

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

**Regular Second Appeal No.4025 of 2015 (O&M)
Date of Decision: January 18, 2016.**

Darshan Singh through LR's and others

.....APPELLANT(s).

VERSUS

Harpal Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashok Aneja, Advocate
for the applicants-appellants.

SURINDER GUPTA, J.

Heard.

2. This is appeal filed by legal representatives of Darshan Singh (since deceased) against the concurrent judgments of the Courts below whereby a preliminary decree of redemption of land measuring 26 kanals 2 marlas as fully detailed in the head note of the plaint and for possession of land measuring 12 kanals 1 marlas bearing khasra No.19 killa No.8/2/2(5-12), 9/2/2(5-9), 9/1(1-0) out of total land measuring 26 kanals 2 marlas was passed in favour of plaintiff-respondent No.1 Harpal Singh. After various rounds of litigation claiming title over the suit property, plaintiff ultimately filed suit seeking redemption of the entire suit land and possession of land measuring 12 kanals 1 marlas which he had purchased from previous

owners.

3. The Courts below relying on the pleadings of the parties in the previous suit and the findings of the Courts that the suit land is under mortgage, allowed the redemption relying on the observations in case of ***Singh Ram (D) through LRs Vs. Sheo Ram and others 2014(4) RCR (Civil) 179***, wherein Hon'ble Apex Court has held that there is no limitation for seeking redemption of usufructuary mortgage.

4. As per the case of plaintiff-respondent No.1 Harpal Singh, land measuring 33 kanals 5 marlas was owned and possession by one Hira Singh, who had mortgaged the same in favour of Roda @ Rura Singh vide registered mortgage deed dated 16.06.1888 and mutation No.454 was sanctioned with regard to this mortgage and entered in the revenue record. The land measuring 33 kanals 5 marlas was later on reduced to 26 kanals 2 marlas in consolidation and new numbers were given to the mortgaged land. Defendants No.25 to 27 ultimately became the owners of the suit land by way of inheritance and vide different sale deeds dated 15.12.1992, 13.08.1993 and 09.12.1999, land measuring 14 kanals 1 marla was sold to the plaintiff. Earlier the plaintiff had filed suit seeking declaration that he has become owner of the suit land which was dismissed. In RSA No.4368 of 2000 decided on 28.11.2000, it was observed that the appellants along with others defendants are mortgagee of the suit land and the plaintiff cannot maintain ownership of the suit land till the mortgage is redeemed. Thereafter the plaintiff filed the instant suit seeking redemption and possession of the suit land.

5. This fact is now no more in dispute that the status of the

appellants is that of usufructuary mortgagee. As per the observations in case of *Singh Ram (D) through LRs Vs. Sheo Ram and others(supra)*, the law is well settled that there is no limitation to seek the redemption of the usufructuary mortgage.

6. Both the Courts below have allowed the relief of redemption of the mortgage and possession of the land measuring 12 kanals 1 marla, as sought by the plaintiff.

7. Learned counsel for the appellants has argued that in the earlier suits, plaintiff has been denying the mortgage and the entries in the revenue record to this effect, as such, now he cannot be allowed to approbate and reprobate and again rely on those entries.

8. The above contention of learned counsel for the appellants has no merits. In the revenue record, the appellants are recorded as mortgagees. Though plaintiff-respondent No.1 Harpal Singh had challenged those entries but could not be successful. This has not taken away his right to seek the relief available to him as per the plea taken by the appellants in earlier litigation and entries in the revenue record. It is not disputed that the finding of Courts in earlier litigation that possession of plaintiff over the suit land was as mortgagee, has attained, finality.

9. Learned counsel for the appellants submits that the possession of the part of the suit land has already been taken regarding which the appellants have right to raise the plea of compensation in appropriate forum.

10. So far as the above argument of learned counsel for the appellants is concerned, the appellants may avail the appropriate remedy

available to them under law.

11. No other argument has been advanced by learned counsel for the appellants.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

13. Dismissed.

January 18, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE