IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209 **RSA-681-2008(O&M)**

Date of decision: 22.12.2025

Vidya Rattan & Another

...Appellant(s)

Vs.

Mahender Kumar & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumeet Mahajan, Senior Advocate with
Mr. Shrey Sachdeva, Advocate
Ms. Shruti Singla, Advocate
for the appellants.

Mr. Dinesh Arora, Advocate
Mr. Jatin Sehra, Advocate
for respondents No.2(iii) and (iv).

***

NIDHI GUPTA, J.

The plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the appellants for possession by way of redemption, has been dismissed by both the Courts below.

2. The case, as pleaded by the appellants in the plaint was that Puran Chand, Girdhari Lal, Ishwar Dayal (father of the plaintiffs), and Ugar Sain were all owners in possession of the shop in dispute. All the aforesaid owners had executed a registered Mortgage Deed dated 11.11.1971 mortgaging suit shop with possession to Karam Chand/defendant No.3 for a

sum of Rs.2,000/-. Thereafter, defendant No.3 inducted defendant No.2/Ram Chander as his tenant vide Rent Note dated 8.12.1971 for the period upto 07.03.1972. Subsequently, Karam Chand transferred the mortgagee right in favour of defendant No.4/Lachhman Dass vide Mortgage Deed dated 01.03.1976. Defendant No.4 further sold his mortgagee rights in favour of defendant No.1/Mahender Kumar vide registered Deed dated 21.10.1993. All this while, defendant No.2 continued as tenant. In the meantime, vide Suit No.129 decided on 28.04.1976 a Family Settlement was arrived at amongst Puran Chand, Girdhari Lal, Ishwar Dayal and Ugar Sain; as per which, the disputed shop fell to the share of Ishwar Dayal. Plaintiffs are the Legal Heirs of Ishwar Dayal. Accordingly, plaintiffs filed the instant Suit on 19.11.1999 to get the shop redeemed and free from all encumbrances on payment of Rs.2,000/- to defendant No.1.

3. Upon notice, the Suit was contested by the defendant No.2 Ram Chander through his LRs by filing written statement stating that the Mortgage Deed was a sham transaction. It was not disputed that Ishwar Dayal was owner in possession of the shop in question. However, it was denied that defendant No.3 had inducted defendant No.2 as tenant. Rather, it was contended that Ishwar Dayal had inducted defendant No.2 Ram Chander as tenant in the shop; and after the death of Ram Chander, his Legal Representatives have been tenants in possession of the disputed shop. It was further contended that defendant No.2 was in physical possession of the

shop in dispute prior to 08.12.1971. It was denied that defendant No.2 had executed a Rent Note in favour of defendant No.3. Rather, it was pleaded that Ishwar Dayal might have obtained the signatures of defendant No.2 Ram Chander on some false pretext, but Ram Chander never signed any Rent Note. Accordingly, dismissal of the Suit was prayed for.

4. Defendants No.1 and 3 to 5 failed to appear in the Suit despite service. As such, they were proceeded against ex parte.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 20.03.2006: -

> *"1. Whether the suit property was mortgaged in favour of defendant no. 3, as alleged? OPP*
>
> *2. Whether defendant no. 2 was inducted as tenant over the demised premises? OPP*
>
> *3. Whether defendant no. 3 sold the mortgagee rights to defendant no. 4 as alleged? OPP*
>
> *4. Whether defendant no. 4 further launched the mortgagee rights in favour of defendant no. 5? OPD*
>
> *5. Whether the property in question fallen in the shares of Girdhari Lal, Ishwar Dayal and Ugar Sain in a family settlement, as alleged? OPD*
>
> *6. Whether the plaintiff has redeemed the shop in question as mortgagor? OPD*
>
> *7. Whether the plaintiff is entitled for the possession of the property in question as detailed in para no. 1 of the plaint upon the payment of Rs. 2000/- to defendant no. 1?0PD*

8. Whether the plaintiff has no locus-standi and cause of action to file the suit ? OPD

9. Whether the plaintiffs are estopped by their own acts and conduct? OPD

10. Whether the suit is barred by limitation ? OPD

11. Relief"

6. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, issues No.1 to 7 were decided against the plaintiffs and in favour of the defendants; issues No.8 to 11 were not decided as the same were not pressed; and accordingly, vide judgment and decree dated 06.12.2006 learned Civil Judge (Senior Division), Faridabad had dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Faridabad vide judgment and decree dated 24.10.2007. Hence, present Second Appeal by the plaintiffs.

7. It is inter alia submitted by learned Senior Counsel for the appellants that the learned Courts below have non-suited the appellants primarily on the ground that the registered Mortgage Deed was not a genuine document as the same was not signed by the mortgagee Karam Chand/defendant No.3; and that the real relationship between the parties was that of landlord and tenant; and therefore, the LRs of defendant No.2 could not be evicted from the shop in question except under the Rent Laws.

8. Learned Senior Counsel argues that the learned Courts below were in error in holding that the Mortgage Deed (Ex.P-1) was not a genuine

document for not being signed by the mortgagee as, as per Section 59 of the Transfer of Property Act, a mortgagee is not required to sign the Mortgage Deed. Learned Senior Counsel refers to the provision in extenso to elaborate his point. However, submits that this aspect of the matter has not been considered by the learned Courts below.

9. Learned Senior Counsel further points out that the Mortgage Deed could not have been rejected also for the reason that the plaintiffs had proved same in accordance with law. The plaintiffs had duly examined one of the executants Girdhari Lal PW3, and the Scribe Baldev PW6 of the Mortgage Deed. The original Mortgage Deed was brought on record. Even the subsequent Deeds of Sale of Mortgagee Rights (Exs.P3, P5 and P7) were proved. Therefore, the plaintiffs had duly discharged the burden; and the onus was upon the defendant no.2 to prove that the said Deed was a sham document. Therefore, the findings of the Courts below to the contrary are not only based on surmises and conjectures but are a result of misconstruction, non-consideration of the material and evidence on record and application of correct principles of law.

10. Learned Senior Counsel further submits that the non-mentioning of Shri Kundan Lal (payer of the mortgagee amount before the Sub-Registrar), in the Mortgage Deed (Ex. P-1) was not relevant because Mortgage Deed, unlike Gift deed can be a unilateral one and payment therefore, could be made by any person on behalf of the mortgagee.

Moreover, when the burden with regard to registration of the mortgage deed was discharged, in the absence of any evidence having been brought on record by the defendant to discharge their onus, the presumption attached to the endorsement of Sub-Registrar regarding execution and payment of mortgage money could not have been rejected.

11. Learned Senior Counsel further submits that the plaintiffs had also proved that the defendant No.2 was inducted as a tenant in the suit shop by defendant No.3 by producing the Rent Note dated 8.12.1971 (Ex.P2). However, even the said Rent Note has been disbelieved by both the Courts on the ground that the same was a unilateral document allegedly executed by defendant No.3 in favour of defendant No.2. Learned Senior Counsel contends that in doing so, the learned Courts below have ignored the positive evidence brought on record by the plaintiffs to prove the execution of the said Rent Note (Ex.P2). The Courts below have ignored that the plaintiffs had examined Baldev PW6/Scribe of the Rent Note, who had deposed that he knew Ram Chander personally. The said Rent Note was also proven by Onkar (PW5), Attesting Witness of the said Rent Note, who had deposed that the stamp paper for the Rent Note was produced by defendant No.2.

