

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

111

Regular Second Appeal No.5545 of 2014 (O&M)

Date of Decision: January 19, 2016

Surjit Singh

...Appellant

Versus

Karam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Anupam Bhardwaj, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.13157-C of 2014

Prayer in this application is for condonation of delay of 18 days
in re-filing the appeal.

For the reasons mentioned in the application which is
supported by the affidavit of the Clerk of the counsel, the same is allowed.

Delay of 18 days in re-filing the appeal stands condoned.

CM No.13158-C of 2014

Prayer in this application is for bringing on record the legal
representatives of deceased Chanan Singh, who was defendant No.2 before
the trial Court, the details of the legal heirs/representatives are given in para
4 of the of the application. Similar prayer has been made qua Jaspinder
Singh legal representative of Gurnam Singh, who was defendant No.3 and
has died. The details of legal heirs of Jaspinder Singh are given in para 5 of
the application. The present application is supported by affidavit of
appellant-plaintiff-Surjit Singh.

In view of the above, the present application is allowed.

The legal representatives of deceased Chanan Singh and

Jaspinder Singh are brought on record subject to just exceptions and for the purpose of present litigation only.

The memo of parties appended along with the appeal is taken on record.

RSA No.5545 of 2014

Challenge in this appeal is to the judgment and decree dated 14.09.2012 passed by the Civil Judge (Senior Division), Amritsar, whereby the suit for declaration filed by the appellant-plaintiff against respondent-defendant No.1 stating that he along with defendants 2 to 17 has become the owner of the land in dispute by way of foreclosure to the extent of the shares, as has been mentioned in the head note of the suit in pursuance to the mortgage deed dated 22.01.1891 executed by Waryam Singh son of Fateh Singh predecessor-in-interest of respondents-defendants in favour of Jawahar Singh son of Meja Singh predecessor-in-interest of the appellant-plaintiff, has been dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge (*Ad hoc*) Fast Track Court, Amritsar, on 11.03.2014.

2. It is the contention of learned counsel for the appellant that as per the mortgage deed which was dated 22.01.1891 executed by Waryam Singh predecessor-in-interest of respondent-defendant No.1 for a consideration of ₹200/- with possession with a period of redemption fixed as six years and interest on the mortgage money was duly treated equal to that of the produce of the crop. The said mortgaged property having not been redeemed by respondent-defendant No.1 within the time stipulated under the statute, entitled the appellant-plaintiff along with defendants 2 to 17 to be declared as the owner of the property by foreclosure. He contends

that the facts in this regard having been accepted by the Courts below about the due execution of the mortgage deed, the decree as prayed for, should have been granted by the Courts below and the denial of the same would render the impugned judgments and decree illegal and unsustainable. Prayer has, thus, been made for allowing the present appeal by setting aside the impugned judgments and decree and decreeing the suit of the appellant-plaintiff.

3. I have considered the submissions made by learned counsel for the appellant and have gone through the impugned judgments but do not find merit in the contentions as raised.

4. The factum that the mortgage deed is a usufructuary mortgage is not in dispute and as per the latest judgment of the larger Bench of the Supreme Court passed in case titled as *Singh Ram (D) through L.Rs. Versus Sheo Ram and others 2014(9) SCC 185*, the Hon'ble Supreme Court has held that in the case of a usufructuary mortgage merely because the period of 30 years has expired from the date of creation of the mortgage, does not extinguish the right of the mortgagor under Section 62 of the Transfer of Property Act. Thus, there is no limitation to recover possession and the right of recovery commences when the mortgage money is paid. There being no limitation for the purpose of redemption of the property in a usufructuary mortgage, the suit as preferred by the appellant-plaintiff, has rightly been dismissed by the Courts below. The law having been settled by the Supreme Court, extinguishes the claim, as has been put forth by the appellant-plaintiff in the suit.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by

both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

January 19, 2016

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE