



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

ESA No.2 of 2020 (O&M)

Reserved On: 15.05.2025

Date of Order:27.05.2025

Gurjeet Singh and another

..Appellants

Versus

Jaspal Kaur and others

..Respondents

ESA No.3 of 2020 (O&M)

Nirmal Singh

..Appellant

Versus

Jaspal Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Aakash Singla, Advocate
for the appellant(s)**

**Mr. Akshay Bhan, Sr. Advocate, with
Mr. Hakam Singh, Advocate
Mr. Santosh Sharma, Advocate
for the respondents.**

ANIL KSHETARPAL, JUDGE (Oral)

I. BRIEF FACTS OF THE CASE

1. With the consent of the learned counsel representing the parties, two connected Execution Second Appeals i.e. ESA No.2 and ESA No.3 of 2020, shall stand disposed of by this common order.

2. The appellants purchased the property during the pendency of Regular Second Appeal No.3667 of 2001. The appellants in ESA No.2 of 2020, are two sons of Chanan Singh, who was the General Power of Attorney holder of the mortgagees. In the Supreme Court, Chanan Singh

represented one of the parties namely mortgagees. Chanan Singh was also instrumental in getting 17 kanals and 2 marlas land exchanged between mortgagors and mortgagees.

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

4. Vikram Singh and Gurdial Singh, the predecessors-in-interest of the respondents (decree holders) mortgaged 142 kanals and 6 marlas land against Rs.12,000/- in favour of Hazara Singh. After partition of the country, the mortgagors were allotted land and the entry of mortgage was entered in the revenue record. The mortgagors filed a suit for redemption in which preliminary decree for redemption was passed which was in turn followed by a final decree on 10.05.1965. Mohinder Singh son of Hazara Singh, the mortgagee challenged the redemption decree by filing a Civil Suit no.80 of 1966, which was decreed on 06.10.1970.

5. Subsequently, Mohinder Singh etc.(the successor in interest of the mortgagee) filed a suit for declaration that they have become owners due to efflux of time which was decreed on 09.06.1998. In the first appeal, the decree was affirmed, however, in Regular Second Appeal No.3667 of 2001, the judgment of the courts below was set aside and the suit filed by the mortgagees claiming to have become owners of the property by efflux of time was dismissed. The counter claim for possession was filed by the defendants in this suit which was also dismissed. The Special Leave Petition filed by the mortgagees through Chanan Singh, the predecessor-in-interest of appellants in ESA NO.2 of 2020, challenging the correctness of judgment of the High Court was dismissed on 12.01.2016, by the Supreme Court. Resultantly, the mortgagee failed to get declaration that they have become

owners by efflux of time and the mortgagors are left with no right, title or interest in the mortgaged property.

6. Chanan Singh, the father of the appellants in ESA No.2 of 2020, represented mortgagees in the Supreme Court.

7. The appellants claim that they have purchased 78 kanals and 15 marlas land from mortgagees. This sale deed was executed during the pendency of Regular Second Appeal, hence governed by the rule of lis-pendens. Once the appeal filed by the mortgagors was allowed, the mortgagees were left with only mortgage rights which were subject to redemption of mortgage.

8. The plaintiffs(respondents)(mortgagors) filed a suit for redemption of mortgage which has been decreed on 14.11.2013. In execution petition, the appellants filed objections which were allowed by the Executing Court but reversed by the First Appellate Court.

II. **ARGUMENTS ADDRESSED**

9. The learned counsel representing the appellants has made the following submissions:-

(A) Neither the appellants were impleaded as a party to the suit nor they have been granted an opportunity of being heard, although, they purchased the property on 10.11.2005, whereas the suit was filed on 17.08.2011.

(B) The appellants are bonafide purchasers of the property.

(C) The mortgagor and mortgagee have exchanged the land during the pendency of the Regular Second Appeal, hence, the appellants were under the impression that the rights of mortgagees as owners have been acknowledged

and not disputed.

