

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

**RSA No.5733 of 2015 (O&M)
Decided on: 02.03.2016**

Sohrab and others

....Appellants

Versus

Chahat

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. M. Salar Khan, Advocate
and Mr. Mohd. Arshad, Advocate
for the appellants.

REKHA MITTAL J. (Oral)

The present appeal has been directed against the consistent findings recorded by the Courts below whereby the suit filed by the respondent has been decreed by the learned trial Court and the judgment and decree passed by the trial Court has been affirmed in appeal.

The respondent/plaintiff filed a suit for declaration with alternative relief of possession by way of redemption on the premise that he is recorded as mortgager of land described in para 2 of the judgment passed by the Appellate Court measuring 6 kanals 12 marlas situated within the revenue estate of village Padheni, Tehsil Taouru, District Mewat and the appellants/defendants are in possession as usufructuary mortgagees. The suit land was got redeemed by predecessor-in-interest of the respondent but the revenue entries showed the land under mortgage with the

appellants and the wrong entries are required to be corrected. The appellants had already gained profits from the suit land more than the mortgage money. The suit land has been mortgaged with possession by predecessors-in-interest of the respondent in favour of predecessors-in-interest of the appellant. No limitation was prescribed for getting the mortgage redeemed.

Appellants No.1, 7 to 9 filed their joint written statement and appellants No.10 to 13 filed their separate joint written statement. Appellant No.10 to 13 admitted claim of the respondent. The remaining appellants who filed the written statement raised the plea that the suit is barred by limitation and the proceedings may be adjourned *sine die* as the judgment passed by the Full Bench of Punjab and Haryana in “**Ram Kishan and others vs Sheo Ram and others, 2008(1) PLR 1**”, is subject-matter of Special Leave Petition to appeal pending before Hon'ble the Supreme Court and another matter “**Chander Bhan vs Om Parkash**” is also pending before the Apex Court. However, they raised a plea that mortgage was a time limit mortgage and the respondent/plaintiff failed to redeem the suit land within the stipulated period and as such right of the respondent stands extinguished.

Appellants No.2 to 5 did not contest the proceedings and were proceeded against *ex parte*. Appellants No.1, 6 to 13

absented from the proceedings later and were proceeded against *ex parte*.

The learned trial Court, on consideration of the pleadings of the parties and evidence adduced on record, decreed suit of the respondent and the defendants/appellants were directed to hand-over possession of the suit property to the respondent on payment of redemption money i.e. Rs.182/- within one month from the date of judgment.

The appellants preferred an appeal that came to be dismissed by the Additional District Judge, Mewat vide judgment and decree dated 24.08.2015 and the findings recorded by the trial Court were affirmed.

Still feeling dis-satisfied, the present appeal has been preferred by the appellant-Sohrab and others.

Counsel for the appellants made a half-hearted attempt to contend by referring to the provisions of Sections 60, 61 and 62 of the Transfer of Property Act that the suit filed by the respondent is barred by limitation as he failed to file the suit within a period of 30 years prescribed under Article 61(a) of the Limitation Act.

I have heard counsel for the appellants, perused the records, judgment of the Full Bench of this Court in ***Ram Kishan's case (supra)*** and that of the Hon'ble Supreme Court in ***“Singh Ram (deceased) through LRs vs Sheo Ram and others”***, 2014(4)

RCR (Civil) 179.

On a pointed query raised by the Court as to the date from which the period of 30 years is to be reckoned for the purpose of limitation prescribed under Article 61(a) of the Limitation Act, counsel for the appellants is not in a position to give any reply much less a satisfactory one. As per plea of the respondent, no limitation was prescribed for getting the mortgage redeemed. The contesting appellants, in the written statement, averred that there was a time limit for redemption of mortgage and as the respondent failed to redeem the suit land within the stipulated period, his right to seek redemption gets extinguished. Indisputably, the appellants did not adduce any evidence to substantiate their plea that any time was prescribed for redemption of mortgage. On the contrary, as per the settled position in law laid down by this Court in ***Ram Kishan's case (supra)*** affirmed by the Apex Court, in the case of a usufructuary mortgage, the principle of *once a mortgage is always a mortgage* is to be applied and there is no limitation to redeem the mortgage.

No other point has been raised.

For the foregoing reasons, the appeal is dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

02.03.2016
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