

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

**Regular Second Appeal No.5930 of 2016 (O&M)
Date of Decision: November 21, 2016.**

Lakhbir Singh and others

.....APPELLANT(s).

VERSUS

Joginder Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Parminder Singh-I, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal by appellants-plaintiffs against the concurrent judgments of the Courts below dismissing their suit seeking the declaration that they are owners in possession of the suit land measuring 45 kanals 2 marlas situated in village Raichak, H.B. No.406, Tehsil Dera Baba Nanak, District Gurdaspur on the strength of mortgage deed of the suit land dated 26.04.1944.

The execution of the mortgage deed qua the suit land is admitted but the plea of the appellant-plaintiff that they have become owner of the suit land with the lapse of time by foreclosure, was discarded. Learned Civil Judge (Junior Division), Batala while discarding the plea of appellants, observed as follows:-

“Further from perusal of Ex.P1 i.e. mortgaged deed dated

26.4.1944, it reveals that no period of limitation has been mentioned in the mortgaged deed and as per condition mortgagee shall pay the mortgaged amount in the month of April (Chet) and further possession will be delivered in the month of October (Rabbi). So, in this way, no period has specifically been mentioned in mortgaged deed regarding redemption of suit land and further mortgagor have legal right to get the land redeemed from mortgagee after paying the mortgaged amount to the mortgagee at any time. Since as per facts and circumstances of the present case, this court is of the considered opinion that plaintiff is mortgagee of the suit land and further defendants No.1 to 3 and 6 are mortgagor, but in these circumstances, plaintiff cannot be declared owner of the suit land for non redemption of the same by defendants and further plaintiff is not entitled for declaration as prayed for.”

The first Appellate Court also affirmed the findings of learned Civil Judge (Junior Division) with the observation that no period of limitation was fixed in the mortgage deed and the mortgagor have legal right to redeem the land after paying mortgage amount at any time.

Learned counsel for the appellants has fairly conceded that mortgage in this case was usufructuary mortgage. As per the observations of Hon'ble Apex Court in case of **Singh Ram (D) through L.R.s vs. Sheo Ram and others, 2015 (2) PLJ 162**, a usufructuary mortgage can be got redeemed at any point of time by paying the mortgage money.

Learned counsel for the appellants while rebutting the observations of the Courts below referred to the mortgage deed dated 26.04.1944, wherein it has been mentioned that the mortgage amount shall

be payable in the month of Chet(April) to get the land vacated after Rabi crop(October). While elaborating this term in the mortgage deed, learned counsel for the appellants has argued that it is clear that the mortgagor has fixed the period for redemption as next year after the execution of the mortgage deed, as such, with the expiry of more than 72 years, the right to redeem stood defeated.

The above argument of learned counsel for the appellants carries no value in the eyes of law. The term of mortgage deed has nowhere indicate that the mortgagor had fixed date for redemption as month of *Chet*, in the year 1945. It rather indicate, as observed by learned Civil Judge, the term in the mortgage deed indicate that the payment of mortgage money will be in the month of April (*Chet*) and possession will be delivered in the month of October after harvesting *Kharif* crop. This indicates that the parties have tried to save the standing crop of mortgagee and to give him chance to harvest next crop from mortgaged land in the event of mortgage money being paid/deposited in *Chet* (April). No period of redemption was fixed in the mortgage deed.

Learned counsel for the appellants has further argued that earlier, the mortgagor Sunder Singh filed civil suit in the year 1973 seeking possession of the suit land, which was dismissed and even after dismissal of that suit, he never sought redemption of the mortgage land. The copy of the judgment passed in that suit, supplied by learned counsel for the appellant shows that the earlier suit was dismissed with the observation that the suit land is under mortgage. That judgment, as such, has no bearing on the fate of the present case.

No other argument has been addressed.

On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

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

Dismissed.

(SURINDER GUPTA)
JUDGE

November 21, 2016
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***