

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

RSA No.836 of 2012

Date of decision : 12.12.2016

Malkiat Kaur and others

...Appellants

Versus

Manjit Singh @ Maghar Singh and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. D.S. Gurna, Advocate for the appellants.

Mr. Mukand Gupta, Advocate for the respondents.

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**AMIT RAWAL, J. (Oral)**

The appellants-defendants are aggrieved of the concurrent findings of fact, whereby suit for redemption of the mortgage deed of the year 1907, has been decreed.

Mr. D.S. Gurna, learned counsel appearing on behalf of appellants-defendants submits that under the provisions of Punjab Redemption of Mortgage Act, 1913, the respondent-plaintiff had already availed the remedy and lost. However, during the interregnum, appellants-defendants had also filed the suit seeking declaration of having become owner on the premise that the mortgagor had lost the right by efflux of time but the same has been dismissed. It is after the dismissal, present suit has been filed. No doubt, there is Full Bench judgment of this Court, interpreting the provisions of Article 61 of the Limitation Act holding that there is no limitation for seeking redemption but there is no findings of any Court regarding availing of the remedy barring the mortgagor to avail the

remedy of redemption in Civil Court i.e. after having availed remedy under the Local Act before the prescribed authority. He also refers to the provision of Article 100 of the Limitation Act, to contend that the period of one year prescribes for setting aside the order of any Civil Court in any proceedings other than the suit or any Act or order of the Officer of the Government in his official capacity.

Per Contra, Mr. Mukand Gupta, learned counsel appearing on behalf of respondents-plaintiffs relies upon ratio decidendi culled out by Hon'ble Supreme Court in *Singh Ram (D) through LRs Vs. Sheo Ram and others, 2014(4) RCR (Civil) 179*, to contend that there is no limitation to seek the redemption. Possession admittedly was handed over to the appellants-defendants and, therefore, in the absence of time period, there shall not be any bar of limitation.

I have heard learned counsel for the parties and appraised the paper book and of the view that once the Article 61 of Limitation Act, prescribes the period of redemption, which has now been interpreted by Hon'ble Supreme Court in Singh Ram's case (Supra), by holding as under:-

*“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.*

*16. On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High court in Bhandaru Ram (D) Through LRs Ratan Lal Vs. Sukh Ram (Supra) will stand over ruled.”*

There is no force in the submission of Mr. Gurna, Advocate regarding applicability of Article 100 of Limitation Act. Once Article 61 which prescribed the period of limitation has been interpreted in the above-mentioned manner, the provision of Article 100 would not come in way. Availing of remedy under the Local Act would not take away the statutory right of the person as provided under Section 9 of CPC.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

Mr. Mukand Gupta, Advocate, during the course of hearing, has apprised this Court the fact that judgment and decree of the Courts below have been complied with. Possession has been taken.

RSA No.846 of 2012 is arising out of final decree which has also been dismissed for non-prosecution whereas Mr. Gurna, Advocate submits that application for restoration of the same is stated to be pending.

**12.12.2016**

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**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**