



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
238 RSA-2065-2015(O&M)
Date of decision: 04.12.2025

Ram Asra

...Appellant(s)

Vs.

Jaswinder Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Munish Gupta, Advocate
for the appellant.

NIDHI GUPTA, J.

The defendant No.1 is in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff/respondent No.1 herein, for possession by way of redemption of suit property as described in the plaint on payment of mortgage money, has been decreed by both the Courts below.

2. Brief facts of the case as evident from the record are that the defendant No.2 was owner in possession of the suit property. Defendant No.2 had mortgaged the suit property with possession to the appellant/defendant No.1 vide registered Mortgage Deed dated 29.03.2001 for an amount of Rs.10,000/-. It was stipulated in the Mortgage Deed that mortgagor would get the property redeemed in the month of Jeth in any year after paying the mortgage money. However, as the appellant failed to redeem



the mortgage, the defendant No.2 had executed Sale Deed dated 09.05.2006 to the plaintiff for consideration of Rs.3,00,000/-. The plaintiff had paid the amount of Rs.2,90,000/- to the defendant No.2 at the time of execution of Sale Deed; and Rs.10,000/- was to be paid by the plaintiff towards redemption of mortgage.

3. Accordingly, plaintiff had filed the present suit on 30.04.2008 praying for a decree of possession by redemption of property on payment of mortgage money of Rs.10,000/-. Vide impugned judgments and decrees of the learned Courts below, the suit of the plaintiff has been decreed.

4. It is inter alia submitted by learned counsel for the appellant that the suit of the plaintiff has been wrongly decreed as the learned Courts below have failed to appreciate that the defendant No.2 had entered into an oral Agreement to sell the suit property to the appellant. It is contended that as such, vide the said Oral Agreement defendant No.2 had surrendered his mortgagor rights. It is further contended that in pursuance to the said Oral Agreement, defendant no.2 had also received Rs.50,000/- as part payment of sale consideration. Learned counsel submits that the appellant had duly proved the said facts on record by leading sufficient evidence. Therefore, the Courts below were in patent error in decreeing the suit of the plaintiff as the appellant had a prior right over the suit property. It is accordingly prayed that the impugned judgments and decrees of the Courts below be set aside.

5. No other argument is made on behalf of the appellant.



6. I have heard learned counsel and perused the case file in detail.

I find no merit in the submissions advanced on behalf of the appellant.

7. By concurrent findings of fact, it is duly established on record that the appellant was unable to prove his alleged Oral Agreement with the defendant No.2. The appellant has also been unable to prove the alleged part payment of Rs.50,000/- of sale consideration. Admittedly, no receipt has been produced by the appellant to prove the said payment of Rs.50,000/-. Learned, counsel for the appellant is also unable to apprise this Court in respect of the other terms and conditions of the alleged Oral Agreement, such as the total sale, consideration, date for execution of sale, deed, et cetera. The appellant has admitted in his cross-examination that he did not receive any receipt qua payment of Rs.50,000/-. He has also admitted that he did not file any suit for specific performance on the basis of the said alleged Oral Agreement. Even DW2 Harjit Singh has admitted in his cross-examination that no receipt regarding payment of Rs.50,000/- was obtained from the defendant No.2.

8. In view of these undisputed facts, learned Courts below correctly held that the plaintiff had stepped into the shoes of defendant No.2; and therefore, the status of the plaintiff qua defendant No.1 was that of a mortgagor; and therefore, plaintiff was well within his right to get the suit property redeemed from the appellant after payment of Rs.10,000/-.



9. Relevant findings of the learned First Appellate Court in the judgment dated 14.11.2014, are as under: -

“13. It is admitted fact that suit property was mortgaged by Sukhdev Singh with defendant No.1 Ram Asra for an amount of Rs 10,000/-. The defendant No.1 has claimed that defendant No. 2 Sukhdev Singh had surrendered his mortgagor rights by way of oral agreement in which he also received Rs 50,000/- as part payment of sale consideration. However, the respondent/plaintiff has denied this oral agreement as alleged by the appellant/defendant No.1. Defendant No.1 has appeared into witness box as DW1 and he also examined DW2-Harjit Singh in whose presence he paid amount of Rs. 50,000/- to defendant No. 2 as part payment of sale consideration. In the cross examination DW1-Ram Asra has admitted that he did not receive any receipt qua the payment of Rs 50,000/- from Sukhdev Singh and he also admitted that he has not filed any suit for specific performance on the basis of this alleged oral agreement. Similarly DW2-Harjit Singh has also stated in his cross examination that no receipt regarding payment of Rs 50,000/- was obtained from Sukhdev Singh. Furthermore appellant/defendant No.1 has never filed any suit for specific performance of alleged oral agreement to sell even after the filing of present suit by plaintiff/respondent. If there was an oral agreement to sell by appellant/defendant No.1, he might have taken some step to get the oral agreement executed but there is no evidence on the file to show that any such effort has been made by appellant/defendant No. 1 to file any suit for specific performance or move any application before any higher authority in this respect. There is copy of jamabandi Ex.



P5, certified copy of sale deed dated 9..5.06 Ex. P3 and mortgage deed dated 29.3.2001 Ex. P4 on the record and these documents shows that defendant No.2 Sukhdev Singh entered into agreement to sell with the plaintiff and in pursuance of said agreement, Sukhdev Singh executed sale deed Ex. P3 and thereafter name of respondent/plaintiff has been entered as owner of the suit property in the revenue record as is evident from the jamabandi Ex. P5.”

10. Ld. Counsel for the appellant is unable to dispute or controvert the above said facts and findings. As such, the present Second Appeal is **dismissed.**

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

04.12.2025

Sunena

(Nidhi Gupta)
Judge

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