

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-2337-1996****Nathu Ram****. . . . Appellant****Vs.****Maman Ram and Others****. . . Respondents************Reserved on: 17.04.2026****Pronounced on: 20.04.2026****Pronounced fully/operative part: Fully************CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

Argued by:- Mr. Raj Kapoor Malik, Advocate
for the appellant.

Mr. Gaurav Chopra, Senior Advocate with
Mr. Harmeet Singh, Advocate for
respondent No.2.

Name of respondent No.3 deleted
vide order dated 21.02.1997.

Respondent Nos.4 to 8 need not be
served vide order dated 07.11.1996.

**********DEEPAK GUPTA, J.**

The plaintiff-appellant is before this Court by way of the present Regular Second Appeal assailing the concurrent findings recorded by both the Courts below, whereby his suit for declaration in respect of the property in dispute came to be dismissed by the learned trial Court vide judgment & decree dated 20.03.1992, and the said findings were affirmed in appeal by the learned first Appellate Court on 08.08.1996.

2. For the sake of clarity, the parties shall be referred to as per their status before the trial Court. Trial Court record was called and the same has been perused.



3. The ***factual backdrop***, as emerges from the record, is that land measuring 266 Kanal 16 Marla comprised in Khewat No.193, Khatoni No.292-293-294, situated at village Khedar, District Hisar, was admittedly owned by Dharmo and others (defendant Nos.3 to 8), who had inherited the same from their predecessor-in-interest, namely Har Sarup.

4.1 The plaintiff claims that out of the above said land, an extent of 50 Kanal 6 Marla, comprised in Rectangle No.189, Khasra No.13(6-2), 17/2(1-18), 18(8-0), 8/2(2-6), 9(8-0), 10(8-0), 11(8-0) and 12(8-0) situated at Village Khedar was initially mortgaged with possession by the owners in favour of one Dharam Pal for a consideration of ₹22,000/-. It is further the case of the plaintiff that subsequently the same parcel of land was again mortgaged with possession in favour of his father Neki Ram vide registered mortgage deed dated 07.01.1981 for a sum of ₹40,000/-. Building upon this foundation, the plaintiff asserts that thereafter the mortgagors executed a lease deed dated 21.01.1982 in his favour for a period of 99 years, whereupon he claims to have been put in possession of the suit land.

4.2 On the strength of the above said lease deed, the plaintiff sought declaration of his rights and challenged the decree dated 20.03.1987 suffered by defendant Nos.3 to 8 in favour of defendant Nos.1 and 2, as also the mutation sanctioned on the basis thereof, alleging the same to be illegal, null and void and not binding upon his rights.

5. ***Stand of the Contesting Defendants*** : The suit was contested by defendant Nos.1 and 2, who denied the possession of the plaintiff and asserted their own ownership and possession over the suit land on the strength of the decree dated 20.03.1987. The lease deed relied upon by the plaintiff was specifically alleged to be a fabricated document, and it was contended that no possession had ever been delivered to him.

6. ***Findings of the Courts Below*** : On the basis of pleadings, issues were framed and parties led their respective evidence. Upon appreciation



thereof, the learned trial Court dismissed the suit, holding that the plaintiff had failed to establish his possession, or any enforceable right in the suit property. The said findings were affirmed by the learned first Appellate Court, which, upon re-appraisal of the entire evidence, concurred with the conclusions of the trial Court.

7. ***Submissions before this Court*** : Assailing the said concurrent findings, learned counsel for the appellant has contended that the Courts below have misdirected themselves in appreciating the evidence and have erroneously held that the suit land leased out to the plaintiff was not proved to be the same which had earlier been mortgaged in favour of his father. It is argued that the mortgage deed (Ex.P2) and lease deed (Ex.P1) clearly establish continuity of possession, inasmuch as the plaintiff was to obtain possession from the mortgagee, i.e., his father Neki Ram.

