

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 4527 of 2012

Date of decision: 04.09.2015

Bhagwan Singh and others

...APPELLANTS

VS.

Mohinder Kaur and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vaneet Soni, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Lower Appellate Court dated 12.06.2012, vide which the suit preferred by the appellants-plaintiffs stands dismissed after setting aside the judgment and decree passed by the Additional Civil Judge (Senior Division) Sunam dated 18.10.2005.

It is the contention of the counsel for the appellants-plaintiffs that the judgment passed by the Lower Appellate Court cannot be sustained as the appellants-plaintiffs have been able to prove that there was a mortgage on the basis of the revenue records, which is based upon a *Bahi* entry and since there is a mortgage proved, the decree, as prayed for, should have been granted by the Courts below. He, however, very fairly, states that in the light of the latest judgment of the Supreme Court in **Singh Ram (deceased) through L.Rs. vs. Sheo Ram**, 2014 (4) RCR (Civil) 179, the

present appeal may not succeed.

I have considered the submissions made by the counsel for the appellants and have gone through the impugned judgment.

It is apparent that the entry regarding mortgage is based upon the *Bahi* but the said entries in the *Bahi* have not been proved. In any case, as per the latest judgment of the Supreme Court in Singh Ram's case (supra), mere expiry of 30 years from the creation of the usufructuary mortgage does not extinguish the right of redemption of mortgager u/s 62 of Transfer of Property Act, 1872. Right to recovery of possession commences when mortgage money is paid out of rents and/or profits or partly out of rents or profits and partly by payment or deposit by mortgager as provided u/s 62 of Transfer of Property Act, 1872. Limitation does not start until then.

In view of the above, the present appeal does not survive and the same stands dismissed.

September 04, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE