

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 3032 of 2001 (O&M)
Date of decision: 4.8.2015

Joginder Singh and others

.. Appellants

v.

Smt. Bholi and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. V. K. Jain, Senior Advocate with
Mr. J. L. Malhotra, Advocate for the appellants.

Mr. Ashok Verma, Advocate for the respondents.

...

Rajesh Bindal J.

The plaintiffs are before this court impugning the judgment and decree of the lower appellate court, whereby that of the trial court was reversed and the suit filed by the appellants, was dismissed.

The claim in the suit filed for declaration was that the appellants-plaintiffs had become owners of the suit property, the mortgagor having failed to get the same redeemed.

The issue has been gone into by Hon'ble the Supreme Court in Singh Ram (D) through L.Rs. v. Sheo Ram and others, 2014(4) RCR (Civil) 179 and it has been opined that usufructuary mortgagee is not entitled to file a suit for declaration that he had become owner merely on the expiry of 30 years from the date of mortgage. It was held that usufructuary mortgage

right to recover possession continues till the money is paid out of rents and profits or whether it is partly paid out of rents and profits and the balance is paid by the mortgagor or deposited in court, as provided under Section 62 of the Transfer of Property Act.

In view of the aforesaid authoritative enunciation of law laid down by Hon'ble the Supreme Court, in my opinion, there is no merit in the present appeal. No substantial question of law arises, as the suit itself was not maintainable. Accordingly, the appeal is dismissed.

(Rajesh Bindal)
Judge

4.8.2015
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