

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

133

RSA-1139-1989 (O&M)

Date of decision: 09.12.2025

Gurnet Singh

...Appellant(s)

Vs.

Sh. Aala Singh deceased represented by

Sh. Gurdial Singh (died) through his LR and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

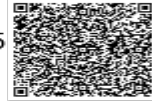
Present:- Mr. Amit Jain, Senior Advocate with
Mr.Parit Aggarwal, Advocate for the appellant.

Mr. Dinesh Ghai, Mrs. Amita Arora and
Mr. Karamjit Singh, Advocates for
respondents No. 1 to 5 and 7.

NIDHI GUPTA, J.

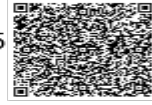
The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for possession by redemption of suit land measuring 40 Kanals 5 Kittas, has been dismissed by both the Courts below.

2. It was the pleaded case of the appellants that Waryam Singh son of Lakhbir Singh was owner in possession as "KASHT HISSEDARI" of land measuring 9K 18M in khasra No. 3816 and land measuring 5K 2M in khasra No. 3815 situated in village Sheroka Tehsil and District Shekhupura in West Pakistan. It was pleaded that Waryam Singh had mortgaged these two khasra Nos. total land measuring 14K in favour of Aala Singh son of Shamir Singh in 1944 for a consideration of Rs.1,000/-. Waryam Singh had



died before partition. Thus, mutation of inheritance was sanctioned in favour of his widow Dhan Kaur, and Gurdial Kaur widow of Kundan Singh and daughter-in-law of the deceased Waryam Singh. Dhan Kaur had sold her share of land in favour of Tarlok Singh etc. who had transferred their shares in favour of present plaintiff Gurnet Singh, who is now the mortgagor. It was also pleaded that the original mortgagee Aala Singh had also died. Defendant Gurdial Singh, being son of Aala Singh, was in possession of the suit land as mortgagee. After partition, successor-in-interest of Waryam Singh was allotted 40K land in village Dachar, Tehsil and District Karnal in lieu of above land left by him in V. Sheroka, West Pakistan.

3. It was further pleaded in the plaint that though total amount of mortgage money was Rs.1,900/- but half of the mortgaged land belongs to the plaintiff; whereas the other half belonged to Gurdial Singh, defendant who had obtained a decree of specific performance of Agreement to Sell from Civil Court, Karnal against Gurdial Kaur daughter-in-law of Waryam Singh; in pursuance to which Sale Deed dated 19.03.1979 was executed in favour of Gurdial Singh. However, a compromise dated 31.07.1980 had been arrived at between the plaintiff and Gurdial Singh/defendant in a pre-emption suit filed by the plaintiff against him. Thus, whole mortgaged land is to be got redeemed by the plaintiff. It is categorically pleaded that out of total mortgage amount Rs.1,900/- one third is to be reduced in accordance with Section 16 of the Displaced Persons Debt Adjustment Act. The plaintiff has claimed his title



through Sh. Tarlok Singh, Gurbaksh Singh, Lal Singh and Wassan Singh sons of Takhat Singh, who have transferred this land to the plaintiff vide Civil Court decree dated 11.3.1977 and mutation has been sanctioned vide No.3549 dated 27.8.1979. Thus, the plaintiff is entitled to file the present suit. It is further pleaded that the plaintiff has requested the defendant to admit his claim and to redeem the land on payment of Rs.1266.67 paise i.e. 2/3rd of the total original mortgage amount but they have refused to do so. Hence, present suit was filed on dated 27.11.1979.

4. Upon notice, defendants had resisted the suit by filing written statement in which it was admitted that since the date of mortgage, the mortgagees are in possession of the suit property which was earlier in possession of their predecessor-in-interest Aala Singh. It was contended that as mortgage had not been redeemed within the prescribed period of limitation, thus, the answering defendants were in possession of the suit land as owners. Thus, suit of the appellant was contested by the defendants only on the ground of being time barred.

5. Appellant had filed replication controverting the pleas taken in the written statement and reasserting those in the plaint as correct.

6. On the basis of the pleadings of the parties, following issues were framed vide order dated 03.05.1982: -

"1. Whether Waryam Singh was owner in possession of the suit land ?OPP

2. Whether Waryam Singh mortgaged the suit property in favour of defendant No.1 if so on what terms and conditions?

OPP

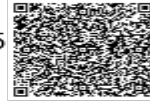


3. *Whether the suit is time barred?OPD*
4. *Whether the suit property cannot be redeemed?OPD*
5. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
7. *Whether the suit is legally maintainable?OPD*
8. *Relief.”*

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Sub Judge 1st Class, Karnal had dismissed the suit of the plaintiff with costs vide judgment and decree dated 08.11.1986. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Karnal vide judgment and decree dated 07.09.1988. Hence, the present second appeal by the plaintiff.

8. It is *inter alia* submitted by learned Senior Counsel for the appellant that the sole plea of the defendants that suit of the plaintiff was barred by limitation as redemption of mortgage land could not be sought beyond period of 30 years, is liable to be outrightly rejected in view of the Full Bench judgment of this Court in **Ram Kishan v. Sheo Ram, (P&H)(FB) : Law Finder Doc Id # 135963**; wherein it is held that in usufructuary mortgage of land, there is no fixed period of redemption, and that mortgagees do not become owners by prescription, and that mortgage is always redeemable.

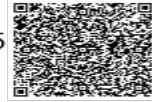
9. It is submitted that the said view has been upheld by a 3-Judge Bench of the Hon'ble Supreme Court in **Singh Ram v. Sheo Ram (SC)**



: **Law Finder Doc Id # 603373**. Thus, plea of bar of limitation in redeeming the mortgage is no longer available to the defendants.

10. Learned Senior Counsel for the appellant further submits that the appellant has been non-suited by the Courts below on the ground that appellant has not been able to prove the mortgage. Learned Senior Counsel contends that in view of the fact that mortgage has been admitted by the respondents in their written statement to the suit, the appellant could not have been nonsuited on this ground. It is submitted that in this circumstance, it was not incumbent upon the appellant to produce the certified copy of the Mortgage Deed. In support of his contention, learned Senior Counsel relies upon judgment of this Court in **Ram Rakhi v. Bimla Devi, (P&H) : Law Finder Doc Id # 37489**. It is submitted that thus, both the Courts below have erred in holding that the appellant has not been able to identify the land and prove that present suit land situated in village Dachar, Tehsil and District Karnal is the land allotted to the predecessor-in-interest of the appellant in lieu of land left behind by him in West Pakistan. Moreover, the said finding is beyond pleadings.

11. Learned Senior Counsel for the appellant further submits that in so far as the factum of mortgage was concerned, the same was admitted and having been covered under issue No.1 was duly recorded by the learned Trial Court in favour of the appellants. The learned Appellate Court without adverting the facts of the case, in an indirect manner seemed to have set aside the finding on issue No.1 as well. It is only issue

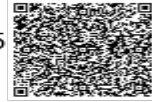


No.2 which had gone against the appellants on various details of the mortgage not coming forth as per discussion of the learned Trial Court. While deciding the issue aforesaid the learned Appellate Court did not advert to various suits inter-partes and otherwise, where all-through factum of mortgage was admitted. The cases replete of various litigations as also the admissions recorded in the earlier pleadings and judgements were duly proved but no reference at all of such evidence has been made resulting into apparent miscarriage of justice.

12. Learned Senior Counsel for the appellant lastly submits that the learned Appellate Court has not given any separate finding on the issues framed by the learned Trial Court. The matter has been taken in lumpsum and it is because of this reason that the various documents proving the case of the plaintiffs, have been lost sight of by the learned Appellate Court. The procedure adopted by the first Appellate Court in dealing with the entire matter without touching respective issues, is wholly illegal and has prejudiced the case of the appellants.

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

14. *Per contra*, Id. counsel for the defendants refers to elaborate findings of both the Courts below to the effect that plaintiff was unable to prove as to which land was mortgaged; what were the terms and conditions of the mortgage; what was the amount of the mortgage etc. It is contended that plaintiff has not led any evidence to prove that the



alleged mortgage by Waryam Singh in Pakistan is the same land which is presently in possession of the defendants. It is submitted that in these circumstances, suit of the plaintiff has been correctly dismissed by both the Courts below.

15. As regards plea of limitation, learned counsel for the respondents very fairly admits that in view of the Full Bench judgment of this Court in **Ram Kishan (supra)**, and of the Hon'ble Supreme Court in **Singh Ram (supra)**, said defence is no longer available to the respondents. He accordingly prays for dismissal of the present appeal.

16. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file alongwith Lower Court Record in minute detail. I find merit in the submissions advanced on behalf of the learned Senior Counsel for the appellant.

17. The factual foundation of this case commences from Waryam Singh s/o Lakhbir Singh, predecessor in interest of the plaintiff, who was the owner-in-possession as 'Kasht Hissedari' of land measuring 14 kanals situated in Village Sheroka, District Sheikhpura (now in West Pakistan), as per Jamabandi 1946-47. In the year 1944-45, Waryam Singh mortgaged the said land with Aala Singh s/o Shamsheer Singh, the predecessor of the defendants, for a consideration of Rs. 1900. The mortgage was with possession; and this fact is admitted in the written statement and also affirmed by defence witness DW2 Santokh Singh, who stated that his father Aala Singh had been in mortgagee-possession for decades prior to partition. Waryam Singh died approximately one year prior to partition, and his rights



devolved upon his widow Dhan Kaur and daughter-in-law Gurdial Kaur widow of Kundan Singh/predeceased son of Waryam Singh, as per their mutation of inheritance. In lieu of the land left in Pakistan, the family of the mortgagor was allotted substitute land/suit land in India at Village Dachar, Tehsil and District Karnal as reflected in mutation Nos. 3549 and 3550 (Ex.P-5 to Ex.P-9) and in the testimony of PW-5 (Patwari) as well as PW-4 from Rehabilitation Department, who confirmed that the land was allotted specifically in exchange for the mortgaged land left in Pakistan.

18. Thereafter, Dhan Kaur vide Sale Deed dated 30.1.1964/Ex.P-1 had sold her half share of land to Tarlok Singh, Gurbaksh Singh, Lal Singh, Ajit Singh and Wassan Singh, sons of Takhat Singh; who further transferred their rights to the present plaintiff.

19. Even Gurdial Kaur vide Sale Deed dated 30.1.1964/Ex.D-1 had sold her half share of land to Tarlok Singh, Gurbaksh Singh, Lal Singh, Ajit Singh and Wassan Singh, sons of Takhat Singh. However, the record further reveals that Gurdial Kaur had also executed an Agreement to Sell dated 2.7.1963, in favour of Gurdial Singh/present defendant. As sale deed was not executed, Gurdial Singh/defendant had brought a suit no.44 for specific performance against Gurdial Kaur and Tarlok Singh, Gurbaksh Singh, Lal Singh, Ajit Singh and Wassan Singh, sons of Takhat Singh; which was decreed by the SJIC, Karnal on 29.3.1965. The appeal filed by the respondents/defendants thereto, was dismissed by this Court on dated 19.1.1977. Pursuant to which Sale Deed dated 19.3.1979 was executed in favour of Gurdial Singh present defendant.



20. The record further reveals that the appellant/plaintiff Gurnet Singh, successor-in-interest of the original mortgagor, instituted suit for possession by redemption of agricultural land measuring 40 kanals comprised in Khewat No. 477, Khatauni No. 497, Rectangle 32 and 46, situated in Village Dachar, Tehsil & District Karnal. The suit was filed on payment of Rs. 1,266.67, representing 2/3rd of the original mortgage amount. At this stage, a compromise dated 31.07.1980 was entered into between the present plaintiff and Gurdial Singh/present defendant no.1 in the pre-emption suit between them; and defendant No.1, admitted that the suit be decreed, and defendant would continue as a mortgagee subject to right of redemption. The land was thus, transferred by a decree in favor of plaintiff who became the lawful successor to the equity of redemption.

21. Despite all of the above facts being on record, the suit of the appellant has been dismissed by both the Courts below on two specific grounds: a) that the Appellant had failed to prove the specific year of the mortgage; and b) that the suit was time-barred as time for redemption stood expired. The finding on limitation is prima facie unsustainable and contrary to the statutory scheme. Both courts proceeded on the premise that the mortgage took place in 1944, and that the suit is time-barred. This is legally untenable as Mortgage with possession constitutes usufructuary mortgage and there is no limitation to redeem a usufructuary mortgage; as held by a Full Bench of this Court in **Ram Kishan (supra)** and affirmed by a 3-Judge Bench of the Hon'ble Supreme Court in **Singh Ram (supra)**. Thus, it



is a settled principle of law that once a mortgage always a mortgage and is always redeemable.

