



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

(116)

**RSA No.711 of 2018 (O&M)
Decided on :21.04.2025.**

Ravi Mathur

...Appellant

Vs

Surajmal (since deceased) through LRs

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Aseem Garg, Advocate for
Mr. Vivek Goyal, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's appeal against the judgment and decree dated 14.02.2017, passed by the Court of learned District Judge, Rohtak, dismissing the appeal filed against the judgment and decree dated 14.07.2015, passed by the Court of learned Civil Judge (Junior Division), Rohtak, vide which the suit for declaration with possession was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Ravi Mathur) filed a suit for declaration to the effect that he had become the full and absolute owner of land measuring 12 Kanals 8 Marlas (fully described in the plaint) situated in Village Sanghi, Tehsil and District Rohtak (hereinafter referred to as the suit land) and decree for possession of the same was also sought.

3.1. The case set up was that the defendant had mortgaged the suit land to the plaintiff for a period of one year from 25.08.2004 to 24.08.2005 vide mortgage deed 25.08.2004 for a sum of ₹4,50,000/-. It was averred that

the said mortgage was a conditional sale as the defendant had borrowed a sum of ₹4,50,000/- from the plaintiff and had mortgaged the suit land. It had been agreed that the suit land would be got redeemed up to 24.08.2005 by paying the sum of ₹4,50,000/- along with interest @ 0.50% per month failing which the suit land was to be considered as having been sold to the plaintiff. For, the mortgage amount or the interest thereon was not paid, the plaintiff claimed to have become owner of the suit land.

4. The suit was opposed by the defendant. In the written statement, certain preliminary objections as regards the suit being false and frivolous, pre-mature, against the law of equity, maintainability, barred by limitation, the suit land being ancestral property, no notice demanding payment having been served, the suit not being in consonance with the provisions of the Bengal Land (Conditional Sale) Regulations 1798 (for short 'the Bengal Act'), cause of action, *locus standi* etc. were raised. On merits, the factum of mortgage was denied. It was also denied that the alleged mortgage was in fact conditional sale. It was also averred that even otherwise the condition in the alleged mortgage deed was illegal and was a clog on the equity of redemption as once a mortgage is always a mortgage.

5. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated.

6. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of the suit land mentioned in detailed in para no.1 of the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Relief.

7. Parties led their respective evidence. The trial Court dismissed the suit vide judgment and decree dated 14.07.2015 and the appeal filed against the said judgment and decree was also dismissed vide judgment and decree dated 14.02.2017 passed by the Court of learned District Judge, Rohtak, leading to the filing of the present Regular Second Appeal.

8. I have heard learned counsel for the appellant.

9. Learned counsel has strenuously urged that the mortgage was in fact conditional sale and since the amount had not been paid, the plaintiff had become the owner of the suit land. Learned counsel also refers to the provisions of Section 8 of the Bengal Act and has submitted that proceedings had been initiated by the appellant under the said provisions. Learned counsel submits that both the Courts erroneously held that the condition of sale was a clog on the equity of redemption. Learned counsel has referred to the findings recorded by the Courts and has submitted that the same are not sustainable.

10. I have considered the submissions made by learned counsel for the appellant, but find the same to be devoid of merit.

11. The mortgage deed dated 25.08.2004 was produced on record as Ex.C1. The execution of the same, though denied by the defendant, was proved by the plaintiff by leading cogent evidence. The only issue which arises for the consideration of this Court is as to whether the plaintiff can be said to have become the owner of the suit land by foreclosure of the mortgage on account of non-deposit of the sum of Rs. 4,50,000/-. The law is well settled that imposing a condition in the mortgage deed as regards a

fixed period for redemption would amount to be a clog on the equity of redemption. Reference in this regard can be made to the judgments of Supreme Court of India of *Murarilal Versus Devkaran AIR 1965 225 and Banwari Lal Versus Puran Chand and other, AIR 1985 P&H 189*. It has clearly been held that when a mortgage contains a stipulation which restrains or restricts the mortgagor's equity of redemption, the said stipulation has to be ignored and the mortgager's right to redeem has to be enforced. It is also well settled there is now no limitation for redemption.

12. Be that as it may, the claim of the plaintiff that on account of non-deposit of the amount within a period of one year, he had become the owner of the suit land is devoid of merit and was rightly rejected by both the Courts.

13. No other arguments has been raised.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

April 21, 2025
Rekha

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