



RSA 3747 of 2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3747 of 2023 (O&M)
Decided on: 08.12.2025

Anil Kumar @ Anil Garg

.....Appellant

Versus

Suresh Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:** Mr. Nitesh Singhi, Advocate
for the appellant.
(through VC)**DEEPAK GUPTA, J.**

The defendant-appellant is before this Court by way of a regular second appeal impugning the concurrent findings recorded by the courts below. The suit, filed by respondent–plaintiff Suresh Kumar for a decree of permanent injunction, was decreed by the trial Court on 8 November 2017; and the first appellate Court dismissed the defendant’s appeal on 12 October 2021. The defendant challenges those concurrent findings on limited grounds.

2. From the record, it appears that the defendant formerly held 8/570 share in the suit property. The plaintiff purchased that share in a Court auction and a sale certificate in his favour was issued on 12th January 2012. On the plaintiff’s application, symbolic possession was handed over and the relevant entries were recorded in the revenue record. The plaintiff’s case before the trial Court was that, though divested of any concern in the property, the defendant was creating a threat of raising construction thereon; accordingly the plaintiff sought a relief of permanent injunction.

3. The defence advanced before the courts below was two-fold: (a) that the suit property was mortgaged in favour of the Punjab Khadi Board since 1997 and, unless the mortgage was redeemed, the plaintiff

**RSA 3747 of 2023**

could not claim the relief sought; and (b) that the defendant continued to assert ownership of the suit property.

4. The trial Court, after appreciating the pleadings and evidence, granted the decree of permanent injunction in favour of the plaintiff; and the first appellate Court affirmed those findings.

5. The learned counsel for the defendant reiterates before this Court that a prior mortgage in favour of the Punjab Khadi Board (as reflected in the Jamabandi for 2001–02, Ex.D-1) defeats the plaintiff's claim.

6. The submissions of the defendant are unsustainable in law and on facts. The crucial legal position is that the sale certificate dated 12 January 2012 transferred to the plaintiff such title and rights as were vested in the subject share at the time of the auction, subject, of course, to any existing encumbrances. The purchaser at a Court auction takes the property with all existing rights and liabilities attached to it; but that legal consequence operates against the mortgagor and the encumbrance-holder, not to resurrect or create any rights in the former owner, who has been divested by a valid sale. Once symbolic possession was delivered to the plaintiff and the revenue entries were altered, the plaintiff stood in the position of a purchaser entitled to protect his possession and title.

7. It follows that the existence of a mortgage in favour of Punjab Khadi Board does not afford the defendant–appellant a licence to obstruct or resist the purchaser's proprietary rights. The Punjab Khadi Board, as the mortgagee, has an independent remedy against the purchaser or against the property and is free to pursue such remedy in accordance with law; but the mortgagor/defendant cannot, by asserting the mortgage, prevent the purchaser from obtaining relief against trespass or threatened construction. To permit otherwise would enable a former owner to appropriate the remedy that belongs to the mortgagee and would undermine the efficacy of court auctions and sale certificates.



RSA 3747 of 2023

8. This Court has examined the record and finds no illegality or perversity in the concurrent findings of fact and law recorded by the courts below. In the absence of any demonstrable error of law or mis-appreciation of evidence warranting interference in a second appeal, the judgment and decree under challenge must be sustained.

9. Resultantly, the instant appeal is dismissed being devoid of any merit. This dismissal is without prejudice to the legal rights and remedies of the Punjab Khadi Board to assert or enforce its mortgage rights in accordance with law. No order as to costs.

Pending applications, if any, stand disposed of.

(DEEPAK GUPTA)
JUDGE

08.12.2025
Jiten

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