(D) The counter claim filed by the decree holders was dismissed in the previous suit filed by Mohinder Singh etc. Hence, they were left with no right in the property.

(E) Nirmal Singh, appellant in ESA No.3 of 2022, claims that he exchanged 62 kanals and 10 marlas land with Mohinder Singh etc. in the year 2005, hence he was required to be impleaded as a party.

(F) The objections could not be dismissed summarily without granting opportunity to the appellants to lead evidence.

10. Per contra, the learned counsel representing the respondents has asserted that the appellants are governed by the rule of lis pendens and the appellants in ESA NO.2 of 2020 are two sons of Chanan Singh, who were looking after the litigation on behalf of the mortgagees, hence, they were aware of the pending litigation.

III. ANALYSIS AND DISCUSSION:-

11. This court has considered the submissions of the learned counsel representing the parties.

12. It is evident that the appellants will step into the shoes of the mortgagee of land because ultimately there was no declaration in favour of the mortgagees to the effect that they have become owners of the property. Their suit was ultimately dismissed by the High Court which was affirmed by the Supreme Court.

13. Moreover, the appellants being the purchasers of the property during the pendency of the previous round of litigation cannot claim to be bonafide purchasers. Additionally Chanan Singh was litigating on behalf of

the mortgagees. Hence, the appellant cannot claim that they were not aware of the pending litigation. Moreover, to prove the plea of bonafide purchaser, the appellants are required to prove that the actual owner of the property had represented to the purchaser that ostensible owner is the real owner. The ingredients of Section 41 of the Transfer of Property Act, 1882, has been elaborately elucidated by the Supreme Court in **Hardev Singh vs. Gurmail Singh (dead) by LRs, (2007) 2 SCC 404**, in the following manner:-

“10. The ingredients of Section 41 of the Act are :

- 1) the transferor is the ostensible owner;*
- 2) he is so by the consent, express or implied, of the real owner;*
- 3) the transfer is for consideration;*
- 4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.”*

14. Moreover, exchange of land measuring nearly 17 kanals between Amar Singh, one of the decree holders and Mohinder Singh, will not be sufficient to prove that the plaintiffs/decreed holders acknowledged that Mohinder Singh etc. had become owner of the property.

15. With respect to the last submission of the appellants' counsel, it may be noticed that the mortgagors/decreed holders on redemption of mortgage become entitled to the property as per the judgment and decree passed on 14.11.2013, hence, dismissal of counter claim for possession in the previous round would not operate as res-judicata because at that time the cause of action for claiming possession had not arisen.

16. With respect to next submission based on exchange, it may be noticed that exchange of land measuring 17 kanals and 2 marlas between Mohinder Singh etc. on one hand and Amar Singh, on the other hand, will

not result in conferring ownership on mortgagees-Mohinder Singh etc. because their suit for declaration to the effect that they have become owners by efflux of time was ultimately dismissed. Similar is the position of Nirmal Singh, appellant in ESA No.3 of 2020. He also received certain land in exchange with Mohinder Singh in the year 2005. This was also during the pendency of the previous round of litigation. Regular Second Appeal filed by the mortgagors in the year 2001, was allowed on 27.08.2009, hence, the exchange of land between Nirmal Singh and Mohinder Singh etc. will not affect the rights of owners, namely, successors-in-interest of Vikram Singh and Gurdial Singh.

17. Similarly, the last submission of the learned counsel lacks substance because as the first appellate court as well as this court has considered their objections in detail but found no substance. The decree sought to be executed was passed in the year 2013. Twelve years have already elapsed. The objections filed by the appellants were considered in detail by the courts below but found lacking substance, Moreover, in this case, the original litigation was started in the year 1960 because the preliminary decree for partition for redemption of mortgage was passed on 31.01.1965. The appellants in these two appeals took risk of purchasing/exchanging the land which was already the subject matter of litigation, hence, their rights are subject to the result of pending litigation.

IV. **DECISION:**

18. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

19. Dismissed.

20. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

27th May, 2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No