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

RSA-5368-2019 (O&M)

Reserved on : 13.01.2025

Date of Decision : 06.02.2025

Santosh Rani & Ors

... Appellant(s)

VERSUS

Mukhtiar Singh (deceased) through LR

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.K. Manchanda, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants aggrieved by the judgment and decree dated 06.05.2019 passed by the First Appellate Court reversing the judgment and decree dated 09.12.2016 passed by the Trial Court dismissing the suit filed by the plaintiff-respondent.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for possession by way of redemption for a shop measuring 1 marla situated within the limits of Nagar Council, Bagha Purana, District Moga. It was averred in the plaint that the original owner of the suit property was one Balbir Singh son of Kapoor Singh, resident of Mudki Road, Bagha Purana, District Moga. Balbir Singh mortgaged the said property for an amount of ₹30,000/- to one Karanjit Singh son of Hans Raj, predecessor-in-interest of the defendant-appellants herein, vide a registered mortgage deed No.7617 dated 09.01.1996. Karanjit Singh was put in possession of the suit property as a mortgagee. Balbir Singh filed a suit being Civil Suit No.6 of 05.01.2006/20.01.2006 titled Balbir Singh Vs. Karanjit Singh for actual

possession by way of redemption but the said suit was withdrawn by the legal heirs on 21.07.2012. On 21.04.2010 the property in dispute was sold to the plaintiff-respondent for a consideration of ₹3,40,000/- vide a registered sale deed dated 21.04.2010. The plaintiff-respondent initially filed a suit titled Mukhtiar Singh Vs. Karanjit Singh which was later withdrawn on coming to know that the defendant - Karanjit Singh - had already expired. The defendant-appellants filed their written statement raising various preliminary objections on the grounds of maintainability and estoppel. It was averred in the written statement that Balbir Singh was the real brother of the plaintiff-respondent, and the plaintiff-respondent had no right to deny that Karanjit Singh was a tenant in the disputed property. It was further averred that the previous litigation had been concealed. On merits it was stated that Balbir Singh was the owner of the disputed shop and the alleged mortgage deed was executed as a security for the amount advanced to Balbir Singh. It was further the case that the property was let out to Karanjit Singh in June 1994 @ ₹1,000/- per month and in 1996, since Balbir Singh was in need of money, the property was mortgaged with Karanjit Singh for ₹30,000/-. It was further the case set up that Balbir Singh never issued any receipt qua payment of rent. Replication was filed controverting the averments made in the written statement and reiterating those of the plaint. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to possession by way of redemption of shop, as prayed for ? OPP
2. Whether the suit is not maintainable ? OPD
- 2-A. Whether the defendants are in possession of shop in dispute as a tenant of Balbir Singh since June 1994 ? OPD

2-B. Whether the alleged mortgage deed was executed as surety to the loan amount advanced to Balbir Singh ? OPD

(Additional issues were framed vide order dated 05.05.2016)

3. Whether the plaintiff has concealed the material facts from the Court ? OPD

4. Relief.

3. The Trial Court vide judgment and decree dated 09.12.2016 dismissed the suit. Aggrieved by the same the plaintiff-respondent preferred an appeal which appeal was allowed by the First Appellate Court vide judgment and decree dated 06.05.2019. Hence, the present regular second appeal by the defendant-appellants.

4. Learned counsel for the defendant-appellants would contend that the First Appellate Court erred in decreeing the suit of the plaintiff-respondent. It is urged that the predecessor-in-interest of the defendant-appellants, namely, Karanjit Singh, was a tenant in the suit property and that the factum of his tenancy has not been dealt with in the right perspective by the First Appellate Court. It is further the contention of the learned counsel that the suit itself was barred as there was one suit filed by Balbir Singh for redemption which was withdrawn on 21.07.2012 and that the plaintiff-respondent had also filed a suit which was withdrawn and, hence, the present suit was clearly barred.

5. I have heard the learned counsel for the defendant-appellants.

6. In the present case the onus to prove that the predecessor-in-interest of the defendant-appellants, namely, Karanjit Singh, was a tenant in the shop, was upon the defendant-appellants. It was the case set up by the

defendant-appellants that the shop was taken on rent in June 1994 @ monthly rent of Rs.1,000/-. One witness – DW2 – stepped into the witness box to state regarding the tenancy and that after the execution of the mortgage deed the rent was paid @ Rs.550/- per month. However, in his cross-examination he admitted that there was no writing when the shop was taken on rent and no rent was paid by Karanjit Singh to Balbir Singh at the time of taking the shop on rent in his presence. It was further stated by him that once or twice the rent was paid in his presence. The defendant-appellants failed to produce any rent receipts on the record. Infact, DW1 – Santosh Rani – who is the widow of Karanjit Singh, in her cross-examination, stated that she had never paid any rent to Mukhtiar Singh (plaintiff-respondent herein) and also stated that there was no proof qua their occupation of the shop since 1994. The mortgage deed is a document which has been admitted by the defendant-appellants though it was averred that the said was orally executed as a security document. The defendant-appellants miserably failed to prove that the property was taken on rent by Karanjit Singh. The mortgage deed (Ex.P1) stood duly proved in accordance with law. The First Appellate Court further found that the earlier case filed by Balbir Singh and Mukhtiar Singh would not bar the filing of the present suit relying on the judgment passed by the Hon’ble Supreme Court in the case of **M/s L.K. Trust Vs. EDC Ltd. & Ors. [2011 (4) RCR (Civil) 600]** wherein it has been held as under :

“23. The mortgagor under Indian law is the owner who had parted with some rights of ownership and the right of redemption is the right which he exercises by virtue of his residuary ownership to resume what he has parted with. In India this right of redemption, however, is statutory

one. A right of redemption is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists. The judicial trend indicates that dismissal of an earlier suit for redemption whether as abated or as withdrawn or in default would not debar the mortgagor from filing a second suit for redemption so long as the mortgage subsists. This right cannot be extinguished except by the act of parties or by decree of a court. As explained by this Court in Jaya Singh D.Mhoprekar and another Versus Krishna Balaji Patil and another, (1985) 4 SCC 162, the right of redemption under a mortgage deed can come to an end only in a manner known to law. Such extinguishment of the right can take place by contract between the parties by a merger or by statutory provision which debars the mortgagor from redeeming the mortgage. The mortgagor's right of redemption is exercised by the payment or tender to the mortgagee at the proper time and at the proper place of the mortgage money. When it is extinguished by the act of parties, the act must take the shape and observe the formalities which the law prescribes. A mortgage being a security for the debt, the right of redemption continues although the mortgagor fails to pay the debt at the due date. Any provision inserted to prevent, evade or hamper redemption is void. Having regard to the facts of the instant case, it is difficult to hold that the respondent NO.3

had lost its right to redeem the mortgaged property or that by the acts of the appellant and the respondent No.1, the right of the respondent No.3 to redeem the property was extinguished.”

7. Learned counsel for the defendant-appellants has not been able to point out to any evidence on the record to show that there was any relationship of landlord and tenant between the parties.

8. In view of the fact that no evidence has been led to show the relationship of landlord and tenant between Balbir Singh and Karanjit Singh and the fact that the mortgage deed was duly proved in accordance with law, no fault can be found with the judgment and decree passed by the First Appellate Court. The present appeal does not raise any question of law, much less any substantial question of law. The appeal being devoid of any merit is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

06.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO