IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No. 1084 of 2014 (O&M)
Date of decision: 11.07.2016

Ibrahim and others
....Petitioners

Versus

Chao Khan and another
....Respondents

2. RSA No. 841 of 2015 (O&M)
Date of decision: 11.07.2016

Ibrahim and others
....Petitioners

Versus

Chao Khan and another
....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

Present: Mr. B.S. Rana, Sr. Advocate, with
Mr. Gagandeep Rana, Advocate,
for the petitioners.

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Paramjeet Singh Dhaliwal, J. (Oral)

This order will dispose of RSA No. 1084 of 2014 and RSA No. 841 of 2015, both titled as Ibrahim and others Vs. Chao Khan and another as common questions of law and facts arise in these second appeals.

The RSA No. 1084 of 2014 has been filed against the judgment and decree dated 29.01.2013 passed by learned Addl. Civil Judge (sr. Division), Ferozepur Jhirka, which has been affirmed by the learned District Judge, Nuh vide judgment and decree dated 01.10.2013 vide which suit of the respondents-plaintiffs seeking redemption of mortgage has been decreed.

The RSA No. 841 of 2015 has been filed against the judgment and decree dated 09.10.2014 passed by the Addl. Civil Judge (Sr. Division), Ferozepur, Jhirka, which has been affirmed by learned District Judge, Mewat vide judgment and decree dated 24.12.2014, whereby suit of the respondents/plaintiffs for passing final decree in view of judgment and preliminary decree dated 29.01.2013 (under challenge in RSA No. 1084 of 2014) has been decreed.

Admittedly the land in question was mortgaged with possession. It is thus a usufructuary mortgage. The only contention of the learned counsel for the appellants is that there is stipulation in the mortgage deed dated 24.01.1890 that mortgagor would get the mortgage redeemed in the following month of 'Jeth' of Bikrami Samvat/Deshi month. Therefore, limitation to redeem the mortgage would start from the month of 'Jeth' following the date of mortgage deed i.e. 24.01.1890. Since the mortgage has not been redeemed within a period of 30 years from the due date, the suit is time barred. This contention of the learned counsel is totally baseless. Even if the contention of the learned counsel that mortgage was to be redeemed in the following month is accepted, the same does not appeal to reason. The mortgage is dated 24th January, 1890, the following month of Jeth of Bikrami Samvat/Deshi month was to come during the month of May-June 1890 i.e. after about four months as the month of Jeth generally falls within the period from 15th May to 15th June of English Calendar year. No one would accept agricultural land on mortgage for such a short period. A perusal of the translated copy of mortgage deed dated 24.01.1890, placed on record of this Court shows that it contains a stipulation that the mortgagor would have no claim till the mortgage is redeemed, the mortgagor would continue to deposit the dues along with sawai **every year** with Government. The words 'every year' clearly show that there was no time limit to redeem the mortgage. Only the month 'Jeth' has been mentioned and no year has been mentioned. It appears that the month 'Jeth' has been stipulated only because a crop year starts in the month of 'Jeth' and the mortgagor wanted to protect his right to have the land for the full crop year before redemption of the mortgage, which is a common practice. Redemption in-between when the crop is standing in the fields is even otherwise not practicable as in that situation the mortgagor is to suffer huge loss by way of losing the crop. In view of this, the contention of the learned counsel for the appellant has no merit and hence rejected. A Full Bench of this Court in **Ram Kishan and others Vs. Sheo Ram and others, AIR 2008 P&H 77** has held that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable. The Hon'ble Supreme Court in ***Singh Ram Vs. Sheo Ram, 2014 (4) RCR (Civil) 179*** has affirmed the judgment of Full Bench of this Court and held that in case of a usufructuary mortgage mere expiry of a period of 30 years from the date of creation of mortgage does not extinguish the right of the mortgagor to redeem the mortgage under Section 62 of the Transfer of Property Act, 1872. The right to recovery of possession commences 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 as provided under Section 62 of the Transfer of Property Act, 1872. Until then limitation does not start. There are concurrent findings recorded by the learned Courts below. No question of law, much less substantial question of law arises in this appeal.

Dismissed in limine.

11.07.2016 **(Paramjeet Singh Dhaliwal)**
PA **Judge**