IN THE COURT OF NEHA GOYAL, ADDL. CIVIL JUDGE (SENIOR DIVISION), SONEPAT.(UID No.HR0359)

HRSO020002072018

Presented on : 02-02-2018
Registered on : 02-02-2018
Decided on : 28-07-2026
Duration : 8 years, 5 months, 26 days

IN THE COURT OF
Additional Civil Judge (Senior Division) AT Sonipat,Sonipat
Presided Over by Ms. Neha Goyal
CS/168/2018

Anil Kumar s/o Chander Singh s/o Dalip Singh aged 48 years r/o village Pritampura, Sub Tehsil Rai, Distt.Sonepat.

.........*Plaintiff*

1. Krishan Kumar s/o Dharam Singh s/o Til Singh r/o village Pritampura Sub Tehsil Rai, Distt. Sonepat.

2. Central Bank of India, Branch Rasoi, Distt. Sonepat through its Manager.

…......*Defendants*

SUIT FOR RECOVERY FOR A SUM OF RS.19,00,000/- ALONG-WITH INTEREST @ 1% PER MONTH

Present: Shri D.V. Nain, Advocate for the plaintiff.
Shri R.S. Rathi, Advocate for defendant No.1.
Shri Y.P.S. Dahiya, Advocate for defendant No.2.

JUDGMENT:

The plaintiff has filed the present suit seeking a decree for a sum of Rs.19,00,000/- along-with interest @ of 1% per month from 03.12.2015 till realization be passed in favour of the plaintiff and against

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the defendant along-with the cost of the suit.

Further decree in default of payment of the above-said amount, the mortgaged land be sold for realization of the decretal amount.

2. The brief facts of the case of the plaintiff as averred by him are that the defendant No.1 mortgaged his land by way of simple mortgage without possession his agricultural land measuring 1-13M i.e. 1/16 share in 26-05M comprised in Khewat No.26, Khata No.27 Rect. & Killa Nos.28//6 (7-11), 15 (8-0), 16 (7-7), 25 (3-7) situated within the revenue estate of Village Pritampura, Sub Tehsil Rai, Distt. Sonepat on 03.12.2015 in Rs.19,00,000/-and received the entire amount and got executed and registered the Mortgage Deed bearing No.2460 dated 03.12.2015 in favour of plaintiff. It was agreed upon by defendant No.1 that he will pay interest @ 1% per month and he will pay after six months against the receipt and it was further agreed that defendant No.1 will get redeemed the land after paying the entire amount along-with interest to plaintiff on or before 03.12.2017. It was further agreed that in case of his failure plaintiff will be entitled to get the mortgage deed declared as sale in lieu of amount due, for that purpose plaintiff asked him on 03.12.2017 to get the suit land redeemed or got executed the sale deed in favour of plaintiff but defendant No.1 did not pay any heed to the request of plaintiff. Moreover defendant No.1 has further dishonestly without disclosing the true facts and in order to cheat the plaintiff further got a

mortgaged deed in favour of Central Bank of India, Village Rasoi defendant No.2 in Rs.7,00,000/- without disclosing the registered mortgage deed which he has executed and registered in favour of plaintiff on 03.12.2015. The defendant no.1 is a mischievous and dishonest person who in order to cheat defendant no.2 without disclosing the fact that he had already got registered a simple mortgage in favour of plaintiff in Rs.19,00,000/- vide Registered mortgage Deed, further mortgaged the suit land in Rs.7,00,000/- in favour of defendant no.2. However the plaintiff has first charge on the mortgaged property of defendant no.1. When defendant No.l failed to redeem the suit property by paying the mortgage amount along-with interest to the plaintiff, the plaintiff served a legal notice dated 09.01.2018 to the defendants but the defendant No.1 refused to receive the notice intentionally and deliberately. However the legal notice was served upon the defendant no.2.

It is further submitted that even after receiving the legal notice, defendant No.1 failed to redeem the suit land and also failed to repay the entire amount along-with interest to the plaintiff. However, the plaintiff is entitled to recover the entire amount along-with interest or to be declared owner of the suit land. The plaintiff asked the defendant so many times to repay the entire amount i.e. Rs.19,00,000/- along-with interest @ 1% per month but the defendant No.1 is not paying any heed to the request of the plaintiff. Hence the present suit.

3. On notice, defendant No.1 appeared and filed written statement taking preliminary objection as to jurisdiction, maintainability of the suit, mis-joinder of parties, estoppal, locus-standi etc.

On merits, it is submitted that the defendant no.1 never mortgaged his land with the plaintiff. The plaintiff is doing the business of money lender. The plaintiff and defendant belong to the same village and same Pana namely Thola Basti of village Pritampura, District Sónepat. Hence they are common descendants of one and the same ancestor Basti.

It is further submitted that the defendant No.1 took a loan of Rs.3,00,000/- from the plaintiff on 02.01.2009 on pronote (Ist Pronote). The defendant No.1 could not return the above-said amount of loan with interest till 07.11.2012 to the plaintiff.

The plaintiff pressurized the answering defendant to get the new/fresh pronote and receipt executed for the above said amount of Rs.3,00,000/- and interest thereon, which came to Rs.5,90,000/-. Thus another pronote and receipt of Rs. 5,90,000/- were executed on 07.11.2012 (2nd Pronote). The original first pronote and receipt were returned to the answering defendant by the plaintiff on 07.11.2012 after execution of second receipt. Unfortunately and due to hard time, the defendant No.1 again could not return the amount with interest of the second pronote. The plaintiff forced the defendant No.1 to give security of immoveable property i.e. agriculture land in lieu of second pronote.

It is further submitted that on 03.12.2015, the plaintiff took the answering defendant to Sub Tehsil Rai, District Sonepat fraudulently and by misrepresentation got a conditional sale mortgage deed executed and registered in his favour. The alleged conditional sale mortgaged deed dated 03.12.2015 was not scribed in presence of answering defendant nor it was read over to the answering defendant. The answering defendant thumb marked the above-said conditional sale mortgaged deed dated 03.12.2015 on misrepresentation of plaintiff that the defendant No.1 is giving security of his agriculture land so that the amount of loan of second pronote along-with interest may be recovered by attachment and sale of his agriculture land, mentioned in the security bond/document. The second pronote with receipt were returned on 03.12.2015 to the answering defendant by the plaintiff. The answering defendant believing the plaintiff, thumb marked the alleged conditional sale mortgaged deed dated 03.12.2015 already scribed by scribe/deed writer. The clerk of Sub Registrar of Sub Tehsil Rai, District Sonepat got the thumb impressions of answering defendant and witnesses on the alleged conditional sale mortgaged deed dated 03.12.2015 and all were photographed there. The alleged conditional sale mortgaged deed dated 03.12.2015 was not read oved to the answering defendant by the registry clerk of Sub Registrar Rai. The answering defendant never appointed Subhash S/o Nathu Ram R/o village Pritampur, Distt. Sonepat as his special power of attorney on 03.12.2015. The power of attorney dated 03.12.2015 has been obtained without disclosing the fact to the answering defendant of the special power of attorney.

It is further submitted that the alleged conditional sale mortgaged deed of conditional sale No.2460 dated 03.12.2015 is void, ab-initio, null & void, illegal as having been obtained fraudulently and by misrepresentation and the conditional sale mortgaged deed dated 03.12.2015 is not binding on the right of answering defendant. The answering defendant put his thumb impression on the above-said conditional alleged sale mortgaged deed dated 03.12.2015 believing the misrepresentation of the plaintiff as true that he is giving security of agriculture land for the loan, which he had already taken through pronote. The answering defendant never received the amount of Rs.19,00,000/- from the plaintiff. Not to speak of Rs.19,00,000/- the answering defendant never received even a single penny from the plaintiff on 03.12.2015 or at any other time except the amount of Rs.3,00,000/- mentioned in the first pronote.

It is denied that it was agreed upon by defendant No.1 that he will pay interest @ 1% per month and he will pay after six months against the receipt. It is also denied that it was further agreed that defendant No.1 will get redeemed the land after paying the entire amount along-with interest to the plaintiff on or before 03.12.2017.

It is submitted that the answering defendant did not receive the sum of Rs.19,00,000/- from the plaintiff, then the question of paying this amount does not arise. The answering defendant never mortgaged the suit land with the plaintiff, hence no question of redemption. The date of 03.12.2017 asking for redemption is false and imaginary. The suit land has not been mortgaged, therefore, the question of its redemption does not arise. The answering defendant got a mortgage deed of suit land executed in his favour of the Central Bank of India, Branch at village Rasoi, Distt. Sonepat for a considering of Rs.7,00,000/- only. The answering defendant did not mortgage the suit land with the plaintiff, so there was no occasion for disclosing to defendant No.2 the fact by answering defendant. The answering defendant came to know about the alleged conditional sale, mortgaged deed dated 03.12.2015 in favour of plaintiff only after receiving summon/notice of the present civil suit filed by the plaintiff against the defendants. As already stated, the alleged conditional sale mortgaged deed dated 03.12.2015 has been obtained fraudulently and by misrepresentation

It is further submitted that the plaintiff never paid Rs. 19,00,000/- to the defendant No.1, so there arises no occasion for the recovery of the same nor the plaintiff is entitled to be declared the owner of suit property. The plaintiff is entitled to recover under law of land, only the amount of Rs.3,00,000/- along-with interest. The defendant No.1 received only Rs.3,00,000/- through first pronote and receipt dated 02.01.2009. The answering defendant did not receive even a single penny from the plaintiff except the amount of first pronote. There is no question of repaying the amount of Rs. 19,00,000/-. Rest of the contents of the plaint are denied as wrong and incorrect and a prayer for dismissal of the suit has been made.

4. On notice, defendant No.2 appeared and filed written statement taking preliminary objections as to maintainability of the suit, locus-standi, cause of action, clean hands, jurisdiction, estoppal etc.

On merits, it is denied that the defendant No.1 had mortgaged his agricultural land measuring around 1K-13 Marla ie. 1/16 share in 26K-05M comprised in Khewat No.26, Khata No.27, Rectangle and killa No. 28//6 (7-11), 15(8-0), 16(7-7), 25(3-7) situated within the revenue estate of village Pritampura, Sub Tehsil Rai, Sonipat on 03.12.2015 for Rs. 19,00,000/- with the plaintiff. It is denied that entire amount was paid by the plaintiff to the defendant No.1.

It is submitted that no such mortgage was created and the present suit/claim is the result of afterthought, just to defraud the defendant No.2. It is also submitted that the defendant No.1 had mortgaged his agricultural land (1K 12 Marla) out of details as mentioned above to the answering defendant Bank and a lien for Rs.7,00,000/- was registered in the Jamabandi records vide Rapat No.275 dated 16.01.2017. It is also submitted that the defendant No.1 had mortgaged his property to the defendant No.2 Bank for purpose of running a mini Dairy and had executed a mortgage deed in bank's favour.

It is admitted that the defendant No.1 had mortgaged the suit land to the answering bank for an amount of Rs.7,00,000/- Further, even if assuming without admitting that the contention made with regard to previous mortgage by defendant No.1 in favour of plaintiff clearly manifests the ill intentions of defendant No.1 in connivance with the plaintiff. It is also submitted that the defendant No.1 and the plaintiff had hatched a criminal conspiracy and came out with this modus operandi to defraud the answering bank. It is submitted that following the application for grant of loan by the defendant No.1, Krishan Kumar s/o Dharam Singh, the Bank has sanctioned the loan of Rs.7,00,000/- for the purpose of operating Mini Dairy. The sanction was given after the bank satisfied itself of the ownership of the land mortgaged by the defendant No.1 and through LSR prepared by its panel Advocate. There was no entry of charge in the documents given to the bank by the said defendant No.1 at the time of application. Following the loan, the charge of the bank was recorded in the revenue records by way of Rapat No.275 dated 16.01.2017 by concerned Patwari. The said defendant No.1 had executed many other necessary bank documents for the purpose of the loan.

