



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

RSA-1003-2024 (O&M)
Reserved on : 10.02.2025
Pronounced on : 18.02.2025

Jasbir Singh (deceased) through LRsAppellants

VERSUS

Sarwan Singh (deceased) through LRs & Ors.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Gupta, Advocate for the appellants.

ALKA SARIN, J.

CM-3771-C-2024

1. For the reasons mentioned therein, the application seeking condonation of 105 days delay in refiling the appeal is allowed. The delay of 105 days delay in refiling the appeal is condoned.

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2. The present appeal has been preferred by the LRs of defendant No.1D (Jasbir Singh) challenging the judgment and decree dated 30.01.2018 passed by the Trial Court and judgment and decree dated 25.07.2023 passed by the First Appellate Court.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 to 7 filed a suit for possession by redemption of mortgage. It was averred that that the suit land was originally owned and possessed by plaintiff-respondent No.1 who mortgaged it with possession in favour of the

original defendant Tara Singh for a consideration of Rs.8,000/- vide registered mortgage deed dated 20.11.1979 for a period of 18 years starting from Kharif 1980 which has since expired. No interest was agreed to be paid as it was a mortgage with possession and the original defendant Tara Singh was in possession of the suit land and enjoying its fruits. As per the plaint the plaintiff-respondent No.1 vide registered sale deed dated 05.05.2009 sold the suit land and other land in favour of plaintiff-respondent Nos.2 to 7 for Rs.13,50,000/-and now the plaintiff-respondent Nos.2 to 7 have become interested in equity of redemption. However, the original defendant Tara Singh was alleging that he has got the suit land on mortgage for a further period of 18 years for a consideration of Rs.15,000/- vide some alleged mortgage deed dated 03.05.1991 which deed is illegal, null and void, against law and against facts. The period of mortgage has expired and the original defendant Tara Singh was requested many times to receive the amount of Rs.8,000/- and hand over possession of the suit land after redeeming same but he has refused for the same. Hence, the suit. In the written statement the original defendant Tara Singh raised preliminary objections of the suit being premature, locus standi, suppression of material facts, valuation, cause of action and jurisdiction. On merits it was submitted that the suit land was mortgaged in favour of the original defendant Tara Singh vide mortgage deed dated 20.11.1979 for a period of 18 years for a consideration of Rs.8,000/- and vide mortgage deed dated 03.05.1991 the same land was mortgaged for a further period of 18 years for a consideration of Rs.15,000/-. According to the original defendant Tara Singh the fact of both the mortgages

was mentioned in the sale deed dated 05.05.2009 allegedly executed by plaintiff-respondent No.1 in favour of plaintiff-respondent Nos.2 to 7. According to the original defendant Tara Singh he was coming in possession as a tenant before the mortgage of 20.11.1979 and that the mortgage deed of 03.05.1991 will continue up to Chet 2016. He also set-up a sale deed in favour of his sons. During the pendency of the suit the original defendant Tara Singh died and his legal representatives were impleaded. Some of the impleaded legal representatives filed their written statements. Replications were filed denying the averments made in the written statements and reiterating those made in the plaint.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to possession by redemption as prayed for ? OPP
2. Whether the plaintiff has suppressed material facts from the Court ? OPD
3. Whether suit is pre-mature ? OPD
4. Whether the plaintiffs have no cause of action ? OPD
5. Whether the plaintiff no.1 has no locus standi ? OPD
6. Relief.

Following additional issue was framed on 24.02.2016 :

- 1A. Whether there was any previous litigation between the parties ? If yes, what's its effect ? OPP

5. The Trial Court vide judgment and decree dated 30.01.2018 decreed the suit and passed a preliminary decree in favour of the plaintiff-respondent Nos.1 to 7. Aggrieved by the decision of the Trial Court, an appeal was preferred by the defendant No.1D i.e. Jasbir Singh - one of the legal representatives of the original defendant Tara Singh. The said appeal was dismissed by the First Appellate Court vide judgment and decree dated 25.07.2023. Hence, the present regular second appeal by the LRs of defendant No.1D i.e. Jasbir Singh who died during the pendency of the appeal before the First Appellate Court.

6. The learned counsel for the defendant-appellant has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent Nos.1 to 7. It is urged that during the subsistence of the first mortgage deed dated 20.11.1979 the suit land was mortgaged vide a mortgage deed of 03.05.1991. It is contended that the suit land could not be redeemed as there was a second mortgage continuing over it. According to learned counsel the factum of both the mortgages was mentioned by the plaintiff-respondent No.1 in the sale deed dated 05.05.2009 allegedly executed by plaintiff-respondent No.1 in favour of plaintiff-respondent Nos.2 to 7.

7. Heard.

8. In the present case both the Courts have refused to accept the mortgage deed dated 03.05.1991 as it was not proved in accordance with the provisions of the Evidence Act, 1872. There is no entry in the revenue record regarding this alleged second mortgage. Both the Courts have noticed that there were multiple litigations between the parties and there was thus no

plausible reason for the plaintiff-respondent No.1 to mortgage the suit land with the defendant Tara Singh on 03.05.1991. It has also been found that the sale deed set-up by the defendant Tara Singh had been held to be a forged document in another set of litigation. There is nothing to prove that the mortgage of 20.11.1979 was ever redeemed. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the defendant-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

9. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.02.2025*Ankur***(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No