Rachhpal Singh Vs Sohan Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 25, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 151

Citation: (2007) 4 CivCC 192 : (2007) 4 RCR(Civil) 166

Hon'ble Judges: R.S. Madan, J

Bench: Single Bench

Advocate: Sukhant Gupta and Mr. Simranjeet, for the Appellant; M.L. Sarin , Ms. Alka Sarin and Mr. D.B. Singh, for the Respondent

Final Decision: Dismissed

Judgement

ORDER

R.S. Madan, J.
This Regular Second Appeal No.465 of 1976 has a checkered history and the same is described as under.

2. The plaintiff-appellant has filed a civil suit for possession by way of redemption of land measuring 25 kanals 5 marlas as detailed in the heading

of the plaint, situated in village Bhatoya, Tehsil & District Gurdaspur on payment of Rs.370/-.

3. It is the case of the plaintiff Rachhpal Singh that Sansar Singn his father had mortgaged certain land in village Phulkian with Beli Ram, father of

the defendant in the year 1939 for Rs.370/- in Pakistan. After partition of the country, the plaintiff was allotted land in village Bhatoya in lieu of the

land left by his father in village Phulkian. The defendant (now respondent) was allotted mortgagee rights. After the death of the father of the plaintiff

the plaintiff claimed that he is entitled to redeem the land on payment of Rs.370/-from the respondent.

4. The aforesaid suit was contested by the defendant by filing written statement. He denied that the father of the plaintiff had mortgaged any land

with the father of the defendant, so the question of redeeming of the land was also denied. From the pleadings of the parties following issues were

framed :-

(1) Whether the mortgage in question is subsisting and if so, on the payment of what amount it is redeemable? OPP

(2) Whether the plaintiff is entitled to redeem the suit land? OPP

5. Both the parties adduced evidence in support of their contentions raised in the pleadings.

6. The learned Trial Court while disposing of the issue No. 1 & 2 together was of the view that the plaintiff has not led any sufficient evidence to

prove that there subsists any mortgage of the land which could be redeemed. The only evidence led by the parties was ocular version of the

plaintiff and his witness Bishambar Singh, whose testimony was not accepted to be true by the Court, so the findings on both the issues were

returned against the plaintiff. Resultantly, the suit was dismissed.

7. Aggrieved by the impugned judgment and decree of dismissal of the suit the plaintifffiled a Civil Appeal No.30/22 of 1974 before the Court of

Sh.K.C.Dewan, Senior Sub-Judge exercising Enhanced Civil Appellate Powers, Gurdaspur. The learned first appellate court endorsed the finding

on issue Nos. 1 and 2 recorded by the learned sub-Judge, First Class and dismissed the appeal finding no merit in it.

8. The litigation further advanced by filing the Regular Second Appeal No.465 of 1976 before this Court.

9. During the pendency of the Regular Second Appeal before this Court an application was moved under order 23 Rule 3 read with Section 151

of the CPC, whereby the appellant/ applicant claimed that Sohan Singh had executed a receipt on 28.03.1977, whereby he had accepted the

claim of the appellant/applicant on payment of Rs.370/-and the mortgage stands redeemed. To vouch safe the validity of the receipt dated

28.03.1977 this Court vide order dated 12.03.1984 sought the report of the Sub-Judge First Class, Gurdaspur about the genuineness of the

receipt. On receipt of the report dated 06.08.1984 of the Sub Judge First Class, Gurdaspur, the trial Court was of the view that receipt Exhibit

RP/1 is forged and fabricated document and it was never executed by Sohan Singh defendant-respondent nor he received any mortgage money.

After the receipt of the report, this Court vide its order dated 22.01.1985, dismissed the Regular Second Appeal with costs, on the ground that

there is no documentary evidence available on the record which suggests that any mortgage had taken place between the parties or whether it still

exists or not.

10. Aggrieved by the dismissal of the Regular Second Appeal, the plaintifffiled Civil Appeal No.5205 of 1993 before the Apex Court, which was

disposed of by the Hon''ble Supreme Court on 24.09.1993 with the direction to the High Court to dispose of the appeal afresh on merits.