12. Learned Senior Counsel further contends that the Rent Note could not have been discarded, even on the basis of the report of the handwriting and document finger print expert; as no opportunity was given to the plaintiffs for the appointment and examination of a handwriting and

finger print expert for contradicting the report Ex. DW-5/A of Shri Naresh Kataria who had opined that the specimen signatures of Ram Chander did not tally with his signatures on Ex. P-2; thereby occasioning a failure of justice. It is submitted that the necessity for the plaintiffs to move an application before the learned Additional District Judge for appointment and examination of a handwriting and finger expert for contradicting the report of Naresh Kataria arose in view of the fact that the rent note Ex. P-2 contained the signatures of Ram Chander only; whereas photographs Ex. D-1 contained signatures of Ram Chander as well as that of Karam Chand. The said fact proves that photographs Ex. DW-5/1 on the basis of which the handwriting expert Shri Naresh Kataria had based his opinion did not relate to the original document Ex. P-2; and therefore, his opinion could not be taken to be correct. Thus the findings recorded by the Addl. District Judge in para 20 that no clarification had been sought from Naresh Kataria DW-5 in his cross examination about the photograph Ex. DW-5/1 is clearly not sustainable; and therefore, on the basis of the said expert report it could not have been concluded that execution of Ex. P-2 was not proved. It is submitted that the learned Additional District Judge ought to have allowed the application for additional evidence for examination of a handwriting and fingerprint expert.

13. It is submitted that accordingly, both the Courts below have erroneously dismissed the suit of the plaintiffs as a result of improper and subjective appreciation of evidence, and the judgment and decree so passed

is vitiated due to perversity of reasoning and due to surmises, misreading and non-consideration of material on record, having: (i) ignored evidence on record; (ii) misdirected themselves in the matter of legal principles governing a valid and complete mortgage; and iii) wrongly cast burden on plaintiffs as to proof of mortgage deed and rights of redemption thereunder.

14. Learned Senior counsel accordingly prays that the present Appeal be allowed, and the impugned judgments and decrees of the learned Courts below, be set aside.

15. Per contra, learned counsel for defendant No.2 - represented through his LRs/respondents No.3 to 7 herein, opposes the submissions advanced on behalf of the appellants and submits that the impugned judgments and decrees of the learned Courts below suffer from no error. It is submitted that it was the clear case of the defendant No.2 before the Courts below that the Mortgage Deed was a sham transaction concocted by the plaintiffs, merely as a ploy to evict the defendant no.2 from the suit shop. It is pointed out that plaintiff was unable to prove the Mortgage Deed. In this regard, learned counsel also refers to the cross-examination of Vidya Rattan PW2 who stated that the Mortgage deed Ex P-1 was not executed in his presence. Suggestion was duly given to PW2 that Mortgage deed Ex P-1 was prepared to evict Ram Chander. Even the Rent Note Ex P-2 was also not executed in his presence. Similar is situation about Ex.P3 to Ex.P5. Moreover,

all mortgagees are relatives and close friends. Thus, there is no error in the finding of the Courts below that the Mortgage Deed was a sham document.

16. Learned counsel further contends that even the Rent Note (Ex.P2) allegedly executed by defendant No.2 in favour of Karam Chand has been rightly rejected by the Courts below as the Rent Note does not bear the signatures of Karam Chand. Thus, there is no sign of the alleged landlord. Even the sign of the defendant No.2 was held to be not proved in view of the Report of the Handwriting Expert. Moreover, in the cross-examination of Girdhari Lal PW3, suggestion was given to him that Ram Chander is continuing as tenant in the shop since 1970 under Ishwar Dayal to which he denied. He stated, "I am not aware that Ram Chander did not execute rent note Ex.P2." He also admitted that rent note does not bear signature of Karam Chand. Suggestion was also given to him that Mortgage Deed Ex P-1 was prepared to evict Ram Chander.

17. Furthermore, defendant no.2 had examined his neighbour Om Parkash Malik as DW3. In cross-examination Om Parkash stated that Ram Chand paid rent to Ishwar Dayal in 1970, but he does not remember month and year. Trilok Chand DW4 is another neighbour. In his cross-examination in answer to a question put to him he stated Ishwar Dayal did not give the shop on rent to Ram Chander in his presence but further stated that Ram Chander paid rent to Ishwar Dayal 2-3 times in his presence. Naresh Kataria Handwriting Expert DW5 proved that signatures on rent note are not of

Ram Chander. It is argued that therefore, all of the above goes to show that respondent no 2 tenant has successfully proved that Ram Chander was inducted as tenant by Ishwar Dayal.

18. It is further argued that all the mortgagees had chosen not to appear and were proceeded ex parte. Best evidence was Karam Chand to prove case of the plaintiff but he neither appeared nor any effort was made by plaintiff to examine him as witness. Once it is proved and plaintiff has failed to prove otherwise, that Ram Chander was inducted as tenant by Ishwar Dayal then the tenancy rights of the respondent no. 2 restore back to Ishwar Dayal or his LRs; for which appropriate remedy to eject the tenant is under Rent Act. The tenant cannot be evicted by redemption of mortgage deed, and the tenancy is not affected by redemption. Even otherwise if the case of the plaintiff is taken to be true as it is, though it is vehemently denied, then also redemption of mortgage deed does not take away tenancy rights of the respondent no 2. It is admitted fact that disputed mortgage deed carries a clause giving right to mortgagee to rent out the shop and it is case of plaintiffs that Karam Chand mortgagee inducted the respondent no 2 as Tenant. In view of this fact also once the plaintiff admits the clause in mortgage deed and admits that tenant was inducted by mortgagee, the tenancy does not come to an end by redemption. Proper course of action to get eviction order will be under the Rent Act. In support of his above contention, learned counsel submits that the present case is

covered by the Full Bench judgment of this Court in **Jagan Nath v. Mittar Sain, (P&H) (F.B.) : Law Finder Doc ID # 31141,** holding that: -

> *"10. After giving the matter my careful consideration, I have come to the conclusion that: -*
>
> *(1) A tenant of a mortgagor, after the mortgage, necessarily attorns to the mortgage and thereby becomes a tenant of the mortgagee, unless his tenancy has been put an end to by the mortgagor at the time of effecting the mortgage. <u>On the redemption of the mortgage, he again is relegated to his position of a tenant of the mortgagor;</u>*
>
> *(2) The mere execution of a rent-note by the tenant of the mortgagor in favour of the mortgagee, after the mortgage has been effected does not create a fresh tenancy in favour of the mortgagee. But there is nothing to prevent the tenant to surrender his earlier tenancy and enter into a fresh contract of tenancy with the mortgagee; and in each case, it will have to be determined on evidence whether a tenant of the mortgagor did surrender his tenancy and obtained a fresh tenancy from the mortgagee after the mortgage came into being;*
>
> *(3) That a tenant inducted by the mortgagee remains a tenant during the continuance of the mortgage and on the redemption of the mortgage, the tenancy comes to an end;*
>
> *(4) That in the case of agricultural tenancies, proposition No. (3) does not absolutely hold good. There is an exception to it, namely, that the tenant of a mortgagee of agriculture land will continue to be its tenant even after redemption provided he has been inducted bonafide and in the like*

manner as prudent owner would have done for the proper management of the land. Even in such a case, the operation of the lease cannot extend beyond the period for which it was granted. No lease can be granted if there is an express prohibition in the mortgage deed.

The onus to prove the exception is on the tenant and unless a clear case is made out in favour of the exception, the general rule will prevail.

(5) That it is open to a mortgagor to permit the mortgagee to induct tenants even beyond the terms of the mortgage, and if the mortgagee does so, on redemption, they will continue to be the tenants of the mortgagor."

(Emphasis added)

19. Learned counsel for defendant No.2 further relies upon judgment of this Cout in **Jiwan Kumar v. Mohinder Pal Kaur, (Punjab And Haryana) : Law Finder Doc ID # 1409622;** wherein it is held that:-

"11. Here the defendant-appellant is not questioning the mortgage, however, what he is trying to save his possession from the landlord who by circumventing the law is trying to defeat the rights of the tenant available to it under rent protection laws. The facts of the present case tell a clear story that these mortgage deeds were created only for the purpose of circumventing the provisions of the Rent Act and to deny the tenant's protection under the rent protection laws. It is reported by learned Court while submitting a report that the value of one shop in the area was approximately Rs. 60,000/-. The rental value of the shop was Rs. 1200/- per month. So in other words, for rent of 8 months rent, the property was mortgaged with

possession permitting the mortgagee to enjoy the property. In other words, for an amount less than year's rent, the mortgage was created. That itself shows that the mortgage was for the purpose of circumventing the provisions of Rent Act particularly keeping in view the relationship between the mortgagor and the mortgagee and all the 7 shops had mortgaged in similar manner.

12. This is not a case of normal mortgagor mortgagee relationship. In the present case, it is apparent that the mortgage was created to circumvent the provisions of the rent protection laws granting protection to the tenants from eviction except on the grounds available under the Rent Act. The mortgagor who is mother has specifically got recorded in the mortgage deed that her daughter who is a mortgagee shall be entitled to derive profits from the shop. One of the way to derive profit by the mortgagee is to lease out the property. There is no clause in the mortgage deed which provide that the tenant of the mortgagee would have to vacate the premises on redemption. In absence thereof and in particular the facts of the present case, the tenant who is not related and has fallen prey to the evil designs of the plaintiff and defendant No.1."

20. Learned counsel contends that therefore, even if case of the plaintiffs is accepted that defendant No.2 was inducted as a tenant by defendant No.3, even so in the ratio of the above-referred judgments, upon redemption of mortgage, defendant No.2 can be ousted by the plaintiffs from the suit premises only by taking recourse to the Rent Act.

21. Ld. Counsel further clarifies that the stand of the plaintiff that Karam Chand original mortgagee inducted the defendant No.2 as a tenant

also falls for the reason that rent note relied upon by the plaintiff itself does not bear any signature of Karam Chand. Even the signatures of Ram Chander (defendant No.2) on the rent note were not found to be one of the Ram Chander and in this regard hand-writing expert report was brought on record is Exhibit DW5/A prepared by Naresh Kataria hand-writing expert. In the written statement filed by Ram Chander in ejectment petition filed by Devinder Kumar it was specific stand of Ram Chander that he has been inducted tenant by Ishwar Dayal. An application for ejectment of Ram Chander was filed by Devender Kumar, which was rejected on the ground that Ram Chander has denied relationship of landlord tenant between him and Devinder kumar. Said application was also dismissed on the ground that since ejectment petition was filed on the ground of nonpayment of rent hence this issue is no longer available. The plaintiff admits respondent no. 2 to be tenant and in continuous tenancy. It is part of pleading that alleged mortgagee, Mahender Kumar filed ejection petition against LRs of Ram Chander, who tendered rent. There also case of LR's of Ram Chander was that he has been inducted as tenant by Ishwar Dayal and not Mahender Kumar. Para 20 of Appellate Court judgment and para 10 of Civil court judgment specifically deal with issue as to who inducted Ram Chander as Tenant and both courts have returned concurrent finding that Ram Chander was inducted as tenant by Ishwar Dayal.

22. Ld. Counsel reiterates that the mortgage deed Ex. P-1 does not bear signature of Karam Chand. The mortgage deed dated 16.02.76 registered on 01.03.1976 whereby allegedly Karam Chand transferred his mortgage rights do not reveal that the shop in question was rented out by him to Ram Chander. The mortgage deed has been prepared to avoid the provisions of Rent Controller. Suit was dismissed recording a finding that defendant No.2 was inducted as a tenant by Ishwar Dayal on a monthly rent of Rs.200/- prior to execution of alleged mortgage deed Ex. P-1. Appeal filed by the plaintiffs was also dismissed vide judgement dated 24.10.2007. Ld. First Appellate Court observed in Para No.19 that absence of signatures of Karam Chand on Exhibit P-1, close relationship of mortgager and mortgagee, non-examination of Karam Chand original mortgagee as well as Kundan Lal who allegedly paid mortgage money of Rs.2000/- indicates that Exhibit P-1 is not a genuine document. The presumption attached to the endorsement of the Sub-Registrar stands rebutted. Learned counsel accordingly prays for dismissal of the present appeal.

23. No other argument is made on behalf of the parties.

24. I have heard learned counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of the appellants.

25. The chronological sequence of events as evinced from the record is as follows: –

<u>11.11.1971:</u> <u>Ex. P-1:</u> Ishwar Dayal, Girdhari Lal and Uggar Sain all s/o Mohar Singh and Puran Chand s/o Bhola Nath were owners in possession of shop measuring 10X60 situated at bazar Uncha Gaon, Ballabgarh, District Gurgaon (now District Faridabad). On 11.11.1971 all the aforesaid owners executed a registered Mortgage Deed (Ex. P-1) whereby the aforesaid shop was mortgaged with possession to Karam Chand (Defendant No. 3). The deed of mortgage in possession was got registered in the office of Sub Registrar, Ballabgarh. Rs. 2000/- was also paid before the Registrar. Actual physical possession was handed over to the mortgagee. As per the said mortgage deed, the mortgagee was entitled to let out the shop in question and receive the rent.

<u>08.12.1971 (Ex. P-2):</u> The aforesaid Karam Chand inducted one Ram Chander s/o Pyare Lal (defendant no. 2) as tenant in the suit shop. The Rent Note dated 08.12.1971 (Ex. P-2) was executed by Ram Chander (tenant/defendant No. 2) and Karam Chand (defendant No. 3). The aforesaid rent note is signed by Ram Chander. This fact has been admitted by Ram Chander in his written statement to the instant suit.

<u>16.02.1976 (Ex. P-3):</u> Karam Chand (defendant No. 3) sold his mortgage rights of the shop in question to defendant no. 4 (Lachman Dass) vide registered deed of sale dated 16.02.1976 registered on 01.03.1976. The shop in question remained in possession of defendant No. 2 as tenant under the new mortgage.

28.04.1976 (Ex. P-4): In the meanwhile, a family settlement took place between the aforesaid four owners, Puran Chand on one side and Ishwar Dayal, Girdhari Lal and Uggar Sain on the other side in which the shop in question fell to the share of Ishwar Dayal, Girdhari Lal and Uggar Sain.

A further family settlement took place between 3 brothers namely Ishwar Dayal, Girdhari Lal and Uggar Sain in which shop in question fell to the share of Ishwar Dayal (father of plaintiff No. 1). The aforesaid family settlement was recognised in the Judgment and Decree dated 28.04.1976 passed in Civil Suit No. 129 dated 02.03.1976.

09.06.1984 (Ex. P-5): Defendant No. 4 (Lachman Dass) further sold his mortgage rights vide sale deed dated 09.06.1984 to defendant No. 5 (Davinder Kumar).

