scrutiny of the matter and adjudicate the same on its merits.



7. I have heard learned counsel for the appellant at considerable length and have given due and careful consideration to the submissions advanced, in the context of the pleadings, the evidentiary record, and the concurrent findings of the Courts below. The entire record has been meticulously examined with a view to evaluating the rival contentions and determining *‘whether the impugned judgments and decrees suffer from any error of law, procedural irregularity, or manifest perversity that would justify interference in the exercise of this Court’s appellate jurisdiction?’*

8. With regard to the scope of a second appeal, it is now a well-settled proposition of law that, in Punjab and Haryana, second appeals are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918, and not under Section 100 of the Code of Civil Procedure. In this context, reliance may be placed on the judgment of the Supreme Court in **Pankajakshi (Dead) through LRs and Others v. Chandrika and Others, (2016) 6 SCC 157**, followed by **Kirodi (since deceased) through LR v. Ram Parkash and Others, (2019) 11 SCC 317**, and **Satender and Others v. Saroj and Others, 2022 (12) Scale 92**. In view of the legal position established by these decisions, no substantial question of law arises that necessitates framing in the present appeal.

9. The pivotal question that arises for determination in this appeal is *‘as to if the respondents are liable to pay interest at the rate of 12% per annum on the cost of construction raised over suit property by the appellant/defendants.’*

10. Learned counsel for the appellant-defendants contends that, in terms of the mortgage deed marked Ex.P9, it was expressly stipulated that a *‘pucca’* construction could be raised over the mortgaged plot, and that at the



time of redemption of the mortgage, the cost of such construction, along with interest calculated at the rate of 1% per month, was required to be paid. It is submitted that the learned Courts below erred in law and on facts by failing to award interest on the cost of construction as assessed by the Court, thereby causing substantial prejudice to the appellants.

11. Conversely, learned counsel for the respondent contended that the learned Civil Court, in paragraph No.26 of its judgment, has awarded interest, and that the cost of construction, assessed at ₹34,299/-, has been duly directed to be paid in accordance with the findings of the learned First Appellate Court. It was thus submitted that the concurrent findings recorded by the Courts below are free from any illegality or infirmity and call for no interference in the exercise of this Court's appellate jurisdiction.

12. A perusal of paragraph No.26 of the judgment rendered by the learned Additional Civil Judge (Senior Division), Faridkot, reveals that interest at the rate of 12% per annum on the mortgaged amount has been appropriately adjusted against the rent of the mortgaged property. Paragraph No.26 is reproduced herein below for clarity and reference:-

“26. As per terms and conditions of mortgage deed Ex.P1, the mortgagor was to pay interest on the mortgage amount rate of ₹12% per annum. It was also stipulated that the interest would be set off against rent of property. Thus mortgagees are not entitled to receive any interest on the mortgage amount.”

13. It is evident from the record that the cost of construction was assessed, as per the report of DW-2, Dhanna Singh, retired SDO, at ₹34,299/-, and the learned First Appellate Court directed that the entire mortgaged property be redeemed on payment of a total consideration of ₹34,499/- within a period of six months. This clearly indicates that no



interest has been awarded on the cost of construction as stipulated under the terms of the mortgage deed marked Ex.P9. Both Courts below, therefore, misapprehended and misinterpreted the express terms and conditions of the mortgage deed, which constitute a binding contract between the parties. In accordance with the deed, interest at the rate of 12% per annum is due on the cost of construction, i.e. ₹34,299/-, accruing from the date the construction was raised over the mortgaged plot. Since the exact date of construction has not been established on record, the Court, exercising judicial prudence, assumes that the construction was likely raised within the first twenty years of the mortgage, and accordingly, interest shall accrue from 01.01.1955 until the date of realization. No other point having been pressed, in view of the foregoing discussion, the appeal is hereby allowed.

14. In consequence of the adjudication of the main case, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, are hereby disposed of finally. No further orders or directions are called for in respect of such applications, which stand conclusively determined in accordance with the reasoning, findings, and conclusions recorded in the main judgment.

06.11.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No