

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2580 of 2010
Date of decision: 25.02.2015

Hari Ram and others

...Appellants

Versus

Gram Panchayat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Harish Rathi, Advocate for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 15.11.2008. Appeal preferred against the said decree failed and was dismissed on 26.11.2009. This is how, plaintiffs are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration, that they and proforma defendants had become absolute owners in possession of the suit land, as depicted in para 1 of the plaint, as the predecessor-in-interest of the defendants had mortgaged the suit property with possession more than 60

years ago, and had failed to redeem the suit land within the stipulated time. Thus, this title in the suit land stood extinguished with afflux of time, after the expiry of statutory period for redemption.

In defence, it was pleaded, inter alia, by defendant No.1, that the suit property was never mortgaged by defendant No.1 or its predecessor-in-interest. The position in the record of rights in this regard was purported to be incorrect. It was maintained that the answering defendants were in fact the owner in possession of the suit land and thus, there was never any occasion to redeem the suit property.

On a consideration of the matter in issue and evidence on record, the courts below found that the jamabandi for the year 1966-67 , Ex.P1 to Ex.P8, revealed that Panchayat deh was shown to be the owner and mortgager through Nathi etc. and Chheetar was shown to be in possession of the suit land as a mortgagee. Mutation, Ex.P9 to Ex.P12, further revealed that plaintiffs No.1 to 11 were recorded as mortgagees in possession of the suit property. Accordingly, it was concluded that plaintiffs were indeed in possession of the suit property as mortgagees. However, as the nature of the mortgage was usufructuary, in reference to the decision of this court in **Ram Kishan and others v. Sheo Ram and others, 2008(1) PLR, 01**, it was observed that in case of usufructuary mortgage, mortgager always had a right to get it redeemed, if

no time limit was fixed or prescribed by which the mortgager was required to redeem the property. Concededly, it was neither pleaded nor proved that any date, by which the mortgager was required to redeem the suit property, was ever stipulated between the parties. That being so, the mortgagees or their successors-in-interest continued to be mortgagees only and thus, could not claim any title in the suit property. Learned counsel for the appellant concedes this position that in the absence of any specific date by which the mortgager was required to redeem the property, mortgagee could claim title by foreclosure. Nothing could be pointed out as to how the conclusions that were recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 25, 2015
Rajan

(Arun Palli)
Judge