

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

Regular Second Appeal No.416 of 2011 (O&M)

Date of decision: 19.5.2015

Surjit Kaur and others

... Appellants

Versus

Gurnam Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.P.K.Ganga, Advocate,
for the appellants.

Mr.Rakesh Nagpal, Advocate,
for respondents No.1 and 2.

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

RAJIV NARAIN RAINA, J.(Oral)

In a suit filed by the mortgagee for declaration of ownership by effluxion of time, it is not disputed that the parties were governed by a usufructuary mortgage and, therefore, the principles laid down 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.

The matter being covered, the appeal is allowed and the judgment and decree of the appeal court is set aside and the judgment and decree of the trial court is restored. The suit stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

May 19, 2015
Paritosh Kumar