24.01.1989: Ishwar Dayal father of plaintiff No. 1 and husband of plaintiff No. 2 died on 24.01.1989. Plaintiffs are legal heirs of Late Sh. Ishwar Dayal.

08.09.1993 (Ex. P-7): Defendant No. 5 (Davinder Kumar) further sold his mortgage rights to defendant No. 1 (Mahender Kumar) vide registered deed of sale of mortgage rights dated 08.09.1993 registered on 21.10.1993. Defendant no. 2 continued to be tenant under the said mortgage under defendant No. 1.

02.01.1998 (Ex. P-8): Defendant No. 1 as mortgagee of appellants filed ejectment petition (Ex. P-8) under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 against Ram Chander stating that he has purchased the mortgage rights from defendant No. 4 (Davinder Kumar) and that tenant Ram Chander (defendant No. 2) is liable to be ejected from the premises as he has not paid rent w.e.f. 07.11.1993 to 06.12.1997.

16.03.1998 (Ex. P-9): Ram Chander (tenant/defendant No. 2) appeared before the Rent Controller in the aforesaid case on 16.03.1998 and made statement (Ex. P-9) to the following effect:

> *"Stated (Ram Chander) that petitioner is wrongly claiming rent of 49 months. Petitioner cannot claim rent of more than 3 years. I want to tender rent for 3 years prior to the institution of the present case @ Rs. 200/- per month amounting to Rs. 7,200/-, cost of case and interest. The same be got paid to petitioner."*

Further stated as under:

"3 years rent @ Rs. 200/- per month	*:*	*Rs. 7200/-*
Interest	*:*	*Rs. 984/-*
Cost	*:*	*Rs. 200/-*
Total	*:*	*Rs. 8384/-"*

Ex. P-10: Ram Chander vide Statement (Ex. P-10), further stated as under:

> *"Statement of Ram Chander – Respondent*
>
> *Stated that I tender in the court rent in the amount of Rs.7200/-, interest of Rs. 984/- and cost of Rs. 200/- as fixed in the court. The same be paid to petitioner".*

15.10.1999: Plaintiff asked defendant No. 1 to redeem the shop in question and requested the defendant No. 1 & 2 to put the shop in question in their possession on redemption but they refused to do so on 15.10.1999.

<u>19.11.1999:</u> Accordingly, the present suit was filed with a prayer that a decree of redemption of possession in respect of the shop in dispute be passed in favour of the plaintiff on payment of mortgage amount of Rs. 2000/- to defendant No. 1.

<u>19.08.2005:</u> The legal representatives of defendant No. 2 filed written statement dated 19.08.2005 in which they took the stand that the shop in question was owned by Sh. Ishwar Dayal who rented out the same to defendant No. 2 in the year 1970. It was stated that Ram Chander, and after his death his legal representatives, have been in occupation of the shop in question prior to 08.12.1971 as tenants and that the shop was allegedly rented out to Ram Chander by Sh. Ishwar Dayal owner of the premises in question. It is important to note that regarding the signature on the rent note it has been stated in the written statement, that "*<u>the defendant No. 2 never executed rent note in favour of defendant No. 3 Karam Chand as alleged. In the alternative Sh. Ishwar Dayal might have obtained the signature of defendant No. 2 Ram Chander on some false pretext but he never signed any rent note consciously".</u>*

<u>18.10.2006</u>: The plaintiffs Vidya Rattan as PW-2 and Girdhari Lal as PW-3 tendered aforesaid mortgage deed dated 11.11.1971 in the court as Ex.P-1; along with their evidence by way of affidavit (examination-in-chief) dated 18.10.2006 (<u>at page No. 208, 209 and 210 of the record</u>).

<u>06.12.2006</u>: The suit of the plaintiff was dismissed by the ld. Trial Court.

10.01.2007: The first appeal was filed by the plaintiffs against the abovesaid Judgment and Decree dated 06.12.2006 passed by Addl. Civil Judge (Sr. Div.), Faridabad.

24.10.2007: The appeal of the appellants was also dismissed by the Additional District Judge, Faridabad.

07.01.2008: The present regular second appeal was filed by the plaintiffs on 07.01.2008.

26. The learned Courts below have dismissed the suit of the appellants, primarily on the following grounds and findings: –

(i) The execution of Mortgage Deed (Ex. P-1) was not proved because it did not bear the signatures the mortgagee Karam Chand;

(ii) The Mortgage Deed (Ex. P-1) cannot be a unilateral one and the factum of execution of mortgage on behalf of Karam Chand through Kundan Lal is also not mentioned therein;

(iii) Shri Karam Chand who was alive and residing at Ballabgarh has not been examined by the plaintiffs to prove the genuineness of Mortgage Deed (Ex. P-1); and therefore, the recital in (Ex. P-3) on the part of Karam Chand that he had taken the shop in dispute of mortgage on the basis of Mortgage Deed itself does not prove the genuineness of Mortgage Deed (Ex. P-1);

(iv) The absence of signature of Karam Chand on (Ex. P-1); close relationship of mortgager and mortgagee; non-examination of Karam Chand; as well as Kundan Lal who had allegedly paid mortgage money of Rs. 2000/- on behalf of Karam Chand indicates that (Ex. P-1) is not a genuine document and payment of mortgage money is also not proved at all;

(v) Therefore, presumption, if any, attached to the endorsement of the Sub-Registrar regarding execution and payment of mortgage money stands rebutted;

(vi) The Rent Note (Ex. P-2) which was alleged to have been executed by Ram Chander in favour of Karam Chand was a unilateral document. Moreover, signatures of Ram Chander on said rent note were not proved as, as per report of fingerprint and handwriting expert the alleged signatures of Ram Chander on Ex. P-2, did not tally with his specimen signatures;

(vii) There was no cogent and convincing evidence on record to prove that defendant no. 3 had inducted defendant no. 2 as tenant in the shop;

(viii) Ram Chander defendant no. 2 was never inducted as tenant by Karam Chand defendant no. 3. Ram Chander was a tenant under Ishwar Dayal since deceased, in the shop in question before 1971 and all the documents Ex. P-1 to P-5 have been executed only to circumvent to provisions of Rent Act. Therefore, appellants are not entitled to the relief claimed.

27. However, in holding as above, the learned Courts below have ignored very vital factual and legal aspects of the matter, which have a material bearing on the issues at hand. I shall deal with each of the above grounds hereinunder.

28. The Mortgage Deed in question has been disbelieved by the learned Courts below on account of the fact that the same was not signed by the mortgagee. In this regard, it is necessary to note a few admitted facts. The Ownership of Ishwar Dayal/predecessor-in-interest of the plaintiffs, over the suit shop is not disputed. The Mortgage Deed dated 11.11.1971 (Ex.P1) was executed by Ishwar Dayal, and other co-owners. Thereafter, vide judgement and decree dated 28.04.1976 the suit shop came exclusively to the share of Ishwar Dayal. Ishwar Dayal died on 24.01.1989. The Suit was filed by LR's of Ishwar Dayal.

29. The learned Courts below have held that the Mortgage Deed dated 11.11.1971 (Ex.P1) is shrouded in suspicious circumstances as it does not bear the signatures of the mortgagee Karam Chand; and only bears the signatures of Kundan Lal son of Pyare Lal, who had paid the mortgage money of Rs.2,000/- on behalf of Karam Chand and whose signatures are borne on the endorsement of Ex.P1. However, as rightly pointed out by learned Senior Counsel for the appellants, signature of mortgagee Karam Chand was not required on the Mortgage Deed in terms of Section 59 of Transfer of Property Act, which reads as follows: –

> *"59. Mortgage when to be by assurance. —*
>
> *Where the principal money secured is one hundred rupees or upwards, a mortgage [other than a mortgage by deposit of title-deeds] can be effected only by a registered*

instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by [a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.”

30. Thus, Section 59 of Transfer of Property Act stipulates that mortgage to secure principal amount of 100 or upward can be affected only by registered instrument signed by the MORTGAGOR and attested by at least two witnesses. The Mortgage Deed in question (Ex. P-1) is a registered document. It bears the signatures of the mortgagors namely Ishwar Dayal, Puran Chand, Girdhari Lal and Uggar Sain who were jointly owners of the property in the year 1971. The aforesaid Mortgage Deed has been duly attested by two witnesses as apparent from the Ex. P-1 itself. A bare reading of Section 59 of the Transfer of Property Act makes it crystal clear that there is no requirement of law that the mortgage deed is required to be signed by mortgagee. In the case at hand the mortgage deed was signed by mortgagors duly attested by two witnesses as mandated/stipulated in the provision. On behalf of the mortgagee one Kundal Lal has signed the Deed. Thus, a valid mortgage was created in favour of Karam Chand satisfying all the conditions as enshrined in Section 59 of the Transfer of Property Act. Therefore, both the courts have committed grave error in disbelieving the registered Mortgage Deed dated 11.11.1971 (Ex. P-1) duly signed by

mortgagors and attested by two witnesses by observing that the same does not bear the signatures of Karam Chand (mortgagee). The aforesaid observation of the Courts below is contrary to the requirement of execution of Mortgage Deed creating mortgage in favour of the defendant No. 3 (Karam Chand). Thus, both the courts below were not justified in discarding the Mortgage Deed (Ex. P-1) for want of signature of mortgagee.

31. I am supported in my above view by a judgment of the Hon'ble Supreme Court of India in the case titled as **"Tarachand Vs. Sagarbai @ Chaiyalibai" (2007) 5 SCC 392,** wherein it is held as under: -

> *"20. The deed of mortgage might have been preceded by an agreement, but, when the terms are altered by a later document which is registered, the latter would prevail. We have noticed hereinbefore the effect of Section 59 of the said Act. <u>It is immaterial for the purpose of admissibility of the document or otherwise, whether the mortgagee was a signatory to the deed of mortgage or not.</u> <u>Indisputably, the deed of mortgage has been acted upon.</u> The appellant himself purchased the stamp paper for its execution. He knew the terms thereof. The parties proceeded on the basis that the said terms were binding on them. It, therefore, does not lie in the mouth of the appellant now at this stage to contend, particularly when no such contention had been raised before the courts below, that the same cannot be given effect to."*

(Emphasis added)

32. The Courts below have committed grave error also in ignoring the fact that <u>Mortgage Deed dated 11.11.1971 (Ex. P-1) is a registered</u>

document. Therefore, presumption of truth is attached to the same. It has been so held in a catena of judgments of the Hon'ble Supreme Court; including in the case titled as "**Rattan Singh & others Vs. Nirmal Gill & others, (2021) 15 SCC 300"**, wherein it has been held as under:

> "33. *To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in **Prem Singh v. Birbal**. The relevant portion of the said decision reads as below:*
>
> > *"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption." (emphasis supplied)*
>
> *In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.*"

33. The Hon'ble Supreme Court of India in "**Ishwar Dass Jain (dead) through LRs Vs. Sohan Lal (dead) by LRs, (2000) 1 SCC 434"**, has held that: -

> "*27. We shall next refer to the vital evidence or facts relating to the mortgage which have not been considered by the Courts*

*below. The defendant admitted in his evidence as DW2 that the mortgage deed was executed by him. The endorsement of the Sub-Registrar shows that the amount of Rs.1000/- was paid as mortgage money. There is a presumption of the correctness of the endorsement made by the Sub-Registrar under Section 58 of the Registration Act (vide **Baidyanath Singh vs. Jamal Bros. & Co. Ltd. AIR 1924 PC 48 : 51 1A 18**), it can be rebutted only by strong evidence to the contrary"*

34. Again, in the case titled as "**Manik Majumder & others Vs. Dipak Kumar Saha (Dead) through Legal Representative & others, (2023) 8 SCC 410"**, the Hon'ble Apex Court has held as under:

"83. In short, it has been authoritatively laid down by this Court that a registered document carries with it, by virtue of it being registered, the presumption as to the authority of the person executing it. In the present case, the Trial Court and the First Appellate Court failed to treat the endorsement made by the District Sub-Registrar on the body of the sale deed, as evidence in respect of the authority of Plaintiff No. 2 to execute the sale deed. This is to be considered in light of the fact that at no point of time did the original owner namely, Braja Mohan Dey dispute the execution of power of attorney in favour of Plaintiff No. 2."

35. The ld. First Appellate Court has also erred in disbelieving the registered Mortgage Deed dated 11.11.1971 (Ex. P-1) on the ground that the <u>mortgagee Karam Chand/Defendant No. 2 has not been examined</u> by the plaintiffs. However, in this regard the ld. First Appellate Court ignored the fact

that Karam Chand could not appear in Court because he was paralysed and his mental condition was also not sound. It was so reported at the back of the summons sent to Karam Chand that he is paralysed and not in full normal and mental condition and that the condition of Karam Chand had been shown to the bearer of the summons. The said report was made by Dr. PC Goyal s/o Sh. Karam Chand at the back of the summons itself. Therefore, no adverse inference could be taken against the plaintiffs on account of Karam Chand having not examined. Sh. Kundan Lal who had signed the mortgage deed on behalf of the Karam Chand could not be found and therefore could not be summoned. It is important to note that the mortgage deed executed on 11.11.1971 and witnesses of the plaintiff were examined in the year 2008 i.e. after lapse of more than 37 years. Therefore, even no examination of Kundan Lal was not crucial to the decision of the case.

36. Further, the mortgage deed dated 11.11.1971 (Ex. P-1) was liable to be believed as, <u>under Section 68 read with Section 114 of the Evidence Act, 1872, presumption of truth is attached to a registered document</u>. Section 68 of the Evidence Act is as under: -

> *"68. Proof of execution of document required by law to be attested.*
>
> *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an*

attesting witness alive, and subject to the process of the Court and capable of giving evidence :

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]"

37. Thus, both the Courts below committed error in not appreciating that under Section 68 of the Evidence Act, 1872 it is not necessary to call attesting witness in proof of execution of a document which has been registered in accordance with the Indian Registration Act unless its execution by the person by whom it purports to have been executed is specifically denied. In the present case, neither the mortgagors nor the mortgagee has denied the existence of the mortgage deed (Ex. P-1). Thus, the mortgage deed Ex. P-1 has been duly proved and was liable to be believed particularly when one of the mortgagors namely Girdhari Lal (PW-3) who had executed the said mortgage deed and scribe Baldev (PW-6) have appeared in the witness box and proved the execution of the same.

38. Even otherwise, under <u>Section 90 of the Indian Evidence Act, 1872,</u> presumption of truth is attached to a document which is 30 years old. Section 90 of the Evidence Act is reproduced hereunder: -

"90. Presumption as to documents thirty years old.

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the *particular case considers proper, the Court may presume that the signature and every other part of such document, which purport to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.*

Explanation. - Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. This explanation applies also to section 81."