8. *Per contra*, learned counsel for the respondents has supported the impugned judgments and submitted that once the land had already been mortgaged with possession in favour of Dharam Pal, there was no occasion for the mortgagors to again deliver possession to Neki Ram, much less to the plaintiff. It is further argued that the revenue record does not support the claim of possession of the plaintiff and that the alleged lease deed is devoid of authenticity.

9. Having heard learned counsel for the parties and perused the record, this Court finds no merit in the appeal.

10. **Analysis and Reasoning by this court** : At the outset, it is to be noted that the plaintiff's entire claim hinges upon two foundational assertions:

- That possession of the suit land was transferred to his father Neki Ram under the mortgage deed dated 07.01.1981; and
- That such possession was thereafter delivered to him under the lease deed dated 21.01.1982.



However, both these material assertions of the plaintiff remain unproved.

11. It is an admitted position, emerging from the plaintiff's own pleadings that prior to the alleged mortgage in favour of Neki Ram, the suit land had already been mortgaged with possession in favour of Dharam Pal. In law, once possession is delivered to a mortgagee under a possessory mortgage, the mortgagor ceases to retain possession and cannot validly deliver the same to another person unless the earlier mortgage is redeemed. The mortgage deed (Ex.P2) itself acknowledges the subsistence of the earlier mortgage and merely contemplates redemption. However, there is not an iota of evidence to establish that the earlier mortgage was ever redeemed or that possession was ever obtained by Neki Ram from Dharam Pal. In the absence of such proof, the very substratum of the plaintiff's case stands eroded.

12. Once it is not established that Neki Ram was ever put in possession of the suit land, the further claim that he delivered possession to the plaintiff under the lease deed becomes wholly untenable. The lease deed (Ex.P1), on which heavy reliance has been placed, also does not inspire confidence. The same does not specify the exact khasra numbers of the land allegedly leased and merely refers to a fractional share without identifying any specific portion. No convincing evidence has been led to demonstrate that actual physical possession of the suit land was ever delivered to the plaintiff pursuant to the said lease.

13. Even if it be assumed, in view of the entries in lease deed (Ex.P1) that it is the same land, which was subject-matter of mortgage deed (Ex.P2), the same does not advance the case of the plaintiff, once it is not established that he was ever delivered possession of the suit land.

14. Significantly, the revenue record on file runs contrary to the claim of the plaintiff. The jamabandi and khasra girdawari entries consistently reflect possession of third parties over the suit land, and not of the plaintiff. Such en-



tries, though not conclusive, carry a presumption of correctness and cannot be lightly disregarded in the absence of cogent rebuttal. The plaintiff has failed to dislodge this presumption. On the contrary, these entries lend credence to the defence version that the plaintiff was never in possession of the suit land.

15. Further, despite the stipulation in the lease deed regarding payment of annual rent, the plaintiff has failed to produce even a single receipt to substantiate such payments. No independent evidence has been brought on record to establish delivery of possession or enjoyment of the suit land by the plaintiff. These circumstances cumulatively cast serious doubt on the genuineness of the lease transaction and support the conclusion drawn by the Courts below that the lease deed was not a genuine document.

16. In light of the foregoing discussion, this Court is of the considered view that the Courts below have rightly held that the plaintiff failed to establish his possession over the suit land on the strength of the lease deed (Ex.P1). The said document does not inspire confidence and appears to have been set up merely to defeat the lawful rights of defendant Nos.1 and 2, who had acquired ownership of the suit property by virtue of the decree dated 20.03.1987 suffered in their favour by Dharmo and others, on the basis whereof the mutation was duly sanctioned in their favour.

17. In the backdrop of the aforesaid factual and legal position, the findings recorded by both the Courts below are found to be based on proper appreciation of evidence and correct application of legal principles. No perversity, illegality or misreading of evidence has been pointed out so as to warrant interference by this Court in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

18. It is trite that in a Regular Second Appeal, this Court does not sit as a Court of facts, and concurrent findings recorded by the Courts below cannot be interfered with unless a substantial question of law arises. No such question of law is found to arise in the present case.



19. Consequently, the present appeal, being devoid of merit, is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

20.04.2026
Neetika Tuteja

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No

Uploaded on.: 20.04.2026