

RSA No.5788 of 2015 (O&M)

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

RSA No.5788 of 2015 (O&M)

Date of decision:29.07.2016

Phogi (deceased) through his LRs

... Appellant

Vs.

Resham Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.P.Soi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14330-C-2015

The application is allowed, subject to all just exceptions. Legal representatives of appellant-Phogi, as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

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Appellant-defendant is aggrieved of the judgments and decrees rendered by both the Courts below, whereby, the suit for redemption of the mortgaged registered deed dated 01.09.1923, has been decreed by both the Courts below.

Mr. S.P.Soi, learned counsel appearing on behalf of the appellant-defendant submits that in the present appeal, an application bearing No.1756-C-2016 has been filed seeking leave of this Court to bring on record document Ex.A-1 by way of additional evidence to contend that

suit for redemption was barred by principle akin to res judicata as the respondents had already availed the remedy of redemption before the Collector and the said petition was dismissed, vide order dated 30.10.2003. The other limb of the argument is that suit for redemption filed on 14.02.2008, was barred by law of limitation. In support of the aforementioned contention, he relies upon the judgment of the Hon'ble Supreme Court rendered in **Prabhakaran and others vs. M. Azhagiri Pillai (Dead) by LRs and others 2006(2) RCR (Civil) 428** and thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant-defendant and appraised the judgments and decrees of the Courts below.

On going through the pleadings of the parties, it is apparent that no objection qua res judicata was taken either before the trial Court or the Lower Appellate Court. This objection has been taken for the first time before this Court. Even otherwise, proceedings before the Collector would not be akin to res judicata. The redemption deed does not prescribe the period of redemption and thus, there is no force in the submissions of Mr. Soi that the suit instituted in the year 2008 was beyond the period of limitation, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Prabhakaran' case (supra)**, for, the Hon'ble Supreme Court had an occasion to discuss about the applicability of limitation in **Singh Ram (D) through LRs vs. Sheo Ram and others 2014(4) RCR (Civil) 179**, wherein, it has been held that where the mortgage deed do not prescribe the

period of redemption, there is no limitation for seeking redemption and that in case usufructuary mortgage granted

At this stage, Mr. Soi, has made an attempt to say that period of redemption was mentioned in a particular season but no year has been mentioned. The aforementioned “chait” always come and go. In my view, the suit is not barred by law of limitation.

In view of the aforementioned observations, the appeal stands dismissed.

No substantial question of law arises for adjudication of the present appeal.

(AMIT RAWAL)
JUDGE

July 29, 2016
savita

Wheather speaking/reasoned	Yes/No
Whether Reportable	Yes/No