It is also submitted that even if the plaintiff claims first charge over the suit property, still as per provisions of law, Bank is entitled to claim first charge over the property and therefore, the present suit of the plaintiff deserves to be dismissed with costs. The answering defendant also reserves its right to file criminal case/complaints as well as civil suits against the plaintiff and defendant No.1, in this matter.

It is denied that the plaintiff is entitled to recover the entire amount along-with interest or to be declared owner of the suit land. It is submitted that as per provision of law, only the answering Bank is entitled to claim the mortgage amount, and that the plaintiff is only entitled to claim any residual amount which may remain after full and final satisfaction of bank's loan ie Principal + Interest + other misc charges till date of payment. Rest of the contents of the plaint are denied as wrong and incorrect and a prayer for dismissal of the suit has been made.

5. Replication to the written statement was filed by plaintiff reiterating the averments of the plaint and denying that of written statement. From the pleadings of the parties following issues were framed vide order dated 17.12.2021:

1. Whether the plaintiff is entitled to a decree for recovery of Rs.19,00,000/- along-with interest, as prayed for?OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no locus-standi to file the present suit?OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the plaintiff has not come to the court with clean hands and has not approached to the court?OPD
6. Relief.

6. The plaintiff in support of his claim, examined himself as PW1, Sukhdas as PW2 and Rajender Singh, Deed-writer as PW3 further tendered following documents:-

Ex.P1	:	Jamabandi for the year 2014-2015
Ex.P2	:	Mortgaged Deed dated 13.12.2015
Ex.P3	:	Copy of Roznamcha report
Ex.P3 (repeated)	:	Legal Notice dated 09.01.2018
Ex.P4	:	Postal Receipt
Ex.P5	:	Registered AD Card
Mark A & Mark B	:	Pronote along-with Receipt Pronote

Thereafter, plaintiff's counsel closed evidence of plaintiff vide his separately recorded statement dated 26.09.2025.

7. The defendants in support of their claim, examined Krishan Kumar (defendant No.1) as DW1 and Preetam; Assistant Manager, Central Bank of India, Branch Rasoi, Distt. Sonepat as DW2 and tendered following documents:-

Ex.D2/B	:	Application form for agricultural loan
Ex.D2/C	:	Loan Acceptance Letter issued by Central Bank of India
Ex.D2/D	:	Mortgage Deed
Ex.D2/E	:	Mutation on Mortgage for Agricultural Loan Purpose

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Ex.D2/F	:	Jamabandi for the year 2014-2015
Mark D2/1	:	Loans Discharge Quota

Thereafter, evidence of defendant No.1 was closed by court order dated 03.04.2026 and ld. Counsel for defendant No.2 closed evidence of defendant No.2, vide his separately recorded statement of the same date i.e. 03.04.2026.

8. In rebuttal, no evidence has been led by the plaintiff and same stands closed by court order of even date.

9. I have heard learned counsel for the parties and have appraised the evidence available on record along with other material facts and particulars of the case. My issue wise findings with reasons thereof are as hereunder:-

<u>ISSUES NO.1 to 5:</u>

10. The onus to prove this issue was upon the plaintiff and to discharge that onus the plaintiff has led oral as well as documentary evidence as discussed above.

