132 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1642 of 2025
Date of Decision: May 14, 2025

Taranjit Singh **. . . . Appellant**

Vs.

Harwinderpal Singh .. . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Surjit Singh Swaich, Advocate for the appellant.

DEEPAK GUPTA, J.

Suit for possession by way of redemption of a shop, on payment of ₹9,000/- being the mortgage amount, as filed by plaintiff - Harwinderpal Singh (respondent herein) was decreed by the trial Court on 05.12.2023; and the appeal filed by the defendant - Taranjit Singh (appellant herein) was dismissed by the First Appellate Court on 28.3.2025.

2. Assailing the aforesaid concurrent findings, defendant of the case is before this Court by way of present regular second appeal.

3. It is contended by learned counsel for the appellant that initially plaintiff - Harwinderpal Singh had filed a suit for possession by way of redemption of the shop in dispute against Ranjit Singh, the brother of the defendant- appellant, based upon a mortgage deed dated 28.02.2005. The civil suit filed by the plaintiff against said Ranjit Singh was decreed on 15.05.2014 and the appeal filed by Ranjit Singh was dismissed on 10.05.2016. An application for final decree filed by the plaintiff was allowed on 17.10.2018 and the appeal filed by Ranjit Singh was dismissed on 15.02.2019. Plaintiff then filed an execution for implementation of the final decree, during which the defendant of the present case, i.e. appellant came into picture and filed an application to implead him as party claiming that he was a mortgagee in terms of the mortgage deed dated 02.03.1989. The

application was dismissed on 29.01.2018. Later on, the plaintiff filed the present suit seeking possession by way of redemption of the shop against defendant on the basis of mortgage deed dated 02.03.1989.

4. It is contended by learned counsel for the appellant that both the Courts below have wrongly dismissed the suit in view of the fact that plaintiff had earlier claimed the brother of the appellant-defendant to be a mortgagee on account of the mortgage deed dated 28.02.2005; and when the application under Order 1 Rule 10 CPC was moved during the proceedings of the execution by the present appellant, the plaintiff had denied the mortgage deed dated 02.03.1989 and as such, plaintiff was estopped from filing the suit to seek redemption based upon mortgage deed dated 02.03.1989.

5. After hearing learned counsel for the appellant at considerable length, this Court does not find merit in the present appeal.

6. It will be relevant to reproduce the observations as made by the First Appellate Court while dismissing the appeal of the appellant, which read as under:-

> "27. Now adverting to the facts of the present case, it is admitted case of the parties that mortgage deed dated 02.03.1989 was executed by plaintiff in favour of the defendant and a perusal of the same reveals that no time period was fixed for redemption. The grounds of contest of the defendant are that the plaintiff earlier denied any execution of such mortgage deed and that he had not paid the mortgage amount, therefore, suit of the plaintiff does not lie. Earlier, civil suit bearing no. 450 of 2016 titled as **Taranjit Singh vs. Harwinderpal Singh** for permanent injunction was decreed vide judgment and decree dated 16.01.2019 **Ex.P9** and **Ex.P10** and it was held that the plaintiff has proved that he was in possession of suit property on the basis of mortgage deed Ex.P1 and thus, the then defendant was restrained to interfere into his possession over the same or dispossess him from the same illegally, forcibly and without redeeming the said mortgage. Appeal was filed against the said

judgment and decree dated 16.01.2019 but the same was dismissed vide judgment and decree dated 01.10.2021 **Ex.P13** and **Ex.P14**. A perusal of cross-examination of **DW1 Taranjit Singh** gives an interesting reading wherein he has admitted that there is no shop owned by him and member of his family on railway road, Himayunpur, Sirhind. He feigned his ignorance towards the fact if shop in dispute was mortgaged by the plaintiff to his brother Ranjit Singh on 28.02.2005 for Rs.30,000/-; whether in the said mortgage deed dated 28.02.2005, his brother Ranjit Singh had paid an amount of Rs.21,000/- and also adjusted Rs.9,000/- as mortgage money paid by him to the plaintiff. He further admitted that as per terms and condition of **Ex.P11**, it is mentioned that the plaintiff can redeem the shop in question after payment of Rs. 9,000/- as mortgage money to him; that it is one of the terms and conditions in **Ex.P11** that after receipt of mortgage money, he would hand over the vacant possession of the shop in question to the plaintiff, owner of shop in question; that the plaintiff is mortgagor who mortgaged the shop in question to him; that he had filed civil suit on the basis of mortgage deed **Ex.P11** and that being mortgagee, he could not become owner of the shop in question. He further stated that he was not ready even on the day of his deposition to receive an amount of Rs.9,000/- as mortgage money from the plaintiff nor he was ready to hand over the vacant possession of the shop in question to the plaintiff. He admitted all facts of **Ex.P11** as correct. He was not ready to redeem the shop in question and to hand over vacant possession of the same and even not ready to receive the mortgage money.