39. Under Section 90, when a document is 30 years old and is produced from custody which, in the opinion of the court is proper, the court may presume that the said document was duly executed and attested by the persons by whom it purports to be executed and attested. For presumption of valid execution under Section 90 of the Evidence Act, 1872, period of 30 years is to be reckoned from 11.11.1971 to 18.10.2006, when the said deed was tendered in court. Thus, the courts below ought to have raised the presumption that the Mortgage Deed Ex. P-1 was duly executed and attested by the persons by whom it was executed and attested. In view of the above noted facts and case law, it is my clear opinion that the Courts below were in patent error in rejecting the Mortgage deed.

40. Learned Courts below have also non-suited the appellants on the ground that the <u>Rent Note dated 8.12.1971 Ex.P-2 was not proved;</u> as per the Report of Handwriting Expert (Ex.DW5/A) Naresh Kataria DW5, the said Rent Note did not bear the signatures of Ram Chander. It was observed that

DW5 had opined that disputed signature marked D1 did not match with specimen signature of defendant No.2 Ram Chander. Accordingly, learned Courts below concluded that Mortgage Deed (Ex.P1) appears to have been executed in order to eject defendant No.2 from the suit premises; and it was held that plaintiffs have no right to redeem the property in question.

41. However, in holding as above the ld. Courts have ignored that in the written statement filed by him, defendant no.2 has not denied his signature upon the Rent Deed Ex.P-2. Rather a strange plea has been taken that defendant No. 2 Ram Chander never signed any rent note ***consciously***. In Para 3 of the written statement, defendant No.2 has stated as follows: -

> *"3. That para No.3 of the plaint is totally wrong and denied. It is denied that defendant No.3 mortgagee inducted the defendant No.2 as his tenant. It is denied that defendant No.2 has executed any rent note from 8.12.1971 to 7.8.1972. It is denied that defendant No.2 got actual physical possession of shop in dispute from said mortgagee. However, it is submitted that defendant No.2 Ram Chander was in possession of shop in dispute as tenant under Ishwar Dayal much prior to 11.11.1971 and 8.12.1971, the date of alleged mortgage and date of alleged rent note, therefore, question of execution of any rent note in favour of defendant No.3 does not arise and question of taking physical possession of shop in dispute from defendant No.3 does not arise. <u>The defendant No.2 never executed a rent note in favour of defendant No.3 Karam Chand as alleged. In the alternative Shri Ishwar Dayal might have obtained the signatures of defendant No.2 Ram Chander on</u>*

some false pretext but he never signed any rent note consciously…"

(Emphasis added)

42. Thus, Ram Chander has not denied his signature on the Rent Deed. Rather the same are admitted when it is averred that Ram Chander did not sign the rent note '*consciously*'. In view of the aforesaid stand in the written statement the Courts below were not justified in holding that the signature of Ram Chander on the rent note has not been proved. It is also to be seen that the application of the appellants for examining their own expert witness was rejected.

43. Even otherwise, there is overwhelming evidence on record to show that Ram Chander was inducted as tenant by the mortgagee Karam Chand (defendant No. 3) and continued to be so under Defendants No. 4, 5 & defendant No. 1 after they purchased mortgagee rights. The clinching evidence of Ram Chander being tenant under the mortgagee is that, besides the fact that the Rent Note dated 08.12.1971 (Ex. P-2) is signed by Ram Chander himself, the same was also duly proved by attesting witness PW-5 (Onkar Mal), who has duly proved the execution of the rent note. The very fact that the rent note was purchased by Ram Chander and the same was undeniably signed by him and that its execution was duly proved by the witness Onkar (PW-5) there was no justification to disbelieve the genuineness of the rent note.

44. It has also come on record that the defendant No.1 Mahinder had filed Ejectment Petition against the defendant No.2, seeking eviction of the defendant No.2 on ground of arrears of rent; which Ejectment Petition was dismissed as withdrawn as the defendant No.2 had tendered rent to the defendant No.1. It is my considered view that once the defendant No.2 has admittedly tendered rent to defendant No.1, there is implicit admission on part of defendant no.2 that he is tenant under mortgagee defendant No.1 in the suit premises.

45. In this regard, it is also necessary to note that Mahender Kumar (Defendant No. 1) had sought ejection of Ram Chander from the shop in question on the ground of non-payment of rent. The ejectment petition dated 02.01.1998 has been produced on record as Ex.P-8. The aforesaid ejectment petition came up for hearing before the Rent Controller, Faridabad on 16.03.1998. On the said date Ram Chander himself appeared before the Rent Controller and made the following statement/ Ex.P-9, which has already been adverted to hereinabove: -

> ***"Ex. P-9***
>
> *Statement of respondent Ram Chander s/o Pyare Lal aged 50 years r/o Ballabgarh. On S.A.*
>
> *stated (Ram Chander) that petitioner is wrongly claiming rent for 49 months. Petitioner cannot claim rent for more than 3 years. I want to tender rent of 3 years prior to the institution of the present case @ Rs. 200/- per month amounting to Rs. 7,200/-, cost of case and interest. The same be got paid to petitioner.*

RO&AC *sd/-*
Sd/- *Rent Controller*
Ram Chander *Faridabad, 16.03.1998*

Ex. P-10

Statement of Sh. Ram Chander, respondent.

It is stated that I hereby tender in the court rent in the amount of Rs. 7200/-, interest in the amount of Rs. 984/- and cost Rs. 200/-. The same be given to the petitioner.

RO&AC *sd/-*
Sd/- *Rent Controller*
Ram Chander *Faridabad, 16.03.1998"*

46. The aforesaid statement of Ram Chander (defendant No. 2) is clear and unequivocal admission of the fact that he has accepted/admitted Mahender Kumar, the mortgagee, as his landlord while tendering the rent. It is worth noticing that in the aforesaid statement defendant No. 2 has nowhere stated that rent is being deposited under protest or that defendant No. 2 is not admitting Mahender Kumar to be his landlord. It is my view that the aforesaid admission of Ram Chander is clinching evidence, which has been wrongly ignored by the Courts below by merely stating that tender of rent does not amount to admission of tenancy under defendant No. 1. In holding so, the averments of defendant no.2 in the written statement have also been ignored. Thus, the aforesaid finding is on the face of it perverse and is liable to be set aside.

47. In this situation, it would be apposite to refer to judgment of the Hon'ble Supreme Court in "**Thimmappa Rai Vs. Ramanna Rai and others, (2007) 14 SCC 63",** wherein it has been held that the admission made by a party to the suit in an earlier proceeding is admissible against him having regard to Section 58 of the Evidence Act. The relevant observation of the Hon'ble Supreme Court is as under:

> *"23. An admission made by a party to the suit in an earlier proceeding is admissible as against him. Such an admission being a relevant fact, the courts below in our opinion were entitled to take notice thereof for arriving at a decision relying on or on the basis thereof together with other materials brought on records by the parties. Once a party to the suit makes an admission, the same can be taken in aid, for determination of the issue having regard to the provisions of Section 58 of the Indian Evidence Act."*

48. The plaintiffs had duly produced statements of defendant No.2 regarding payment of rent (Ex.P9 and Ex.P10) in the Rent Petitions filed by defendant No.1. These facts prove that defendant No.2 was not brought as tenant in the suit premises by Ishwar Dayal.