11. In nutshell, the case of plaintiff is that defendant No.1

mortgaged the suit property by way of simple mortgage without possession in favour of the plaintiff on 03.12.2015 for total sum of Rs.19,00,000/- and received entire amount from the plaintiff and got registered the Mortgage Deed bearing No.2460 dated 03.12.2015 in favour of plaintiff which is placed on court file as Ex.P2. It was agreed by defendant No.1 that he will pay interest @ 1% per month and he will pay after six months against the receipt and it is also agreed that defendant No.1 will get redeemed the land after pay the entire amount along-with interest to the plaintiff on or before 03.12.2017 and in case of failure plaintiff will be entitled to get the mortgage deed declared as sale in lieu of amount due. The plaintiff asked him on 03.12.2017 to get the suit land redeemed or get execute the sale deed in favour of the plaintiff but of no avail. Neither the defendant No.1 without disclosing the true facts and in order to cheat the plaintiff further got a mortgage deed in favour of Central Bank of India, village Rasoi i.e. defendant No.2 for a sum of Rs.7,00,000/- without disclosing the registered mortgage deed which is executed in favour of the plaintiff already on 03.12.2015. So, it is alleged that defendant No.1 redeemed the suit property by way of paying the mortgaged amount along-with interest to the plaintiff and he dishonestly further mortgaged the suit land in favour of defendant No.2 without disclosing the fact that he had already got registered his simple mortgage in favour of the plaintiff of the same land. So, the plaintiff served legal notice dated 09.01.2018 to the defendants which is Ex.P3 but the defendant No.1 refused to receive the notice and he failed to repay the entire amount along-with interest to the plaintiff.

Hence, plaintiff filed the present suit seeking decree for sum of Rs.19,00,000/- plus interest @ 1% per month from 03.12.2015 till realization of the total amount.

12. In order to prove his case, plaintiff examined himself as PW1 and tendered his affidavit Ex.PW1/A reiterating the averments of the plaint.

Further, the plaintiff examined Sukhdas as PW2 who also tendered his affidavit Ex.PW2/A in support of the case of the plaintiff.

Lastly, the plaintiff has examined Rajender Singh, Deed-writer as PW3 who deposed that he has brought the summoned record and supported the case of plaintiff in letters and spirits.

In documentary evidence, plaintiff has tendered documents from Ex.P1 to Ex.P5 and Mark A and Mark B.

13. On the other hand, defendant No.1 has taken the defence that he never mortgaged his land with the plaintiff. Rather, the plaintiff is money lender and defendant No.1 took loan of Rs.3,00,000/- from the plaintiff on 02.01.2009 on a pronote and receipt but defendant No.1 could not return the said amount with interest to the plaintiff till 07.11.2012. So, the plaintiff pressurize the defendant No.1 to get execute fresh pronote

and receipt for above-said amount of Rs.3,00,000/- along-with interest which came to Rs.5,90,000/-. Thus, another pronote and receipt of Rs.5,90,000/- was executed on 07.11.2012 and the original first pronote and receipt were returned to the defendant No.1 by the plaintiff on 07.11.2012 after execution of second pronote and receipt. It is stated that defendant No.1 could not return the amount and interest of the second pronote so the plaintiff forced the defendant No.1 to give security of movable property in lieu of second pronote to which defendant No.1 agreed interest on 03.12.2015, the plaintiff took defendant No.1 to Sub-Tehsil Rai and by way of fraud and misrepresentation got additional sale mortgage executed and registered in his favour. So, it is stated that alleged additional said mortgage deed dated 03.12.2015 is result of fraud and misrepresentation and was not scribed in the presence of defendant No.1 nor it was read over to him. The alleged mortgage deed dated 03.12.2015 was thumb marked by defendant No.1 on the ground of misrepresentation. So, the same is void, abinitio and not binding upon defendant No.1. It is stated that defendant No.1 never received any amount of Rs.19 lakh from the plaintiff and the entire story made by plaintiff is false and concocted in connivance with the deed-writer and the witnesses to the alleged mortgage deed dated 03.12.2015. Hence, prayer is made for dismissal of the suit of the plaintiff.

14. In order to prove his defence, defendant No.1 himself

appeared into witness-box as DW1 and tendered his affidavit Ex.DW1/A in support of the defence of defendants.

Further, the defendants have examined Preetam; Assistant Manager, Central Bank of India, Branch Rasoi, Distt. Sonepat as DW2 who also tendered his affidavit Ex.DW2/A and documents Ex.D2/B to Ex.D2/F and Mark D2/1 in support of the defence of the defendants.