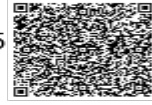
22. As regards, proving of the mortgage, besides the facts already enumerated hereinabove, both courts below have egregiously erred in holding that the details of mortgage were not proved as, the existence of the mortgage was not only pleaded in the plaint but categorically admitted by the defendants in their written statement, and by DW1 and DW2 in their testimony. The defendant no.1 Gurdial Singh in his written statement has admitted as follows: –

“2(b). That para-No. 2 (b) as stated is wrong and denied. However, the land has throughout been in possession of the original mortgage Shri Aala Singh since the date of mortgage and after his death, his legal heirs are in possession of the land in question. The land has since not been redeemed within the prescribed period of limitation. The right of redemption is no more available to the present plaintiff. The suit is not within time.

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2(e). That para No. 2 (e) of the petition as stated is wrong and hence denied. The total land subject matter of mortgage is 40 K. The suit has not been filed for the entire land. The suit deserves dismissal on this score alone.

2(f). That para No. 2 (f) is wrong and hence denied as alleged. The sale in favour of defendant has since been preempted by the plaintiff. The suit in the present form is not legally maintainable. Other allegations contained in this para are also denied.” (Emphasis added)



23. Further, Gurdial Singh/DW1/defendant no.1 in his deposition has stated as follows:-

“The land in dispute is 05 Killa. That my father Aala Singh had taken this land on mortgage 6-7 years before establishment of Pakistan. After mortgage of said land, Aala Singh was in possession. Until Aala Singh was alive he had possession over said land. After establishment of Pakistan abovesaid mortgaged land was allotted to Aala Singh, which is the land in dispute. After death of Aala Singh, we are in possession. After mortgaging the land, Waryam Singh, or his legal heirs or the plaintiff were never in possession over said land. We are in possession as owner over suit property. Mortgaged land was never redeemed.”

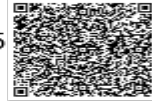
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I cannot tell the Number of land orally. At this time I have no any Jamabandi and document regarding said land. We have documents in of Pakistan, but cannot show. We had got entered said land with Area Patwari about 34-35 years ago. I don't know name of Patwari, Tehsil. I have no any document regarding entry of land. It is wrong to suggest that I am deposing falsely and I have no concern with disputed land.”
(Emphasis added)

24. Even DW2 Santokh Singh has stated as follows:-

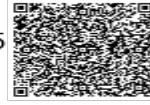
“I was known to Aala Singh. Aala Singh had taken land on mortgage 6-7 years before establishment of Pakistan. Earlier, Aala Singh was in possession. After establishment of Pakistan, the land in dispute was allotted to Aala Singh. After death of Aala Singh, his legal heirs are in possession over abovesaid dispute land.

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Mortgage Deed was not produced before us. Waryam Singh was mortgagor and he has died. It is correct that Dhan Kaur and Gurdial Kaur would legal heirs of Waryam Singh. It is wrong to suggest that Mutation of the land did not enter on the name of Aala Singh. It is correct that after death of Aala Singh, Gurdial had possession. I have no information about mortgage. It is wrong that Aala;'s son is heir of mortgaged land. I don't know that the land of Trilok was allotted to whom? It is wrong that I have no personal information about this case and I am deposing falsely."

25. From the above, it is clear that following facts were admitted by the defendants that: Waryam Singh was owner in possession in Pakistan; He mortgaged land to Aala Singh; mortgage was with possession; that in lieu of land mortgaged by Waryam Singh in Pakistan, present Suit land was allotted. Thus, the observation of the learned Courts below that mortgage terms were not proved is misplaced, because once mortgage is admitted, the court is required only to determine entitlement to redeem, all of which stood proved. In any event, the only dispute related to the year, which is immaterial for determining the existence of the mortgage. Once the factum of mortgage is admitted, courts cannot go behind the pleadings to require strict proof of the mortgage deed. Even the Identity of the mortgaged land stands fully established. The defendants never disputed the identity of the land under mortgage. Documents Ex P1 and Ex.D1 specifically proved the details of the land under mortgage. The fact regarding pre-emption suit were also admitted in the written statement. The defendants have categorically admitted that they came to be in possession of present suit

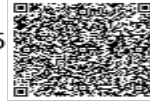


land measuring 40K situated in village Dachar Tehsil and District Karnal as mortgagee in continuation of the mortgage executed by Waryam Singh predecessor-in-interest of the plaintiff in favour of Aala Singh, predecessor-in-interest of the defendants. These facts have been categorically, unambiguously, and unequivocally admitted by the defendant Gurdial Singh as above.

26. Needless to say, it is settled position in law that admission is the best evidence. In the present case, in view of the admission of defendant No.1/Gurdial Singh, no further evidence was needed to prove the factum of ownership of the plaintiff and possession and mortgage of the defendants over the suit property. As per Section 58 of the Evidence Act, admission is the best evidence. The Hon'ble Supreme Court in **Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary (SC) Law Finder Doc Id # 83537**, has held that an "*admission of fact is good evidence*" against the person admitting the same unless it is legally explained away to be made under a bona fide mistake. That is not so in the present case.

27. The Hon'ble Supreme Court in **Union of India vs. Moksh Builders and Financiers Ltd and others 1977 AIR, SC 409, Law Finder Doc Id # 105456** has held that "*admissions duly proved are admissible evidence irrespective of whether that party making them appeared in the witness box or not.*"

28. Further in **Hub Lal Singh (D) represented by LRs and Another vs. Sheo Balak Singh and others, 2014 (10), RCR (Civil), 1573, Law Finder**

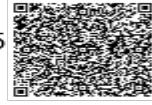


Doc Id # 470026 Allahabad High Court has held that *“An admission has been considered to be best evidence for the reason that section 58 of the Evidence Act, 1872 states that the fact admitted need not be proved. An admission in pleading means admission of an averment by the opposite parties. However, party making admission cannot take advantage of it, and on the contrary, the party in whose favour it is made, may get its benefit.”*

29. Reliance may also be placed upon judgment of the Hon’ble Supreme Court in **Vathsala Manickavasagam v. N. Ganesan (SC) 2013(4) RCR (Civil) 22, , Law Finder Doc Id # 461299** wherein it is held as under:-

*“24. As far as the principle to be applied in Section 17 is concerned, the Section as it reads is an admission, which constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts, incorporated therein. When once, the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion. In this context, it will be worthwhile to refer to a decision of this Court in **Union of India v. Moksh Builders and Financiers Ltd. and others, AIR 1977 Supreme Court 409** wherein it is held as under :*

*"It has been held by this Court in **Bharat Singh v. Bhagirath [1966] 1 SCR 606** that an admission is substantive evidence of the fact admitted, and that admissions duly proved are "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when*

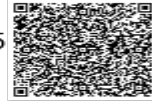


*appearing as witness was confronted with those statements in case it made a statement contrary to those admissions." In taking this view this Court has noticed the decision in **Ajodhya Prasad Bhargava v. Bhawani Shanker, AIR 1957 Allahabad 1 (FB) also.**"*

30. The Hon'ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D) by Lrs. (SC) 2011 AIR SC (Civil) 1418**, has held as under:-

"16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings."

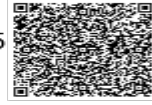
31. Thus, in view of the above noted factual and legal position, the enquiry conducted by the learned Lower Appellate Court in para 7 of its impugned judgment dated 07.09.1988 to the effect that appellant had not furnished details of the mortgage and not produced the mortgage deed, is not warranted being beyond pleadings. Rather, as already discussed above in detail, in the written statement the defendants had admitted the mortgage. DW1 has admitted in his evidence that defendant is in



possession as mortgagee for the land left behind by his predecessor-in-interest in Pakistan and mortgage has not been redeemed till date. Similarly, DW2 has claimed ownership of the suit land as mortgagee only on the ground of limitation.

32. Finding/reasoning of the learned Courts below that certified copy of the Mortgage Deed was not produced is liable to be rejected in view of the pronouncement of law in this regard by this Court in **Ram Rakhi (supra)**; wherein it is held as under: -

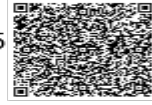
“4. After hearing the learned counsel for the parties, I find no merit in the appeal. The primary argument of Mr. Gopi Chand, learned counsel for the appellant, that as the mortgage deed was not proved, the property could not be identified, to my mind, is without merit. A cumulative reading of the written statement as also Exhibit P-9 which is a reply to the notice Exhibit P-6 clearly makes out that the factum of the mortgage having been executed was admitted and the only rider placed on its redemption was that as she had spent a sum of Rs. 16,000/- in reconstructing the shop after it had been demolished during the emergency, she was entitled to be reimbursed this amount. In the face of this admission, I am of the opinion that the mere fact that the original mortgage deed in question had not been produced in Court would not have any adverse effect on the case of the respondents. Mr. Gopi Chand's second argument that the admission was to be read as a whole and not be torn asunder may be meritorious but this question does not arise in the facts of the case. It is to be noted that the primary purpose for denying the admission was that the identify of the shop in question could be disputed. However, even in the written statement, the only dispute was with



