

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

Decided on: 03.05.2016

1. RSA No.4298 of 2012 (O&M)

Gurnam Singh and others
Versus
....Appellants

Sant Singh and others
....Respondents

2. RSA No.4299 of 2012 (O&M)

Gurnam Singh and others
Versus
....Appellants

Sant Singh and others
....Respondents

3. RSA No.4269 of 2011 (O&M)

Gurnam Singh and others
Versus
....Appellants

Sant Singh and others
....Respondents

4. RSA No.4270 of 2011 (O&M)

Gurnam Singh and others
Versus
....Appellants

Sant Singh and others
....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Pritam Singh Saini, Advocate
for the appellants (in RSA Nos.4269 and 4270 of 2011 and
RSA Nos.4298 and 4299 of 2012)

Mr. Amandeep Agnihotri, Advocate
for the respondents (in RSA Nos.4298 and 4299 of 2012)

REKHA MITTAL J.

This order will dispose of RSA Nos.4298, 4299 of 2012
and 4269, 4270 of 2011 as common questions of law and fact are

involved for adjudication. For the sake of convenience, facts are taken from RSA No.4270 of 2011.

The short question that calls for determination is, whether the period of limitation for redemption of usufructuary mortgage is only 30 years and by efflux of time, the mortgage becomes non-redeemable.

Counsel for the appellants has submitted that the appeal was filed at that point of time when the correctness of Full Bench judgment of this Court ***“Ram Kishan and others vs Sheo Ram and others”***, 2008(1) RCR (Civil) 334, was pending decision before Hon'ble the Apex Court and the Apex Court had granted leave to appeal against the aforesaid Full Bench decision. He has fairly conceded that as per the Full Bench decision of this Court ***Ram Kishan's case (supra)***, there is no period of limitation for redeeming a usufructuary mortgage, therefore, the right of the mortgager to redeem the mortgage is not extinguished with the passage of time or a period of 30 years. He has fairly conceded that the Full Bench decision in ***Ram Kishan's case (supra)***, has been upheld by Hon'ble the Supreme Court of India in ***“Singh Ram (D) through LRs vs Sheo Ram and others”***, 2014(4) RCR (Civil) 179.

Keeping in view the enunciation of law laid down in ***Singh Ram (D) through LRs case (supra)***, affirming the judgment passed by the Full Bench of this Court, there cannot be any dispute about the settled position in law that in case of usufructuary mortgage, mere expiry of period of 30 years from the date of creation of mortgage neither extinguishes right of the mortgager under Section 62 of the

Transfer of Property Act nor the mortgagee can claim to have become owner of the mortgage property by lapse of time. In this view of the matter, the aforesaid question is answered against the appellants and in favour of the respondents.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

03.05.2016
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