11. It is pertinent to mention here that none of the parties have suggested the law points involved in the case. In the absence thereof a duty is cast

upon this Court to frame the law points. Although both the issues which have been framed before the trial Court are the legal issues and can be

termed as the law points involved in this appeal.

(1) Whether any mortgage of the suit land subsist on the date of filing of the appeal?

(2) If so, whether the mortgage land can be redeemed on the date of disposal of the appeal?

Both the law points are answered in negative.

12. After the remand of the case by the Apex Court to this Court CM. Application No.4560-C of 1994 under order 41 Rule 27 read with

Section 151 CPC was moved by the appellant on 28.11.1994, vide which the plaint sought to place on the record the following documents by

way of additional evidence:-

1. Annexure PI is copy of the order passed in Civil Appeal No.5205 of 1993 arising out of the judgment of the High Court dated 22.01.1985 and

disposed of by the Apex Court on 24.09.1993.

2. Annexure P2 is the copy of application under Order 41 Rule 27 of the CPC moved in Civil Appeal No. 13 of 1983, titled as Rachhpul Singh v.

Inder Singh and Jagat Singh in the Court of Sh.M.L.Singhal, Additional District Judge, Gurdaspur, vide which the documents from Sr.No.(i) to

(vii) attached with application were sought to be produced by way of additional evidence.

3. Annexure P3 is the copy of the order dated 03.01.1986 vide which the application under Order 41 Rule 27 of the CPC was disposed of by the

Court of Sh.M.L.Singhal, Additional District Judge, Gurdaspur in the aforesaid appeal.

4. Annexure P4 is the copy of the judgment dated 15.03.1986 passed in Civil Appeal No. 13 of 1983/1984 by Sh.M.L.Singhal, Addl. District

Judge, Gurdaspur, whereby the judgment of the Trial Court was set aside and the appeal was accepted thereby and a decree for redemption of

mortgage was passed in favour of the plaintiff-appellant.

5. Annexure P5 is the copy of the decree sheet prepared on the basis of the decision rendered in the Civil Appeal No. 13 of 1983.

6. Annexure P6 is the copy of order passed in the Regular Second Appeal No. 1193 of 1986, filed by Inder Singh and Jagat Singh against

Rachhpal Singh before the Hon''ble High Court from the order of Sh.M.L.Single, Additional District Judge, Gurdaspur which was dismissed in

limine on November 10,1986.

7. Annexure P7 is the copy of the order passed in the petition for Special Leave to Appeal (Civil) No. 15861 of 1986 filed by Inder Singh and

another against Rachhpal Singh, which too was dismissed by the Apex Court on 24.09.1993.

8. Annexure P8 is the original Sanad through which land was allotted to the appellant in India at village Bhatoya, District Gurdaspur.

9. Annexure P9 is the copy of the Mutation No.248 attached with Jamabandi for the year 1929-30 of village Phulkian, District Sialkot to establish

that the mortgage rights were sold in favour of Inder Singh and Jagat Singh vide order dated 19.02.1930.

10. Annexure P10/T is the copy of Mutation No.452 of Village Pulkian which shows that mortgagee rights have been transferred in favour of

Sohan Singh vide order dated 20.08.1942 on payment of Rs. 1300/- by.Inder Singh which is reproduced as under:-

Inder Singh and Jagat Singh previous Mortgagees, identified by Safaidposh Tarlok Singh in open public confess the transfer of mortgages land of

1930 as also the amount of mortgage. He presented after the verification by the Kanungo.

Sd/-

Revenue Officer,

In Urdu dt.20.8.42

Verification by the Kanungo has been made Parties are agriculturists by occupation. So the transfer of mortgage rights of 1/3 share of Khata No.

2-17-21 and 1 6 share of Khata No. 7 and 55 total area 386 /canals 5 marl as is sanctioned in favour of Sohan Singh against Rs. 1300/-.

Sd/-

Revenue Officer

In Urdu dt.20.8.42

11. Annexure P11 is the Khatouni Istemal of village Bhatoya, H.B.No.673, Tehsil and District Gurdaspur.

12. Annexure P12 is the copy of the Naqsa Rights holder of village Bhatoya which shows that Sohan Singh adopted son of Beli Ram and

Rachhpal Singh -are mortgagees.

