IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3954 of 2008(O&M)
Date of Decision: 1.05.2015

Om Parkash & ors.

... Appellants

Versus

Madan Gopal Gombar & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sudhir Mittal, Advocate,
for the appellants.

None for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The substantial questions of law which arise in the present appeal are framed as follows:-

1. Whether a usufructuary mortgagee acquires ownership rights by effluxion of time of 30 years from the date of mortgage?
2. Whether there is any period of limitation provided for redeeming a mortgage, and if not, whether the defendants/appellants No.2 & 3 who have stepped into the shoes of late Deena Nath, and his successors-in-interest are still entitled to redeem the mortgage?

It may be noted that despite the order dated 23rd December, 2014 passed by this court and the office note put up that the opposing counsel has been informed vide letter No.123 dated 7.1.2015, neither he has appeared nor anyone has caused appearance on his behalf. This office note is dated 22.4.2015.

Learned counsel for the appellants says that this is a case involving a usufructuary mortgage. The appellants are mortgagors of the suit property who are judgment debtors with the suit filed against them standing decreed. The plaintiffs/respondents mortgagees have secured a declaration that they have become owner of property by effluxion of time and the right of redemption stands extinguished after the passage of 30 years by mortgagee's continuous possession over the suit property. Do the plaintiffs have a right to retain property by foreclusure of redemption rights in the mortgagors is the moot question in appeal. The legal position on the point has now been settled by the Supreme Court in **Singh Ram (Dead) through LRs v. Sheo Ram & ors.**, 2014(9) SCC 185. The Supreme Court upheld the Full Bench decision of this Court and endorsed the view that once a mortgage is always a mortgage and always open to equity of redemption. However, the Supreme Court has made a slight modification of the decision of the Full Bench of this Court in **Ram Kishan & ors. v. Sheo Ram & ors.**, AIR 2008 Punjab & Haryana 77: 2008(1) RCR (Civil) 334 in appeal that the period of limitation for redemption of property would run from the date when the mortgage money is paid. The Supreme Court also held that a usufructuary mortgagee is not entitled to file a suit for declaration that he has become owner merely on the expiry of 30 years from the date of mortgage. Therefore, title rights have overshadowed the subservient rights of mortgagee flowing from the mortgage deed.

In view of above, the answers to the substantial questions of law framed above are no longer *res integra* being covered by the decision of the Supreme Court.

Resultantly, this appeal is allowed and the judgments and decrees of both the Courts below are set aside but without costs.

01.05.2015 **(RAJIV NARAIN RAINA)**
monika **JUDGE**