15. A separate written statement was filed on behalf of defendant No.2 in which it is stated that the defendant No.1 mortgage his agriculture land i.e. 1K-12M to defendant No.2 and a loan of Rs.7,00,000/- was registered in the Jamabandi vide a rapat No.275 dated 16.01.2017 and it is stated that defendant No.1 mortgaged his property to defendant No.2 for the purpose of running a mini dairy and thus executed mortgage deed in favour of bank. It is also stated that the alledged mortgage deed in favour of the plaintiff by defendant No.1 is not in the knowledge of defendant No.2. In fact an application was moved by defendant No.1 for grant of loan before defendant No.2 and defendant No.2 sanction the loan of Rs.7,00,000/- for the purpose of operating mini dairy and the sanction was given by the bank after satisfying its ownership of the land mortgaged by defendant No.1 and through LSR prepared by its panel Advocate. It is stated that as per provisions of law defendant No.2 is entitled to claim mortgaged amount and the plaintiff is entitled to any respectful amount after full and final specification of bank’s loan. Thus,

prayer is made for dismissal of the suit of the plaintiff.

16. So, after going through the pleadings of the parties to the suit as well as evidence brought on record by the plaintiff, this court is of the considered view that suit of the plaintiff with regard to recovery of outstanding amount deserves to be **'*decreed*'** :-

First and foremost, it is noticed that the plaintiff is stating that defendant No.1 mortgaged the suit property as land by way of a simple mortgage without possession in his favour on 13.12.2015 for sum of Rs.19 lakh and defendant No.1 received the entire amount and got executed and registered mortgage deed bearing No.2460 dated 03.12.2015 in favour of the plaintiff original mortgage deed is placed on record by the plaintiff as Ex.P2.

17. On the other hand, the defendant No.1 is alleging that the alleged conditional sale mortgaged deed dated 03.12.2015 has been obtained by the plaintiff by way of fraud and by way of misrepresentation and the defendant came to know about the same only after receiving of the summons of the present suit filed by the plaintiff. In fact, the defendant No.1 neither received an amount of Rs.19 lakh from the plaintiff and the defendant No.1 put his thumb impressions on the alleged conditional sale mortgaged deed playing the misrepresentation of the plaintiff as true that defendant No.1 is giving security of his agricultural

land for the loan which he had already taken through pronote. So, it is stated that the alleged mortgaged deed dated 03.12.2015 is not binding upon defendant No.1. However, in this regards, this court is of the considered view that the original mortgaged deed dated 03.12.2015 is a registered mortgaged deed which bears thumb impressions of defendant No.1 as well as two witnesses namely Ramphal and Sukhdass.

18. As per contents of the said mortgaged deed, defendant No.1 mortgaged the suit property in favour of plaintiff without possession on 03.12.2015 for total sum of Rs.19,00,000/- and the defendant No.1 received the entire amount and then executed and get registered the mortgage deed in favour of plaintiff. The allegations of defendant No.1 is that the same is result of fraud and misrepresentation as defendant No.1 had never executed the mortgage deed on 03.12.2015 cannot be taken into consideration because defendant No.1 has failed to prove the fraud and misrepresentation by way of leading cogent and convincing evidence. It is the settled law that the fraud has to be proved by way of leading cogent evidence and beyond reasonable doubt. Merely, raising vague plea of fraud and misrepresentation is of no help to either party. In this regard, I draw my support from the case law cited in ***"Satwinder Singh & Others Vs Swarn Singh & Anr., 2008(4) RCR(Civil) 434 (P&H)"***, wherein it was held that the fraud has to be proved by way of positive evidence and beyond reasonable doubt.

19. Moreover, the mortgage deed dated 03.12.2015 is a registered document. It is the settled law that a registered document carries a presumption that it was executed in accordance with law. Therefore, it has come on record that the defendant no.1 had mortgaged the suit land to the plaintiff vide mortgage deed dated 03.12.2015 for a sum of Rs.19,00,000/- on interest @ 1% per month and that he will pay after six months against the receipt.

20. Further, as per the terms and conditions of mortgage deed Ex.P2, it was also agreed that defendant No.1 will get redeemed the suit land after paying the entire amount to the plaintiff on or before 03.12.2017. It was further agreed that in case of failure by defendant No.1 to get the suit land redeemed after paying the entire amount, in that case, the plaintiff will be entitled to get the sale deed executed with respect to the suit land in respect of the plaint through the process of the court.

