

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1) **Date of Decision: 28.05.2016**
RSA No.2614 of 2016 (O&M)
Dhoop Singh
....Appellant

Vs.

Prabhu and others
....Respondents

2) **RSA No.2625 of 2016 (O&M)**
Dhoop Singh
....Appellant

Vs.

Prabhu and others
....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Surya Kant Gautam, Advocate
for the appellant.

Amol Rattan Singh, J (Oral)

The appellant in these two appeals is one of the plaintiffs before the learned Civil Judge (Junior Division), Panipat, before whom they had filed a suit for declaration to the effect that they are owners in possession of the suit land measuring 6 kanals and 8 marlas, which had been mortgaged to their fore-fathers, by the fore-fathers of the defendants (respondents herein).

The respondents herein had also filed a suit against the plaintiffs

in the other suit (including the present appellant), seeking a declaration to the effect that they are legally entitled to get their (same) agricultural land, measuring 6 kanals and 8 marlas, redeemed on payment of the mortgage money and further, seeking a declaration that the order dated 22.01.2009, passed by the S.D.O. (Civil), Panipat, exercising the power of Collector, Panipat, in case No.29/Redemption, titled Prabhu and others v. Sher Singh and others, by which order their application for redemption had been dismissed, be also declared to be illegal, null and void.

2. Upon hearing the parties, the learned Civil Judge passed a consolidated judgment, dismissing the suit filed by the present appellant and his co-plaintiffs and decreeing the suit filed by the present respondents, holding them entitled to redeem the suit land, on payment of the mortgage debt, which already stood deposited by them in the Treasury. Hence, the appellant and his co-plaintiffs were directed to hand over the vacant possession of the suit land to the present respondents.

The order of the SDO (Civil), Panipat, dated 22.01.2009 was also held to be not binding on the present respondents.

The aforesaid judgment of the Civil Judge was based upon the judgment of a Full Bench of this Court in **Ram Kishan and others v. Sheo Ram and others**, 2007(4) LJR 1, by which it was held that a mortgagee always remains a mortgagee and time is not the essence of such a contract and therefore, the right to redeem the mortgage is an incident of a subsisting mortgage.

3. The learned Additional District Judge, in the two first appeals filed by the present appellant and his co-plaintiffs also, on the same ground, dismissed the appeals (though without referring to the Full Bench judgment

specifically), but holding that law in that regard is well settled. That Court also referred to Section 60 of the Transfer of Property Act, 1882.

4. Learned counsel for the appellant in both these appeals, submits that he does not have anything to say on the issue of redemption of the mortgaged land, which has been held by the Courts below to be a usufructuary mortgage, usage of the suit land having been admittedly given to the predecessors-in-interest of the appellant in the year 1884. Thus, the law on there being no limitation to redemption of such a mortgage having been settled by a Full Bench of this Court in *Ram Kishan Vs. Sheo Ram* (supra), and upheld by the hon'ble Supreme Court in **Singh Ram Vs. Sheo Ram**, (2014) 9 SCC 185, he does not press the appeal on that ground.

However, he submits that the Courts below have erred in decreeing the suit, to the extent that the suit land has been ordered to be redeemed upon payment of Rs.171 and 12 annas, i.e. the amount that it was mortgaged for to the predecessors-in-interest of the appellant, in the year 1884.

He submits that there being no paper money in the year 1884, obviously the mortgage money was paid in gold or silver coins and hence, the redemption value today should be taken in terms of the equivalent value of gold/silver currently.

5. Having considered the aforesaid argument, though 'possibly attractive' at first, in my opinion, it cannot hold, for three reasons.

Firstly, such a plea was never set up before the Courts below.

Secondly, there was no evidence led before the Courts below to show as to how many gold or silver coins were paid (if that was the mode of payment at all), nor was the weight of the each coin proved, so as to

determine today the value of such coins, by which the mortgage money equivalent to Rs.171 and 12 annas is stated to have been paid, in the year 1884.

Thirdly, as regards taking into account, even by extension of that argument, the inflationary value of money as it stands today, compared to 1884, obviously, the fruits of the land as was mortgaged, have been enjoyed by the appellant and his predecessors-in-interest for 132 years till today. The fruits of the land obviously keeping pace with inflation from year to year, it cannot be said that it was only the interest on the mortgage money which was enjoyed by the appellants, and that the principal stood intact, which must be paid as per the inflationary value thereof today. In fact, the essence of a usufructuary mortgage is that the mortgagee continues to enjoy the fruits of the mortgaged property, which is taken to be adjusted towards the interest on the mortgaged amount. Thus, such interest in any case keeping up with inflationary trends as already stated, what is eventually to be paid by the mortgagor to redeem the land, is the principal, if such principal has also not been already adjusted from the usufruct of the land, upon any agreement in that regard, in terms of Section 62(a) of the Transfer of Property Act. Hence, even if such agreement had been entered into, which is not seen to be pleaded before the Courts below, in any case, that advantage would go to the mortgagor and not the mortgagee.

Consequently, though learned counsel has made an earnest attempt to make good his submission as above, finding no merit in the appeals, they are dismissed *in limine*, but with no order as to costs.

Civil Misc. No.6978-C of 2016

As the appeal itself has been dismissed on merits, the issue of

condonation of 294 days delay in filing the appeal is rendered academic and is not gone into.

May 28 , 2016

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**(AMOL RATTAN SINGH)
JUDGE**