

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1745 of 1985 (O&M)
Date of Decision : 16.08.2016

Harbhajan Lal and another

....Appellants

Versus

Surain Chand and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Bhandal, Advocate
for Mr. Harminder Singh, Advocate
for the appellants.

Mr. Sandeep Khungar, Advocate
for respondent no. 1.

Surinder Gupta, J.

Plaintiffs-appellants filed suit seeking redemption of suit land measuring 62 *kanals* 1 *marla* situated in village Jallalabad, H.B. No. 196, *Tehsil* Fazilka (now District).

2. Then learned Senior Sub Judge, Ferozepur dismissed the suit as barred by limitation and held defendant no. 1 as owner of suit land by foreclosure.

3. Ist Appellate Court affirmed the findings of learned Senior Sub Judge, Ferozepur and dismissed the appeal.

4. Learned counsel for parties are *ad idem* that point of limitation for redemption of usufructuary mortgage has since been set at rest by Apex Court in case of **Singh Ram (D) through L.R.s vs. Sheo Ram and others, 2015 (2) PLJ 162**, wherein it was observed that there is no limitation for seeking redemption of usufructuary mortgage.

5. The substantial question of law, which arises in this appeal that “as to whether the right to seek redemption of usufructuary mortgage ceases

after expiry of 30 years from the date of mortgage” has already been set at

rest in the aforesaid citation. Apex Court in para 15 of above judgment has observed as follows:-

“15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.”

6. In view of above observations of Apex Court, learned counsel for respondent no. 1 has no law or citation to refer. This fact has not been disputed that the mortgage in favour of defendant no. 1 was a usufructuary mortgage.

7. As the substantial question of law has already been set at rest by Apex Court in ***Singh Ram's case (supra)***, this appeal has merit and is accepted. Judgments of Courts below are set aside and suit of plaintiffs-appellants is decreed and preliminary decree is passed in favour of plaintiffs for redemption of land in suit on payment of ₹1100/-, if not already deposited, within six weeks. On redemption of land, plaintiffs-appellants will be entitled to possession of suit land. Appellants shall also be entitled to costs of suit throughout. Counsel fee is assessed as ₹10,000/-.

August 16, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/non-speaking

Yes/No

Whether Reportable

Yes/No