

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

Regular Second Appeal No.401 of 2010 (O&M)

Date of decision: 14.5.2015

Kalu Ram and others

... Appellants

Versus

Chhotu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

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

RAJIV NARAIN RAINA, J.

The plaintiffs are in second appeal. Their suit has been dismissed and the appeal has been declined by the learned Additional District Judge, Sonapat vide judgment and decree dated 28th August, 2009. The plaintiffs are mortgagees in possession and claimed in the suit ownership of suit property by way of adverse possession. It is an admitted fact that the present is a case involving a usufructuary mortgage.

The issue is no longer *res integra* and the legal principle has been settled by the Supreme Court in **Singh Ram (dead) through Legal Representatives v. Sheo Ram and others**; (2014) 9 SCC 185 while upholding the view of the Full Bench of this Court in **Ram Kishan and others v. Sheo Ram and others**; 2008 (1) RCR (Civil) 334 that a mortgagee cannot acquire rights of ownership by prescription or by

effluxion of time. The mortgagee's right of redemption can be curtailed only when limitation of 30 years ends after payment of mortgage money, for which, there is no time limit. In cases of mortgage other than usufructuary mortgage, the right to redeem would accrue on the date of mortgage resulting in extinguishment of the right of redemption after 30 years. Therefore, in a case of usufructuary mortgage like the present one, the mortgagee's right cannot ripen into ownership by effluxion of time. Reliance, if any, of Mr.Sudhir Mittal, learned counsel appearing for the appellants to para. 22 of the judgment in Singh Ram's case (supra) cannot be accepted since it is not his case that the mortgage in the present case was not in nature usufructuary. No other point was pressed nor arises in this appeal which is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

May 14, 2015
Paritosh Kumar