

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****201****RSA No.963 of 1995****Reserved on : 16.02.2024****Date of Decision : 26.02.2024**

Mitta Singh and Others

....Appellants

VERSUS

Shamesher Kaur (deceased) and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Gurcharan Dass, Advocate for the appellants.

Mr. Aakash Singla, Advocate for respondent No.1.

**ALKA SARIN, J.**

1. The present regular second appeal has been preferred by the defendant-appellants against the concurrent findings returned by both the Courts.

2. The suit filed by the plaintiff-respondent No.1 for declaration and possession was decreed by the Trial Court vide judgment and decree dated 01.12.1988. Aggrieved by the same an appeal was preferred by the defendant-appellants which appeal was also dismissed vide judgment and decree dated 27.03.1995. Hence, the present regular second appeal.

3. Learned counsel for the defendant-appellants would contend that the mortgage deed was executed on 20.02.2002 BK (Ex.P2) by Biro widow of Mukand Singh for an amount of Rs.1,300/- and that during her lifetime she did not get the suit land redeemed and hence the limitation for getting the mortgage redeemed stands elapsed. It is further the contention

that Biro had died on 30.01.1973 and even before her death the limitation to get the suit land redeemed stood elapsed.

4. *Per contra* learned counsel for the plaintiff-respondent No.1 has relied upon a judgment of the Full Bench of this Court in the case of **Ram Kishan & Ors. vs. Sheo Ram & Ors. [2008(1) RCR (Civil) 334]** wherein it was held that in case of a usufructuary mortgage, where there is no time limit fixed for redemption, the mortgagor has a right to redeem at any time on payment of the mortgage debt and the period of 30 years' limitation under the Limitation Act, 1963 would not be applicable. Further reliance has been placed upon a judgment of the Hon'ble Supreme Court in the case of **Singh Ram vs. Sheo Ram [(2014) 9 SCC 185]**.

5. I have heard learned counsel for the parties.

6. In the present case the only ground on which the suit was contested by the defendant-appellants was that the redemption was barred by limitation. Briefly, the facts relevant to the present case are that Biro widow of Mukand Singh, the original owner of the suit land, had mortgaged the same through a registered mortgage deed dated 20.02.2002 BK (Ex.P2) in favour of Dalip Singh son of Basant Singh to the extent of ½ share and Hardial Singh and Nek Singh sons of Mehar Singh to the extent of ½ share. Mortgage amount was fixed as Rs.1,300/-. The plaintiff-respondent No.1, claiming herself to be the sole heir of Biro, filed an application for redemption which was dismissed on 19.03.1985 by the Sub Divisional Magistrate, Sunam. Hence, the suit challenging the dismissal of the redemption application. The defendant-appellants filed their written statement alleging therein that the suit was not within limitation and also challenged the locus-standi of the plaintiff-respondent No.1 to file the suit.

The mortgage by Biro was not disputed. A counter-claim was also filed setting up the claim that the defendant-appellants have become owners in possession of the suit land and that they have been in possession as mortgagees for more than 30 years. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether Smt. Shamsheer Kaur is the owner of the property in dispute being the legal heir of Smt. Biro deceased ? OPP
2. Whether the plaintiff being the legal heir of Smt. Biro is competent to get the suit property redeemed on payment of mortgage amount ? OPP
3. Whether the order dated 19.03.1985 of A.C. Ist Grade, Sunam, is null and void ? OPD
4. Whether the suit is within limitation ? OPP
- 4-A Whether the right to redeem has extinguished and the defendants have become the owners of the suit land ? OPD
5. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD
6. Whether the suit is not maintainable in the present form ? OPD
7. Whether the suit is bad for non-joinder of necessary parties ? OPD
8. Whether the suit has not been properly valued for the purposes of court-fee and jurisdiction ? OPD
9. Relief.

7. The Trial Court vide judgment and decree dated 01.12.1988 held the suit to be within time on the ground that Biro had been declared insane and on 24.11.2002 (Ex.P11) Court of Ward was appointed with respect to the property of Biro on the ground that she had become insane. Admittedly, Biro died on 30.01.1973. Holding that the limitation would be 30 years from the death of Biro, the suit was held to be within limitation. The order dated 19.03.1985 passed by the A.C. Ist Grade, Sunam was held to be illegal and void. The appeal preferred by the defendant-appellants against the judgement and decree of the Trial Court was dismissed by the First Appellate Court vide judgment and decree dated 27.03.1995. Hence, the present appeal.

8. A Full Bench of this Court in the case of **Ram Kishan** (supra) has held as under :

*“42. The limitation of 30 years under Article 61(a) beings to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage, where rents and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and profits from the interest thereof, therefore, right of*

*foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable.*

*43. The argument that after the expiry of period of limitation to sue for foreclosure, the mortgagees have a right to seek declaration in respect of their title over the suit property is not correct. From the aforesaid discussion, it is apparent that the mortgage cannot be extinguished by any unilateral act of the mortgagee. Since the mortgage cannot be unilaterally terminated, therefore, the declaration claimed is nothing but a suit for foreclosure. It is equally well settled that it is not title of the suit, which determines the nature of the suit. The nature of the suit is required to be determined by reading all the averments in the plaint. Such declaration cannot be claimed by an usufructuary mortgagee.*

*Thus, we prefer to follow the dictum of law laid down by the larger Bench in Seth Ganga Dhar's case (supra) as well as judgments of Hon'ble Supreme Court*

*in Jayasingh Dnyanu Mhoprekar's case (supra), Pomal Kanji Govindji's case (supra), Panchanan Sharma's case (supra) and Harbans's case (supra) in preference to the judgments relied upon by the mortgagees in Prabhakaran's case (supra) and Sampuran Singh's case (supra).*

*44. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable.”*

9. In the present case the only ground of challenge was that the redemption had become barred by limitation. The said question stands answered by the Full Bench of this Court in the case wherein it has been held that in case of a usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court the mortgage money or the balance thereof. It was further held that once a mortgage always a mortgage and is always redeemable.

10. In view of the law laid down by this Court in the case of **Ram Kishan** (supra), I do not find any merit in the present appeal. No question of

law, much less any substantial question of law, arises for determination in the present case. The present appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

26.02.2024  
jk

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO