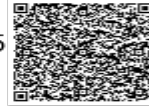
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****237****RSA-1423-2023 (O&M)****Date of decision: 08.01.2026****Satish Kumar****...Appellant(s)****Vs.****Mohinder Singh and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Rajinder Sharma, Advocate for the appellant.***********NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurrent judgments and decrees of the Id. Courts below, whereby the suit for possession filed by the appellant, has been dismissed by both Courts below.

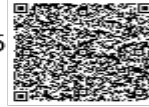
2. It was the pleaded case of the appellant in the plaint that plaintiff was owner of adjoining properties measuring 1.5 M bearing Khasra No. 373 min.; and property measuring 7M 6 Sarsai of Khasra No. 373 in village Gunowal Tehsil and District Amritsar. The said properties were purchased by the appellant vide Sale Deeds dated 28.08.1995 and 18.12.1995 respectively. Plaintiff had constructed shop in the property measuring 1.5M. Plaintiff had obtained loan from defendant No.2 after mortgaging the aforesaid shop and had been paying regular instalments. Subsequently, plaintiff had defaulted on the instalments and Bank had declared his account NPA under the SARFAESI Act. Thereafter, sale was conducted in favour of defendant No.1 for an amount of Rs.1,26,750/-;



which amount was deposited in the account of the plaintiff. It was further averred in the plaint that to restore the property to him, the plaintiff had filed Civil Suit No. 420 dated 16.01.2012 for permanent and mandatory injunction after repayment of loan. The said suit was dismissed vide order dated 05.01.2013. It was further alleged in the plaint that while taking possession of the auctioned/mortgaged shop, possession of the vacant plot was also forcibly taken by the officials of defendant No.2. It was accordingly pleaded that possession of the remaining vacant property, which was never mortgaged in auction, had been illegally taken from the plaintiff and the same was liable to be restored back to the plaintiff. Despite repeated requests, defendants had failed to do so. Accordingly, plaintiff had instituted the present suit on 17.09.2015.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Amritsar had dismissed the suit of the plaintiff with cost vide judgment and decree dated 06.09.2018. The Civil Appeal filed by the appellant was dismissed with costs by the learned Additional District Judge, Amritsar vide judgment and decree dated 22.09.2022. Hence, present second appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below have dismissed the suit of the plaintiff merely on a technical ground that the suit for possession without seeking declaration is not maintainable. Learned counsel contends that in terms of Order 23 Rule 1(3) CPC, when suit is dismissed only on a technical ground, the appellant be permitted to withdraw the present civil suit and file a



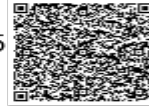
fresh suit. It is further submitted that the Courts below fell in error of Law in dismissing the suit and appeal of the appellant. The finding recorded by the First Appellate Court shows that the sale certificate issued by the Bank with regard to vacant plot is void, as the same is without any sale consideration, without any right, title or interest in the property, as the same was never mortgaged with the bank. As per settled Law, a document which is void, need not to be challenged by claiming declaration as the said plea can be set up even in collateral proceedings. In this regard appellant finds support from Judgement titled as **Kewal Krishan Vs. Rajesh Kumar and ors, Civil Appeal No. 6989-6992 of 2021 S.C.**

5. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

6. No other argument is raised on behalf of learned counsel for the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

7. Perusal of the record of the case shows that it is the admitted case of the appellant that the plaintiff had availed loan from the Punjab & Sind Bank, Jandiala Guru Branch, District Amritsar. It is also admitted fact that plaintiff failed to pay back loan amount; and therefore, his account had been declared NPA; where after the property was sold to defendant No.1.

8. It is also admitted fact on record that previously also, plaintiff had filed Civil Suit No. 420 dated 16.01.2012, seeking mandatory



injunction directing the Bank to restore possession of the suit property after receiving the entire outstanding loan amount. The said suit had been dismissed vide order dated 05.01.2013. Admittedly, no appeal was filed by the appellant against the dismissal of the said suit. Meaning thereby, that the judgment dated 05.01.2013 had attained finality. As such, present suit of the appellant was not maintainable being barred under Order 2 Rule 2 CPC as cause of action in the present suit is the same as that of previous Civil Suit No. 420, which was already dismissed vide order dated 05.01.2013.

9. Furthermore, it has been alleged by the plaintiff that he had mortgaged one property; whereas defendant No.2 had sold both the properties. However, in his cross-examination, plaintiff has specifically admitted that the Sale Certificate dated 11.12.2007 Ex.DX was issued with regard to both the properties in favour of defendant No.1. It was further admitted by the plaintiff in his cross-examination that he had not challenged Sale Certificate dated 11.12.2007 in the instant suit, despite the same being in his knowledge. Admittedly, plaintiff has failed to challenge the Sale Deed in the present Civil Suit. As such, plaintiff cannot claim possession simplicitor without seeking declaration as he is no more owner of the properties.

10. Lastly, the argument of the appellant in terms of Order 23 Rule 1(3) CPC has not been raised in the present Grounds of Appeal.

11. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

12. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.
13. Pending applications, if any, stand disposed of.

08.01.2026

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No