regard to the dimensions of the property and there was not even a suggestion that the identity of the property was disputed. To my mind it appears that when the dimensions of the shop are disputed, it cannot be said that the identity of the property had been disputed. Moreover, from a reading of the admission as a whole, it cannot be lost sight of that it had been admitted that the shop in question had been mortgaged but as already indicated above it was sought to be redeemed only on the payment of Rs. 16,000/- which had been spent after it had been demolished during the emergency. Even this assertion was untenable as no evidence had been produced by the appellant with regard to issue No. 5. i.e. with regard to the amount that she had spent on the shop in question and the trial Court accordingly gave a finding against her on that issue.”

33. Furthermore, the very fact that the respondents are claiming ownership by way of expiry of redemption period, in itself amounts to admission of the mortgage. The fact that mortgage was with possession is confirmed from Ex.D4, Ex.D6 revenue entries. It is not disputed that till date in the revenue record Jamabandi for the year 1970-1971/Ex.D-4, and Jamabandi for the year 1980-1981/Ex.D-6, plaintiff is shown as mortgagor and defendants as mortgagee. Thus, from the above, it is clear that the defendants are in possession of the suit land as mortgagee.

34. It may lastly be pointed out that Dhan Kaur widow of Waryam Singh had executed Sale Deed dated 30.01.1964 Ex.P1 in favour of Tarlok Singh, Gurbaksh Singh, Lal Singh, Ajit Singh and Wassan Singh, sons of



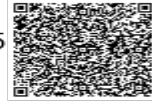
Takhat Singh (vendors of the present plaintiff) for an amount of Rs.15,000/-; wherein in Ex.P-1, Dhan Kaur has categorically mentioned as follows:-

“.....Out of this, 40 Kanal of land comprised in Khewat No. 334 is under mortgage with possession with Aala Singh son of Shamsher Singh son of Pradhan Singh, resident of Village Dachaur, Tehsil and District Karnal to the extent of my share and half share of the owner Smt. Gurdial Kaur. The land bearing Khasra No.31 31//21, 32//24, 25, 19//2 are under mortgage and in possession from both of us to (Labh Singh son of Assa Singh, resident of Village Dachaur, Tehsil and District Karnal). Both these mortgage deeds are for Rs. 1900/- approx.....”

35. Similarly, Gurdial Kaur, widow of Kundan Singh, son of Waryam Singh has also executed Sale Deed dated 30.01.1964/Ex.D1 wherein she too had mentioned as follows:-

“.....Out of this, 40 Kanal of land comprised in Khewat No. 334 is under mortgage with possession to Aala Singh son of Shamsher Singh son of Pradhan Singh, resident of Village Dachaur, Tehsil and District Karnal to the extent of my share and half share of the owner Smt. Dhan Kaur. The land bearing Khasra No.31//21/1, 32//24, 25, 19//(1-2) (4-10) are under mortgage and in possession from both of us (Labh Singh son of Assa Singh, resident of Village Dachaur, Tehsil and District Karnal). Both these mortgage deeds are for Rs. 1900/- approx.....”

36. As already mentioned above, in respect of share of Gurdial Kaur, defendants had filed a civil suit for specific performance of Agreement to Sell executed by Gurdial Kaur in favour of the defendants. Suit of the



defendants was decreed for specific performance vide judgment and decree dated 29.03.1965; in pursuance to which Sale Deed was executed through Court on 19.03.1979. However, in the meantime, plaintiff had filed suit for preemption in exercise of its preemptory rights. In the said proceedings, a compromise dated 31.07.1980 (available at page 85 of the LCR) was entered into between the present plaintiff and the present defendant, as per which, it was agreed between the parties that respondent will continue to remain in possession of the suit property as mortgagee subject to plaintiff's right of redemption. It may be mentioned that the said decree dated 29.03.1965, Sale Deed dated 19.03.1979, and Compromise dated 31.07.1980 were sought to be brought on record by the plaintiff by way of additional evidence. However, the said application of the appellant was dismissed by the First Appellate Court while dismissing the suit vide judgment dated 07.09.1988. Nonetheless, the said facts have not been denied by the respondents at any stage.

37. Given the above discussion and position in law, the present Appeal is **allowed**; and judgments and decrees of the Courts below are set aside; and suit of the plaintiff for possession by redemption stands decreed.

38. Pending applications, if any, stand disposed of.

09.12.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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