13. Annexure P13 is the copy of the Jamabandi for the year 1957- 1958ofvillage Bhatoya, District Gurdaspur.

14. Annexure P14 is the copy of the Jamabandi for the year 1962-1963 of village Bhatoya, District Gurdaspur.

13. These documents have been placed on the record with a view that the facts involved in the present case are akin to the facts of the case

mentioned above in the said documents which was filed against Inder Singh and Jagat Singh.

14. The translation copies of the aforesaid records were are also filed with the application.

15. In is further averred in the application that the plaintiff-appellant has moved an application on 26.06.1971 for sending interrogatories to

Pakistan.in the name of Special Kanungo, Sialkot, through the Registrar of High Court of Lahore, so that the date of the mortgage may be

ascertained as no documents were in existence in India to prove the date of mortgage effected by Sansar Singh father of the plaintiff-appellant with

Beli Ram son of Roda Ram of village Phulkian, Tehsil and District Sialkot. But the said application was dismissed as there was no agreement

between India and Pakistan for communication, post or otherwise. Again in appeal the appellant filed an application dated 12.11.1974 that the

interrogatories which were already on the file may kindly be sent to Pakistan as an agreement had been reached for sending post or communication

between the two countries. But the said prayer was declined as no notification or documents in support of the contention were placed on record.

In the R.S.A. the application was filed with similar grounds but the same was dismissed vide order dated 22.01.1985. After the appeal was

dismissed the appellant went to Pakistan in March 1985 to obtain documents proving the ownership and also the fact that the respondent was in

possession of the land in dispute as mortgagee. The said documents were available to the appellant in the month of April 1985 which includes the

certified copy of the mutation and jamabandi, these documents were filed along with the SLP before the Hon"ble Supreme Court which remanded

the case to the High Court with the direction that case be decided on merits but no order with respect to the documents attached with the SLP was

passed. It is the case of the appellant that he could not produce these documents before the Trial Court and the First Appellate Court as well as in

the Regular Second Appeal because these documents were not available to him at the relevant time. The appellant now through present application

wants that these documents be taken on the record by way of additional evidence.

16. It is the case of the plaintiff-appellant that after the decision of the case by both the Courts below the appellant went to Pakistan in the year

1985 and collected these documents Annexure P9 & Annexure P10 on 07.04.1985 for the purpose of proving this mortgagee rights. So far as the

documents Annexure P2 to P7 are concerned, they relate to another Civil Suit which was instituted against Inder Singh and others by Rachhpal

Singh the present plaintiff-appellant in the Civil Court in the year 1982 and in the said suit the plaintiff secured a decree for redemption of the

mortgage of the land mortgaged by his father Sansar Singh in Village Phulkian because the documents were filed before the First Appellate Court

during the pendency of the appeal.

17. The documents Annexure P8 is the copy of the Sanad, P9 is the copy of the mutation which depicts that there was an oral mortgage in favour

of Anant Ram and others who sold their mortgagee rights in favour of Inder Singh and Jagat Singh on payment of Rs.5,500/-.

18. Annexure P10 is a copy of the Mutation No.452 to show that the rights of Inder Singh and others as mortgagee have been transferred in

favour of Sohan Singh.

19. Reply to the application was filed denying the factum of the mortgage as well as that the plaintiff cannot be allowed to place on the record the

documents P2 to P7 in the evidence as the same are not inter-parties. The documents P9 to P14 are not relevant because the documents depicts

the mortgage of the property of the land which Inder Singh and Rachhpal Singh and sons of Ruda Mal has purchased from Anant Ram as is

evident from Annexure P9. There is no document on the record to suggest that the father of the plaintiff had mortgaged his land measuring 25

Kanals 5 Marias in favour of the defendant-respondent. It was also pleaded that these documents have been produced after a lapse on 23 years of

the filing of the suit when a valuable right has accrued to the opposite side.

20. In the year 1997 appellant moved another Civil Miscellaneous Application No.2340-C under Order 6 Rule 17 vide which he sought the

amendment of the plaint to the effect that at the time of filing of the suit the plaintiff was not in possession of the documents Annexure P9 and P10.

These documents were secured by the plaintiff after visiting Pakistan in the month of April, 1985. On account of the non-availability of these

documents the plaintiff now sought amendment in Para No.4-A of the original plaint which reads as under:-

(A) The contents of para No. 1 of the plaint are to the substituted by the following:-

That Rura s/o Roda and Sansar Singh son of Bachitter Singh and Beli Ram son of Roda, Caste Rajput residents of Village Phulkiana District

Sialkot (now in Pakistan) had mortgaged the land (the suit land being a portion there of) in favour of Anant Ram, Diwan Chand, Kanshi Ram,

Mukand Lal and Javanda Mal sons of Gobind Ram caste Khatri residents of Sialkot for an amount of Rs.5,500/- and their mortgagee rights were

purchased by Inder Singh and Jagat Singh son 01 Rura Mal and Mutations of sale of mortgagees rights, No.248, 249, 250 and 251 were

sanctioned on 19.02.1930. Thereafter Inder Singh and Jagat Singh sold their mortgagee rights regarding the land in suit in favour of Sohan Singh

defendant for a consideration of Rs. 1,300/- and mutation No.452 to that effect was sanctioned on 20.08.1942. The details are as follows:-

(B) In sub Clause (b) of para No. 1 the name of the mortgagee has wrongly been mentioned as Beli Ram son of Roda Mal but it should have been

Sohan Singh son of Beli Ram son of Roda Mal resident of Phulkiana Tehsil Sialkot, thus after the amendment this sub para is to read as follows:-

(b) Sohan Singh adopted son of Beli Ram son of Roda Mal Rajput resident of Phulkian Tehsil Sialkot now resident of Village Bhatoya Tehsil

Gurdaspur (defendant).

(C) Date of mortgage as such in Sub Clause ""(c)"" in para No. 1 of the plaint is to be stated as 20.08.1942 and after the amendment the said clause

would read as under:-

(c) 28.08.1942"".

(D) In clause (d) of Para No.1 of the plaint the amount of mortgage is to state as Rs. 1,300/- instead of Rs.370/- and after the proposed

amendment the said para is to read as under:-

(d) Rs. 1,300/-.

(E) That in para No.4 of the plaint the amount of mortgage is to the substituted as Rs. 1,300/- instead of Rs.370/- and after the amendment the

said para 4 to read as follows:-

That the Original mortgagor the father of the plaintiff is dead and thus the plaintiff is entitled to redeem the land in suit on payment of Rs. 1,300/-.

The original mortgagee is also dead and the defendant is his legal heir. The copy of the mutation shall be produced later on.

(F) Similarly the amount of mortgage as referred to para No.5 of the plaint to this regard to as Rs. 1,300/- instead of Rs.370/- and the said para is

to the read as:-

That the defendant has been asked many a times to redeem the land in dispute on payment of Rs. 1,300/- but he has refused to do so since a year

back, hence the cause of action has arisen to the plaintiff since then.

(G) In para No.6 of the plaint figure Rs. 185/- is to the mentioned as Rs.650/- and after amendment that para is to read as

That the value for purposes of Court fee is Rs.650/- the half of the principal amount of the mortgage money and for purposes of jurisdiction at 30

times the land revenue is Rs.210/- and as the land in suit is situated in Village Bhatoya, Tehsil Gurdaspur, hence the Civil Courts as Gurdaspur

have got jurisdiction to try this suit.

(H) In prayer clause the figure Rs.370/- is to be substituted as Rs. 1,300/-and after the amendment that para is to read as :-

That the plaintiff prays that a decree for possession by redemption of land measuring 25 kanals, 5 marlas, as described in the heading of the plaint

be passed with costs in favour of the plaintiff against the defendant on payment of Rs. 1,300/- or whatever amount is found to be correct by the

Court. Even if the mortgage is proved to be earlier in the year 1939, even then the decree may be passed against the defendant.

21. The case of the plaintiff is that due to non-availability of the documents these defects occurred in the plaint which now needs to be

incorporated in the amended plaint.

22. Reply to the application was filed and it was pleaded therein that the amendment cannot be allowed at this stage when the original suit was filed

on the last date of limitation and the present amendment has been sought in the year 1977, whereas the suit was filed in the year 1971. The

amendment cannot be allowed after a gap of 26 years. It was also pleaded that on account of the consecutive findings on Issue No. I and 2

recorded by the two Courts below as well as for want of evidence, a valuable right has accrued to the defendant-respondent. A suit once it is

time-barred on the date of seeking amendment in the plaint, cannot be allowed. Reliance was made on Munilal v. Oriental Fire and General

Insurance Co. Ltd., 1996 (1) CCC 46 7 (S. C.) : 1996 (1) ACJ 605 (S.C.) : (1996) 113 PLR 209 (SC) which reads as under:-

Code of Civil Procedure, 1908 Order 6 Rule 17 - Amendment of Plaint when relief stands barred by time - Amendment not be allowed.

23. It is not disputed that both the Courts below have returned the finding of issue No.1 and 2 against the plaintiff-appellant for want of adequate

oral as well documentary evidence which led to the dismissal of the suit by the Trial Court as well as appeal by the First Appellate Court. It was

for the first time in the Regular Second Appeal that the plaintiff-appellant has tried to built up his case through documents Annexure P9 and P10

which are copy of Mutation No.248 and 452 respectively attached with the Jamabandi for the year 1930 of village Phulkian to establish that the

mortgagee rights of 71 fields totaling 221-8 and 1/2 share of 63 -17 or 14 fields with share of every kind of Shamlat was transferred from Anant

Ram. Kanshi Ram, Diwan Chand, Mukand Lai & Jawanda Mal in equal shares in favour of Inder Singh & Jagat Singh in equal shares is

sanctioned as in the present form on payment of Rs.5,500/- as mortgage amount on 19.02.1930.

Annexure P10/T is a copy of Mutation No.452 of the same village which shows that mortgagee rights have been transferred in favour of Sohan

Singh by Inder Singh and Jagat Singh vide order dated 20.08.1942 on payment of Rs. 1300/-. Annexure PI 1 is the Khatouni Istemal of the land

of village Bhatoya, District Gurdaspur.

Annexure P12 is the copy of Naqsa Rights holder of village Bhatoya wherein it is simply recorded that Sohan Singh adopted son of Beli Ram and

Rachhpal Singh son of Sansar Singh are mortgagees.

So far as the documents P2 to P7 are concerned they do not relate to the present case nor it is inter se parties. Annexure P13 is the copy of the

Jamabandi for the year 1957/1958 of village Bhatoya, District Gurdaspur show the allotment of land. Annexure P14 is the copy of the Jamabandi

for the year 1962- 1963 of village Bhatoya, District Gurdaspur.

24. I have heard the learned counsel for the parties namely Sh.Sukant Gupta for the appellant and Sh.M.L.Sarin, Sr.Advocate with Ms.Alka

Sarin, Advocate for the respondent-defendant.

25. Opening the arguments on the application under Order 41 Rule 27, CPC the learned counsel referred to the provision of Order 41. Rule 27

which is reproduced as under: -

Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not b,e entitled to produce additional evidence, whether

oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within

his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other

substantial cause.

The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

26. According to the learned counsel for the appellant the case of the plaintiff-appellant falls in Clause (b) when the Court is of the opinion during

hearing of the case that if it requires any document so as to enable it to pronounce the judgment, in that eventuality it is the duty of the Court to

permit the additional evidence. Reference was made to Syed Abdul Khader Vs. Rami Reddy and Others, titled as Syed Abdul Khader v. Rami

Reddy & Ors. wherein it is observed as under:-

By a catena of decisions of this Court, it is well established that Order 41, Rule 27, CPC does not confer a right to the party to produce

additional evidence., But if the Court hearing the action requires any document so as to enable it to pronounce judgment, it has the jurisdiction to

permit additional evidence to be produced. The High Court has given cogent reasons why it felt impelled to permit production of registered sale

deeds so as to enable it to pronounce judgment in the matter. If the High Court considered the production of registered sale deeds essential so as

to enable it to pronounce judgment, there is no reason why the Supreme Court should interfere with the discretionary power properly exercised by

the High Court in the interest of justice. Even otherwise the High Court was justified in permitting additional evidence to be produced when it

consisted of registered sale deeds. Such additional evidence has to be read as part of the record. Once these registered sale deeds are taken into

consideration, a part of the decree of the trial Court granted in favour of the plaintiff awarding him possession of the land on the only ground that

the sale deeds in respect of those pieces of lands were produced, could not be maintained and the High Court rightly allowed the appeal of original

defendants No.8,9 and 11 and no exception can be taken to it.

Reference was also made to (1991) 100 PLR 214 rendered in Telu Ram Jain v. M/ s Aggarwal Sons, which reads as under-

Additional evidence.- Production of Money suit dismissed on technical ground of non-registration of plaintiff, a partnership firm-Appellate Court

can permit production of certificate of registration.

Reliance was also placed on another judgment rendered in Savitri and Others Vs. Manphool and Others, which is reproduced as under:-

Held, that the appellate Court can admit additional evidence if it is required to enable to pronounce judgment. The Court may be able to

pronounce judgment even in the absence of additional evidence, but if the production of additional evidence can enable the Court to dispose of the

appeal in a more satisfactory manner, conditions mentioned in the sub-clause will be satisfied. The expression ""substantial cause"" mentioned in the

sub-rule confers a wide discretion on the appellate Court to admit additional evidence when the ends of justice require it. It can do so even if it can

pronounce judgment on the basis of material on record. But the additional evidence must be decisive and conclusive in character and free from

suspicion.

Reliance was also placed on Gurnek Singh and Another Vs. Gurbachan Singh and Others, rendered in Gurnek Singh & Anr. v. Gurbachan Singh

& Ors. In this case the facts of the case are quite distinguishable. In Gurnek Singh''s case an application under Order 41, Rule 27, CPC was

moved before the First Appellate Court to produce the revenue record by way of additional evidence. The said application was declined. It was in

the circumstances that application under Order 41, Rule 27, CPC was allowed by the High Court on the ground that the proposed additional

evidence would not cause prejudice to the other side and the authenticity of the revenue record cannot be doubted.

27. Learned counsel submitted that the plaintiff-appellant had exercised due diligence in the trial Court when he moved an application to send the

interrogatories to Pakistan to record the statement of the revenue official through the Registrar of Lahore High Court. But the said interrogatories

was declined due to strained relations between India and Pakistan. Admittedly, the plaintiff was not in possession of these documents at the time of

filing of suit and it had sought the indulgence of the Court after he secured these documents from Pakistan. It was for the first time that after filing of

the Regular Second Appeal before this Court the appellant visited Pakistan in the month of April 1985 and secured Mutations P9 and P10. So far

as the remaining documents PI 1 to P14 are concerned, all these documents have been secured by the plaintiff from the revenue official of

Gurdaspur. Thus, according to the learned counsel the documents now sought to be produced by way of additional evidence in the appeal would

enable this Court to adjudicate the controversy in the appeal.

28. On the other hand, learned counsel for the respondent Sh.M.L.Sarin submitted that it was for the plaintiff-appellant to establish that the

existence of these documents were not in his knowledge, when he led the material evidence before the Court. It was for the plaintiff to have taken

all such steps which were essential for the purpose of adducing the evidence in support of his claim set up in the plaint before the Courts below.

But the plaintiff had not taken any steps in this direction nor any list of reliance of documents was filed with the suit. Reliance was placed on a

judgment rendered in Surjan Singh v. Paras Ram, (1994)108 PLR 503 which is reproduced under:-

Where the plaintiff had relied upon the documents sought to be produced as additional evidence but had not produced copies thereof along with

the plaint or during the time allowed to him to produce his evidence, the plaintiff was not entitled to claim production thereof later on as, if he had

exercised due diligence, he could have produced them earlier.

