

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. Nos. 7319-20-C of 2014 &
RSA No. 3085 of 2014 (O&M)

Date of Decision: 22.12.2015

Leela Devi and others

.....APPELLANTS

VERSUS

Raj Kumari and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Sandeep Bansal, Advocate,
and Mr. Arun Bansal, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J (ORAL)

C.M. No. 7319-C of 2014

Prayer in this application is for condonation of delay of 19 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit, the same is allowed. Delay of 19 days in re-filing
the appeal is condoned.

RSA No. 3085 of 2014

Challenge in this appeal is to the judgment and decree passed
by the learned Additional District Judge, Hoshiarpur dated 04.12.2013, by

which the appeal preferred by the respondents-defendants against the judgment and decree dated 06.08.2005 passed by the learned Civil Judge (Junior Division), Hoshiarpur, whereby the suit of the plaintiffs for declaration to the effect that they are owners in possession of the suit property stood decreed on the basis of a mortgage which was prior to 1936, has been allowed dismissing the suit of the appellants-plaintiffs.

2. It is the contention of the learned counsel for the appellants that the stand as has been taken by the respondents in their written statement, is that the suit land was redeemed in the year 1978 vide receipt dated 15.07.1978 (Mark-A). The said assertion of the respondents having not been accepted, the finding of the Court to the effect that there is no limitation for redeeming the usufructuary mortgage would not be sustainable as from the alleged date of redemption of the suit property, the period of 30 years have expired till the filing of the suit and since it is no more an usufructuary mortgage, the respondents cannot redeem their land.

3. I have considered the submissions made by the learned counsel for the appellants and with his assistance, have gone through the impugned judgment dated 04.12.2013 passed by the Additional District Judge, Hoshiarpur, but do not find any merit in the above submissions.

4. It is not in dispute that the initial mortgage of the property was usufructuary mortgage as the possession was handed over to the appellants-plaintiffs. An assertion admittedly has been made by one of the respondents with regard to the redemption of the land vide receipt dated 15.07.1978, which they have not been able to prove and in the light of the said fact, the Court had rightly come to the conclusion that there is no redemption of the property. If that be so, the usufructuary mortgage continues and, therefore,

the learned Lower Appellate Court has rightly proceeded to hold that there is no limitation for redemption of the usufructuary mortgage. The law, as has been settled by the Supreme Court in **Singh Ram (deceased) through LRs vs. Sheo Ram and others**, 2014 (4) RCR (Civil) 179, also is to this effect. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

5. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 7320-C of 2014

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 22, 2015

pj