21. Now, the plaintiff has alleged that he asked defendant No.1 on 03.12.2017 to get the suit land redeemed or get the sale deed executed in favour of the plaintiff but defendant No.1 did not pay any heed to the plaintiff. Rather, defendant No.1 further got a mortgage deed in favour of defendant No.2 for total sum of Rs.7,00,000/- with respect to the suit land without disclosing the registered mortgaged deed which is already

executed in favour of the plaintiff on 03.11.2015 whereas the plaintiff is already having first charge on the mortgaged property of the defendant No.1.

22. The plaintiff also served legal notice dated 09.01.2018 to defendant No.1 which is placed on court file as Ex.P3 and postal receipt is Ex.P4 but plaintiff has stated that defendant No.1 refused to receive the notice of the plaintiff. So, the plaintiff is entitled to recover the entire amount along-with interest or to be declared owner of the suit land. When plaintiff appeared into witness-box as PW1, he was cross-examined by ld. Counsel for defendant No.1 regarding his financial capacity to pay an amount of Rs.19,00,000/- to defendant No.1 in pursuance of alleged registered mortgaged deed dated 03.12.2015. The plaintiff stated in his cross-examination that after acquisition of his land he gave the amount which he received from two different persons and he got that amount back from those persons and paid Rs.19,00,000/- to defendant No.1 and he also took an amount of Rs.12,00,000/- from one Ram Narain Master and also by paying an amount of Rs.5,90,000/- which were of pronote and also after paying some amount which were in his possession, he gave an amount of Rs.19,00,000/- to the defendant No.1.

23. Ld. Counsel for defendant No.1 submitted that plaintiff in his

cross-examination admitted regarding execution of pronote which is the defence taken by defendant No.1 that defendant No.1 took loan of Rs.3,00,000/- from the plaintiff on pronote and a receipt but he could not return the amount of loan. So, the plaintiff pressurize the defendant No.1 and got executed fresh pronote of Rs.5,90,000/- on 07.11.2012.

24. So, ld. Counsel for defendant No.1 submitted that the entire case set up by the plaintiff is false and fabricated in view of the admission of plaintiff regarding the execution of pronote.

25. However, in this regard, it is noticed that defendant No.1 has not produced on record the original pronotes before the court if at all defendant No.1 is alleging that two pronotes were executed forcibly by the plaintiff from defendant No.1 firstly for an amount of Rs.3,00,000/- and secondly, for an amount of Rs.5,90,000/-. It is clearly stated in the written statement that original first pronote and receipt were written to defendant No.2 by the plaintiff on 07.11.2012 after execution of second pronote but neither first nor second pronote and receipt were produced by defendant No.1 before this court. No reason has been given as to why the same were not brought before the court, if at all the said pronotes were got executed by the plaintiff by pressurizing the defendant No.1. When defendant No.1 was cross-examined he himself admitted in his cross-examination that original pronotes were returned to him by the plaintiff

and he has produced Mark A and Mark B which are photocopies and he stated that he will produce the original pronotes before the court but even after giving him opportunity to produce original pronotes before the court, he did not bring the same before the court and stated in his cross-examination that he forgot to bring the original pronotes with him. Infact, in his cross-examination, he has admitted his thumb impressions on mortgaged deed Ex.P1 and stated that his photograph was clicked in the Tehsil but he stated that the process were executed by plaintiff Anil by way of misrepresentation to defendant No.1 by saying lie to him.

26. However, as already discussed above, that merely raising oral averments regarding misrepresentation without leading any positive evidence carries no value in the eyes of law. Rather, he has stated in his cross-examination that he knows both the witnesses on the mortgaged deed namely Ramphal and Sukhdass who belongs to his village and he does not have any enmity towards the said witnesses.

