

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

Regular Second Appeal No.3719 of 2010 (O&M)

Date of decision: 5.5.2015

Malkiat Singh and others

... Appellants

Versus

Ramroop Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Santosh Sharma, Advocate,
for the appellants.

Mr.Avnish Mittal, Advocate,
for respondents No.1 to 3.

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

RAJIV NARAIN RAINA, J.(Oral)

Heard the learned counsel for the parties.

The dispute is with respect to a mortgage. The appellants are mortgagors of the suit property and the mortgagee is held to have been usufructuary in nature by both the Courts below and therefore, ratio of the Full Bench decision of this Court in **Ram Kishan v. Sheo Ram**, 2008 (1) RCR (Civil) 334 as upheld by the Supreme Court in **Singh Ram (dead) through LRs v. Sheo Ram and others**; 2014 (4) RCR (Civil) 179 is applicable and, therefore, the decree would have to make way to the declaration of law by the Court.

Mr.Avnish Mittal appearing for the respondents submits and refers to para. 27 of the judgment of the trial Court canvassing that there are two regular second appeals with respect to the inheritance of the estate of late Mehar Singh pending in this Court in which the rights of parties and shares in the common holding are yet to be determined and, therefore, either this matter should be clubbed with those appeals or should be adjourned *sine die* to await the decision in those two appeals.

On the other hand, learned counsel for the appellants submits that the two pending RSAs have no connection whatsoever as in the present case a limited issue arises as to whether the mortgagee has become owner by prescription due to non-redemption and passage of time of 30 years. Therefore, by effluxion of time, the respondent has become owner of the suit property. I am afraid it is not possible to accept the request of Mr.Mittal that the fate of this appeal should be tied with the fate of the two regular second appeals pending in this Court as they stand on altogether different footings. In this case, the short question which arises for determination is covered by a judicial dicta holding that once a mortgagee is always mortgagee and a mortgage is always open to redemption and with the Supreme Court holding in addition to the Full Bench dicta that the limitation would run from the date the money is paid. No other question arises in this appeal or any question of law, much less a substantial one, is involved which requires any further debate by this Court.

The appeal is, accordingly, allowed and the judgment and decrees of both the Courts below are set aside to bring them in conformity

with the law laid down by the Supreme Court in **Singh Ram's** case (supra).

However, it will be open to the respondents to take all available pleas before this Court in the pending RSAs as per law.

(RAJIV NARAIN RAINA)
JUDGE

May 5, 2015
Paritosh Kumar