29. After hearing the learned counsel for the parties this Court is of the view that the plaintiff-appellant has been negligent at the time of filing of the

suit. The plaintiff has never relied upon these documents which the plaintiff has now sought to be produced by way of additional evidence. The

plaintiff has tried to produce these documents when the two Courts below have already given their findings of facts against the appellant on the

basis of the evidence already on the record.

30. Now coming to the documents which the plaintiff sought to produce by way of additional evidence are the Annexure P2 to P7, which relate to

a case not inter-parties. Therefore these documents are not helpful to the appellant. The documents Annexure P9 to P10 are the documents which

the plaintiff collected in the month of April 1985 after visiting Pakistan. Admittedly, these documents were in the knowledge of the plaintiff at the

time of filing of the suit but he had not taken any such step by visiting Pakistan to secure these documents when the plaintiff was yet to lead his

evidence in the trial Court. After availing several opportunities before the trial Court, the plaintiff failed in his attempt to produce the relevant

documents which were material to resolve the bone of contention between the parties.

31. So far as the documents P11 to P14 are concerned these are the revenue documents in the form of Jamabandis and Khatouni Istemal. These

documents were very much available in India at the time of filing of the suit but the plaintiff did not care to produce them at the time of filing of the

suit. Therefore, it cannot be"" said that these documents were not in the knowledge of the plaintiff-appellant at the time of filing of the suit nor it

could be termed as exercising of due diligence.

32. The application for additional evidence was moved after a gap of 23 years, which itself established that the appellant had not exercised due

diligence in securing these documents. It was very much within the knowledge of the appellant, when a suit was dismissed by the trial Court on the

ground of not proving the fact that there existed a mortgage of the suit land and the same could be redeemed. It was not difficult for the appellant

to have visited Pakistan and secure these documents when the case was pending adjudication before the two Courts below. After the consecutive

finding of the fact recorded by the two Courts below on issue No. 1 and 2 the High Court should refrain itself to interfere in the finding of fact

recorded by the Courts below as has been observed in AIR 1959 SC 57, which is reproduced as under:

The provisions of S. 100 are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of

fact, however gross the error may seem to be. Nor does the fact that the finding of the first appellate Court is based upon some documentary

evidence made it any the less a finding of fact. A judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the

findings of fact given by the first appellate Court based upon an appreciation of the relevant evidence, (The practice of some judges of the High

Court disposing second appeals as if they were first appeals deprecated.) ILR. 18 Cal. 23 (P.C.) and AIR 1930 RC. 91 Re. on.

33. In view of the peculiar facts and circumstances of the case, I see no ground to allow the application under Order 41 Rule 27 and the same is

accordingly dismissed for want of due diligence on the part of the appellant.

34. Now coming to the question of application under Order 6, Rule 17, CPC securing amendment of the plaint where the plaintiff wants to change

the entire averments made in the original plaint in Para No.4 (A to H) as reproduced in earlier part of the judgment requires to be amended. These

averments falsify the case of the plaintiff and to a great extent changing the nature of the case. Before disposing of the application under Order 6

Rule 1.7, CPC it is pertinent to mention here that during the pendency of the Regular Second Appeal before this Court, the appellant has moved

an application that Sohan Singh has compromised the matter with the plaintiff and accepted the mortgage money of Rs.370/- and thus the property

stands redeemed in favour of the appellant. The said receipt dated 28.03.1977 Ex.PR/1 produced by the plaintiff was adjudicated upon by the

Sub Judge, First Class, Gurdaspur, who furnished his report to this Court by observing that the receipt is fabricated and forged document and

cannot be termed as executed by Sohan Singh in favour of the appellant. This fact falsifies the case of the appellant.

35. Now 1 shall dispose of an application under Order 6 Rule 17, CPC read with Section IS1 filed by the appellant for the amendment of the

plaint. But this application was moved after 12 years of his visit to Pakistan in the year 1985. It has been contended on behalf of the appellant that

the amendment of the plaint could be allowed at any stage of the suit if it does not change the nature of the entire case and the amendment if any

would relate back to the date of filing of the suit. Reliance was placed on Krishan Singh Vs. Prem Singh and Another, which reads as under: -

Civil Procedure Code (V of 1908) Order 6 Rule 17 - Suit filed for mandatory injunction claiming respondents to be licensees - Relief in the suit

was for a direction to deliver the possession - Amendment so as to convert the suit for mandatory injunction into one for possession and also to

include the relief of possession -Proposed amendment would not change the nature of the suit.

36. Reference was also made to Ram Singh v. Bell Ram 1989 (2) Rev.L.R. 323 which reads as under:-

Error committed on account of negligence cannot be perpetuated when remedial procedure provided - A person cannot be denied just relief on

ground of laches when cost is panacea for it - Except in cases where party has acquired right by efflux of time can very well be compensated by

payment of costs - Amendment should be allowed even at a belated stage when proposed amendment not likely to introduce a new case and it is

only to give better particulars and there is no mala fide.

37. At the end learned counsel submitted that even under Article 226 of the Constitution of India, the High Court can reverse the pure finding of

the fact in exercise of its writ jurisdiction in an appropriate case where it becomes necessary to do so in. order to undo manifest injustice, which

might have been caused to a person who invoke the jurisdiction of the High Court. Reference was made to 1967 CLJ (P&H) 836, which is as

under-

Held, that it is not beyond the jurisdiction of a High Court to reverse a pure finding of fact in exercise of its writ jurisdiction in an appropriate case

where it becomes necessary to do so, in order to undo manifest injustice when might have been caused to a person who invokes the jurisdiction of

the High Court under Article 226 of the Constitution. Held further that relief under Article 226 is discretionary.

38. The appellant thus prayed that the proposed amendment be allowed.

39. On the other hand, the learned counsel for the respondent, Sh.M.L.Sarin submitted that it is the case set up by the plaintiff-appellant that the

Civil Suit was filed on the last date of limitation of redeeming the suit property and the proposed amendment is being sought after 26 years of filing

of the suit without any plausible explanation of delay when both the Courts below have given their findings of fact on issue No. 1 and 2 against the

appellant. It is the law of the land that amendment can be allowed at any stage of the suit provided the proposed amendment is being sought within

the period of limitation. Reference was made to Radhika Devi Vs. Bajrangi Singh and others, , Radhika Devi v. Bajrangi Singh & Ors., which is

given as under:-

O.6, R. 17 - Leave to amend - Gift deed executed and registered in July 1978 -For three years no steps taken to file the application for

amendment of the plaint -Held that the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint and that

the High Court was right in refusing to grant permission to amend the plaint - Appeal dismissed.

40. Reference was also made to 1996 (1) CCC 467 (S.C.): 1996 (1) ACJ 60S (S.C.) : (1996) 113 PLR 209 (SC) which is as under:-

AMENDMENT OF PLAINT where relief stands barred by time - Amendment not to be allowed.

41. It is not a question of delay that has to be taken into account but the Court has also to see whether the amendment can be refused if it bars by

some statutory provision of law or that the party has acquired a right which cannot be compensated with cost or the amendment sought is mala

fide.

42. Thus, keeping in view these principles, this Court is of the view that after the finding of the fact recorded by the two Courts below the

proposed amendment would take away the right which has accrued to the party i.e. respondent in the present case. 1, therefore, feel that the

proposed amendment cannot be allowed being time-barred as well as the same was moved when a valuable right has accrued to the parties and

the same is a mala fide act on the part of the appellant. The background of the case would show that plaintiff was never sincere in the present

litigation but was hob-nobing to secure the land by adopting deceitful means as is evident from the forged receipt Exhibit PR/1 dated 28.03.1977.

43. Learned counsel for the appellant was unable to convince from the record as to how the findings recorded by the trial Court and First

Appellate Court on both the issues No. 1 and 2 manifest misinterpretation of the evidence brought on the record nor apparently it has caused

injustice to his party.

44. The finding of the trial Court as well as of appellate Court that no mortgage subsists on the date of filing of the suit in favour of the plaintiff, thus,

the question of redeeming the suit property does not arise. I do not find any illegality and infirmity in the consecutive findings recorded on the above

noted two issues by the two Courts below after evaluating the evidence produced by the parties. Accordingly this appeal fails and the same is

hereby dismissed with no order as to costs.