49. The next contention on part of defendant no.2/the next ground on which the appellants have been nonsuited, is that the <u>Rent Deed has not been signed by the landlord/Karamchand/Mortgagee</u>. However, there is no requirement of law that mandates that rent note is required to be signed by the landlord also. This Court has held in many authoritative pronouncements

that it is not necessary that landlord should also sign rent note. If a rent note is not signed by the landlord, the same can still be relied upon for its contents. This Court in the case titled as **Sudama Parshad v. Surinder Kumar, (P&H) : Law Finder Doc ID # 54490,** has held as follows: -

> *"3. At the time of motion hearing reliance was placed by the learned counsel for the petitioner on **Nand Kishore v. Jagdish Chander Jain, 1985 Punjab Law Reporter 215**. According to him, since the rent note was signed by the landlords, the document shall be a lease deed in terms of the definition of lease and, therefore, the same could not be looked into. Before the Appellate Authority, this contention was repelled on the ground that <u>it was not disputed that in the present case, rent note is not signed by the landlords. It is signed by the tenant and two witnesses.</u> So, it will not become a lease dead. In the above said ruling, the rent note was signed by both the tenant and the landlord and attested by the witnesses. Therefore, the same was held to be a lease and, thus, inadmissible for want of registration. In any case, in the present case, apart from the rent note Exhibit A-1, there is a copy of the statement of the tenant, Exhibit A-8, dated October 11, 1980, which was made by him in a suit for the grant of the permanent injunction filed by Surinder Kumar, landlord, wherein he categorically admitted that the house, in dispute, was on rent with him. He also admitted his liability to pay the house-tax. In these circumstances, I do not find any illegality or infirmity in the concurrent findings of the authorities below."*

(Emphasis added)

50. The Hon'ble Supreme Court in the case titled as "**Gordhan Vs. Ali Bux, RLW 1981"** has held as under:

> *"9……Merely because a rent note executed by the lessee alone has been produced in the case, the same is not in any manner contradictory of the description of the contract of tenancy between the parties as oral. It is unfortunate that the learned Civil Judge failed to consider the provisions of Sec. 107 of the Transfer of Property Act, which would have made it abundantly clear that there is no conflict in describing the lease as oral and at the same time producing a 'kabuliyat' or a rent note executed by the lessee alone, in support of the alleged oral contract of lease.*"

51. Furthermore, apart from documentary evidence plaintiffs have also led oral evidence. PW-2 Vidya Rattan, PW-3 Girdhari Lal have duly proved the execution of the rent note, and their deposition is consistent and could not be faulted. Thus, the courts below have wrongly rejected the evidence led by the plaintiffs to prove that Ram Chander was the tenant inducted by mortgagee and not by Ishwar Dayal.

52. Even further, the Courts below have failed to appreciate that the only defence of the defendant No.2 is that he was inducted as tenant by father of the appellants, and not by Karam Chand mortgagee or by defendant No.1. However, most importantly, the learned Courts below have ignored the fact that the defendant no.2 has led no evidence whatsoever to show that he was tenant under Ishwar Dayal. Defendant no.2 has failed

to lead any documentary evidence to remotely indicate that he was tenant in the suit property prior to 11.11.1971. No rent note, lease deed, any receipt, or any other document such as register of Municipal Committee, electricity bill, water bill etc. has been produced to prove his tenancy before 11.11.1971 created by Ishwar Dayal. Yet both the courts below have returned a finding that defendant No. 2 was tenant in the premises in question before 11.11.1971. Such perverse findings cannot be sustained.

53. Learned Courts below are also in error in relying upon evidence of DW3 and DW4 in non-suiting the plaintiffs as DW3 and DW4 have not stated anything in their statement to prove that Ishwar Dayal has inducted defendant No.2 as tenant in the suit premises. Yet, both the courts below have held that DW-3 and DW-4 have deposed that Ram Chander was tenant before execution of Ex. P-1 and Ex. P-2. The aforesaid finding is based on complete misreading of statements of DW-3 and DW-4 in this regard. DW-3 in its cross-examination dated 14.11.2006 deposed as under: -

> *".......I cannot tell exact date and month, when Ram Chander had taken disputed shop on rent from Ishwar.........."*

54. From the aforesaid statement it is quite apparent that no value can be attached to the deposition of DW-3 that Ram Chander was tenant before the execution of mortgage deed Ex. P-1 and it does not prove that Ram Chander was inducted as tenant before the execution of the Ex. P-1 and Ex. P-2. On the contrary DW-3 further goes on to say that "*I do not*

remember that this shop was mortgaged to Karam Chand by Puran Chand, Ishwar Dayal, Girdhari Lal and Uggar Sain in 1971". In view of the fact that DW-3 has not denied the fact of mortgage by owners/mortgagors in favour of Karam Chand, it cannot be said that DW-3 has denied the creation of mortgage on 11.11.1971.

55. Similarly, DW-4 in his cross examination dated 24.11.2006 has stated that *"......Ram Chander did not take from Ishwar Dayal on rent in front of me....."* Since DW-4 stated that no tenancy has created in his presence, the deposition of DW-4 that Ram Chander was tenant in the shop before execution of mortgage deed Ex. P-1, is of no consequence. Thus, the reliance placed by the courts below on the statements of DW-3 and DW-4 is completely wrong and unwarranted.

56. Moreover, the rent note is more than 30 years old, and presumption of its execution arises under Section 90 of Indian Evidence Act.

57. Last but not the least, it has been vehemently contended on behalf of the defendant/respondent no.2 that tenancy created by mortgagee does not come to an end on redemption of the suit property; and that defendant no.2 shall continue to be tenant under the appellants. In support of his contention, learned counsel for defendant no.2 has relied upon a Full Bench judgment of this Court in **Jagan Nath supra.** However, the said contention of defendant no.2 is misconceived and legally not sound. It is settled law that if the tenancy has been created by mortgagee, then

upon redemption of the suit property the tenancy created by the mortgagee comes to an end. It is held so by the Hon'ble Supreme Court in "**Thakar Singh (dead) by legal representatives & anr. vs. Mula Singh (dead) through legal representative and others, (2015) 5 SCC 209"** as under: -

> *"9. In **Pomal Kanji Govindji v. Vrajlal Karsandas Purohit (1989) 1 SCC 458 : 1988 Supp (3) SCR 826**, this Court dealt with the same question and arrived at two basic conclusions. The first is that a clog on the equity of redemption will be disregarded by a court of law and <u>secondly that a lease created by a mortgagee in possession of an urban immovable property would not be binding on the mortgagor after redemption of a mortgage even assuming such lease is as a prudent owner of property would have granted in the usual course of management</u>. This Court held: (SCC pp. 479-83 & 492, paras 32-33, 35, 39 & 46)*
>
> *XXX*
>
> > *39. On the second aspect of the question whether the right of the tenants of the mortgagees are protected after the redemption of mortgage, reliance was placed by the first appellate court on the decision of the Full Bench of the Gujarat High Court in Lalji Purshottam v. Thacker Madhavji Meghaji (1976) 17 Guj LR 497. There urban immovable property was mortgaged with possession, mortgagee creating lease during the subsistence of the mortgage. <u>The question was whether after redemption of mortgage such lease is binding on the mortgagor.</u> It was held that Section 76(a) of the Transfer of Property Act would not apply to such cases. <u>There must be express words showing an intention if tenancy was to be created beyond the term of the mortgage. Mere reference that mortgagee is entitled to lease property does not create a binding tenancy on the mortgagor. After the redemption</u>*

<u>of the mortgage the relationship of landlord and tenant does not exist. Such tenant, therefore, does not get any protection under Section 12 of the Bombay Rent Control Act, it was held.</u> The Gujarat High Court had referred to several decisions of this Court. In Mahabir Gope v. Harbans Narain Singh 1952 SCR 775 : AIR 1952 SC 205 which was a decision dealing with a lease created by a mortgagee with possession under the Bihar Tenancy Act, this Court reiterated that the general rule is that a person cannot by transfer or otherwise confer a better title on another than he himself has. A mortgagee cannot, therefore, create an interest in the mortgaged property which will enure beyond the termination of his interest as mortgagee. Further the mortgagee,who takes possession of the mortgaged property, must manage it as person of ordinary prudence would manage if it were his own; and he must not commit any act which is destructive or permanently injurious to the property. Reliance may be placed for this purpose on Section 76 clauses (a) and (e) of the Transfer of Property Act, 1882. It was held that the provisions of Sections 20 and 21 of the Bihar Tenancy Act, did not apply to the lessees since they were not 'settled raiyats' and the lessees could not claim to have secured under the statute occupancy rights in the land. It was further held that the mortgagor was entitled to the possession of the land upon redemption of the mortgage. In a slightly different context in Harihar Prasad Singh v. Deonarain Prasad 1952 SCR 775 : AIR 1952 SC 205, this Court was concerned with a mortgage with possession effected on agricultural land. This Court had to consider in that decision whether under the provisions of the Bihar Tenancy Act the tenant inducted on the mortgaged property during the pendency of the mortgage could claim right to remain in possession after the redemption. Venkatarama Ayyar, J., speaking for the Court pointed out that if the tenant could not resist the suit for ejectment either by reason of Section 76(a) of the Transfer of Property Act or Section 21 of the Bihar Tenancy Act, the

tenant could not get such a right as a result of the interaction of both those sections. This Court ultimately held that the tenants inducted by the mortgagee with possession had failed to establish that they had any right of occupancy over the suit lands and that the plaintiffs were entitled to a decree in ejectment, with future mesne profits as claimed in the plaint. Thus, a right claimable under Section 76(a) of the Transfer of Property Act because of a lease created in the course of prudent management of the property was put on a different footing altogether from a right created by a special statute.

XXX

12. On the facts of this case, it will be seen that the mortgagees were entitled to create tenancies by virtue of the mortgage deed dated 9-3-1942. However, there is nothing in the language of the mortgage deed to indicate clearly that the tenancies created by the mortgagees would be binding on the mortgagors. At the highest, after redemption, and after possession is taken, the mortgagor or mortgagors will also be entitled to receive rent in future. It will be seen that the mortgagor's right to get back possession is expressly recognised by the mortgage deed without any clear and unambiguous language entitling tenants created by the mortgagees to become tenants of the mortgagors. The entitlement to receive rent in future can by no stretch be held to create a tenancy between the mortgagor and the tenants of the mortgagees. This phrase has to be reconciled with the expression immediately preceding it, namely, "on taking possession". It is clear that taking of possession from the mortgagees and his tenants is completely antithetical to recognizing the mortgagees' tenants as the mortgagors' tenants.

If the clause is to be read in the manner that the High Court has read it, the mortgagors would not be able to get back possession on redemption which would in fact be a serious interference with their right to redeem the property inasmuch as the mortgagors would have to evict such tenants after making out a ground for eviction under the Rent Act. Such ground can only be bona fide requirement of the landlord or some ground based on a fault committed by the tenant such as non-payment of rent or unlawful subletting, etc. Further, such ground may never become available to the mortgagor/ landlord or may become available only after many years. It has already been seen that a mortgagee continuing in possession after redemption as tenant of the mortgagor is regarded as a clog on redemption. The position is not different if the mortgagee's tenants continue in possession after redemption. This would necessarily have to be regarded as a clog on redemption as the right to redeem would in substance be rendered illusory."

(Emphasis added)

58. Reference may also be made to judgment of the Hon'ble Supreme Court in **"All India Film Corporation Ltd. & Others Vs. Sri Raja Gyan Nath & Others" (1969) 3 SCC 79,** wherein it is held as under:-

"10. This brings us to the next question. It is whether the tenants could take advantage of the provisions of the East Punjab Urban Rent Restriction Act, 1949? The answer to this question depends on whether we can say that there was a tenancy to protect. We have shown above that the lease came to an end with the mortgagee's interest in the property. Although this was not a case of a redemption plain and simple because a straight

redemption was refused, the property was put to sale and the purchaser paid off the mortgage in full. The interests of the mortgagor and mortgagee united in the person of the purchaser and the mortgage ceased to subsist. In this view of the matter the purchaser, speaking in his character as a mortgagor, could claim that the mortgagee's action came to an end and there did not subsist any relationship between him and the tenants.

11. The respondents attempted to argue that the Rent Restriction Act defines landlord and tenant with reference to the payment of rent. A landlord means a person entitled to receive rent and a tenant means any person by whom or on whose account rent is payable. These definitions apply if the tenancy, either real or statutory, could be said to survive after the termination of the mortgage. The scheme of Section 10 of the Evacuee Interest (Separation) Act, 1951, is that in the case of a mortgagor or a mortgagee: (a) the Competent Officer may pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the property, or (b) the Competent Officer may sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof, or (c) the Competent Officer may partition the property between the mort-gagor and the mortgagee proportionate to their shares, or (d) adopt a combination of any of these measures. It is obvious that method (b) was followed. The property was sold and the mortgage was satisfied. This led to the extinction of the mortgagees' interest and the purchaser acquired full title to the property. <u>The termination of the mortgagee interest terminated the relationship of landlord and tenant and it could not, in the circums-tances, be said to run with the land. There being no</u>

landlord and no tenant, the provisions of the Rent Restriction Act could not apply any further. Nor could it be said that when the mortgagor cancelled the rent note and authorised the mortgagee to find any other tenant, the intention was to allow expressly a tenancy beyond the term of the mortgage. In this view of the matter the decision of the High Court and the Court below cannot be said to be erroneous."

(Emphasis added)

59. The Hon'ble Supreme Court in **"Jadavji Purshottam Vs. Dhami Navnitbhai Amaratlal & Others" (1987) 4 SCC 223,** has further held as under:

"16. Since it has been found that the mortgagors had not empowered the mortgagee to create a lease which would be binding on them after the redemption of the mortgage and since the appellant's rights, as a tenant, did not become enlarged by means of any tenancy legislation which came to be enacted after the lease was granted, the appellant can claim tenancy rights only as against his landlord viz. the mortgagee and not against the mortgagors. As soon as the mortgagee's rights became extinguished by the redemption of the mortgage, neither he nor anyone inducted by him has a right to be in possession of the mortgage property. Consequently, the mortgagors were entitled to seek ejectment of the mortgagee and the tenant inducted by him. The appellant, had no independent rights and hence it was not necessary that he should have been made a party to the suit filed by the mortgagee or the execution application taken out by the mortgagors after the redemption of the mortgage. His position was akin to that of a sub-tenant whose rights were co-terminus with those of the tenant himself. As such the execution

application taken against the mortgagee will be binding on the appellant. Having no independent rights of his own, the appellant cannot contend that the decrees and the execution application are not binding on him as he was not made a party to the proceedings."

(Emphasis added)

60. Thus, keeping in view the above discussion, and the above noted factual and legal position, the present appeal is **allowed.** The impugned judgments and decrees of the ld. Courts below are set aside, and suit of the plaintiffs is decreed.

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

(Nidhi Gupta)
Judge

22.12.2025
Sunena

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