27. Thus, in such circumstances, when the entire defence of defendant regarding fraud and misrepresentation by the plaintiff stands disproved on the court file, whereas the execution of the mortgage deed which is registered document is proved that defendant No.1 mortgaged his suit property without possession on 03.12.2015 in favour of plaintiff for total sum of Rs.19,00,000/- and defendant No.1 received the entire

amount from the plaintiff and the mortgaged deed was duly executed and registered on 03.12.2015 and that defendant No.1 failed to redeem the suit land after paying the entire amount along-with interest to the plaintiff on or before 03.12.2017, in that case, it comes out that the plaintiff who has paid the amount of Rs.19,00,000/- and he is also not having possession of the mortgaged land. So, he is definitely entitled to atleast recovery of the amount paid by him amounting to Rs.19,00,000/- from the defendants along-with interest @ 1% per month from the date of execution of mortgaged deed i.e. 03.12.2015 till its actual realization.

The petitioner has also *locus-standi* and cause of action to file the present petition which is maintainable and petitioner is not concealing anything from the court.

Thus, in view of the discussion made above, the issues No.1 to 5 are decided in favour of the plaintiff.

RELIEF (ISSUE No.6):

28. In view of my above noted findings particularly on issues No.1 to 5, the suit of the plaintiff is hereby, **decreed with costs to the effect that the plaintiff is entitled to atleast recovery of the amount paid by him amounting to Rs.19,00,000/- from the defendants along-with interest @ 1% per month from the date of execution of mortgaged deed i.e. 03.12.2015 till its actual realization.**

Decree sheet/Memo of cost be prepared accordingly. File after needful be consigned to the record-room.

Pronounced in open court. (Neha Goyal)
28.07.2026 Addl. Civil Judge (Senior Division),
Sonepat.

Note: It is certified that this judgment contains **twenty-four** pages and each page has been signed by me.

Pronounced in open court. (Neha Goyal)
28.07.2026 Addl. Civil Judge (Senior Division),
Sonepat.
Sonal **(UID No.HR0359)**

(Neha Goyal)
Civil Judge (Senior Division),
Sonepat.UID NO.HR-0359
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Present: Shri D.V. Nain, Advocate for the plaintiff.
Shri R.S. Rathi, Advocate for defendant No.1.
Shri Y.P.S. Dahiya, Advocate for defendant No.2.

Today the case was fixed for rebuttal evidence, if any as well as for arguments. No rebuttal evidence is present. Therefore, rebuttal evidence is closed by court order of even date.

Arguments heard. Vide my separate judgment of even date, the suit of the plaintiffs is hereby, **decreed with cost**. Decree-sheet/Memo of cost be prepared accordingly.

After due compliance file be consigned to record room.

Pronounced in open court.
28.07.2026

(Neha Goyal)
Addl. Civil Judge (Senior Division),
Sonepat.
(UID No.HR0359)

Sonal

(Neha Goyal)
Civil Judge (Senior Division),
Sonepat.UID NO.HR-0359
28.07.2026

Ld. Counsel for plaintiff has relied upon the law laid down by Hon'ble Punjab & Haryana High Court in case titled as ***<u>"Bimla Devi and others vs. Parvesh Kumar in RSA No.3569 of 2012 D/d 21.05.2020 (P&H)"</u>*** *wherein the Hon'ble Punjab and Haryana High Court held that '****Transfer of Property Act, 1882-Section 58(c)-Bengal Land (Redemption and Foreclosure) Regulation, 1806 - Appeal against decree for possession Mortgage by conditional sale Entitlement of mortgagee to possession after redemption period Plaintiff, a mortgagee, claimed ownership of property after defendants failed to redeem within two years - Defendants contended repayment of mortgage amount decreed suit in favor of plaintiff - The Court found that the stipulated two-year redemption period was unfairly restrictive and constituted a clog on the equity of redemption, thus the plaintiff could not be granted ownership - The defendants were entitled to apply for redemption within the limitation period prescribed under Article 61 of the Limitation Act, 1963 Appeal allowed, decrees set aside. (Paras: 2, 27, 32)'.***

(Neha Goyal)
Civil Judge (Senior Division),
Sonepat.UID NO.HR-0359
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