28. Learned counsel for the appellant has argued by drawing my attention towards the cross-examination of **PW1 Harwinderpal Singh** where he stated that Taranjit Singh defendant was not in possession but Ranjit Singh was in possession of the shop in question that when Taranjit Singh is not in possession of the shop as per **PW1 Harwinderpal Singh** then how Harwinderpal Singh can obtain the decree of possession from Taranjit Singh. The appellant/defendant himself filed the suit for permanent injunction restraining the present plaintiff/respondent from interfering into his peaceful possession

over the shop which is subject matter of present lis. The said suit was decreed in favour of Taranjit Singh by holding that Taranjit Singh was in possession of the shop in question on the basis of mortgage deed dated 02.03.1989 as proved by Taranjit Singh. Thus, Harwinderpal Singh was restrained from interfering into possession of Taranjit Singh over the said shop or dispossess him from the same illegally, forcibly and without redeeming the said mortgage deed. Thereafter, Harwinderpal Singh filed the present suit for possession by way of redemption. Now the appellant/defendant wants to blow hot and cold in one breath which cannot be allowed. Earlier, he has sought injunction on the basis of the said mortgage deed dated 02.03.1989 and now he wants to wriggle out from the terms and conditions of the said mortgage deed. The intention of the appellant/defendant is clear from his cross-examination and the fact that he filed the present appeal on 22.12.2023 against impugned judgment and decree dated 05.12.2023 whereby learned Trial Court granted time to the plaintiff to deposit the mortgage amount of Rs.9,000/- to the defendant within one month and it was also ordered that in case, the defendant refuses to accept the said amount, the plaintiff shall be at liberty to deposit the said amount in the court within a further period of one month and the plaintiff shall be entitled to seek final decree from the court for getting possession of the suit property. What to talk to accepting the mortgage amount of Rs.9,000/-within the period of one month, the defendant filed the appeal within 20 days of the impugned order and on the other hand, the respondent has deposited the amount of Rs.9,000/- on 05.01.2024 reflecting his intention to comply the direction given in the impugned judgment and decree dated 05.12.2023. It reveals about the fact that the appellant/defendant has no intention to abide by the terms and conditions of mortgage deed dated 02.03.1989 which cannot be allowed. Thus, when execution of mortgage deed dated 02.03.1989 has been proved and the present plaintiff was restrained from interfering into peaceful possession of the present defendant who is in possession on the basis of the said mortgage deed and was restrained from dispossessing him illegally and forcibly without redeeming the said mortgage, the plaintiff was having only option to file the suit for redemption. The objections that the plaintiff earlier denied the execution of the said mortgage deed and therefore, is not entitled to relief of possession by way of redemption is not tenable as the said document has been duly proved and the suit of the plaintiff is based on the said document. The ground that the suit cannot be allowed for redemption as the mortgage money has not been paid is baseless as the preliminary decree can be passed subject to payment of mortgage amount as once a mortgage is always a mortgage and is always redeemable. The threat to the business of the appellant cannot stop the plaintiff to seek his remedy. It can be redeemed by the plaintiff/respondent at any time as per law.

29. I have perused judgment dated 05.12.2023, learned Trial Court has granted the following relief:

> *"On the basis of discussion and findings on the above said issues, suit of the plaintiff is decreed with costs and preliminary decree is passed in favour of the plaintiff to the effect that the plaintiff shall be entitled to relief of redemption of the mortgage deed dated 02.03.1989 on payment of the mortgage amount of Rs.9000/- by the plaintiff to the defendant within one month. In case the defendant refuses to accept the said amount, the plaintiff shall be at liberty to deposit the said amount in the court within a further period of one month and the plaintiff shall be entitled to seek final decree from the court for getting possession of the suit property."*

30. In this view of matter and in the light of above discussion, I do not find any error, illegality or perversity in the judgment dated 05.12.2023 passed by the learned Trial Court. Hence, the judgment and decree dated 05.12.2023 are upheld and the appeal is hereby dismissed. Decree sheet be prepared. Record of learned Trial Court be sent back along with copy of this judgment. Appeal file be consigned to the record room (Sessions) Fatehgarh Sahib, after due compliance."

7. It is evident from the aforesaid observations that it was own case of the appellant-defendant that he was mortgagee by virtue of the

mortgage deed dated 02.03.1989; and when the plaintiff sought redemption of that mortgage, the appellant-defendant wants to resile from that mortgage deed.

8. Considering the aforesaid facts and circumstances, this Court has no reason to take a different view comparing to the concurrent findings of facts as recorded by the Courts below as the findings are found to be based upon proper appreciation of evidence on record. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

May 14, 2025 **(DEEPAK GUPTA)**
Sarita **JUDGE**

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

Sarita Rani
2025.05.16 10:20
I attest to the accuracy
of this document/order