

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

**RSA No.1848-2000(O&M)
Date of Order: 14.11.2017**

JAI KUM AND OTHERS

..Appellants

Versus

SUBHAN KHAN AND OTEHRS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.P.Kaushal, Advocate,
for the appellant.

Mr. Amit Jain, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Plaintiffs-appellants are in regular second appeal against the judgment passed by the learned Additional District Judge, Gurgaon.

Plaintiffs filed a suit claiming declaration that they have become owners in possession of the land, which was mortgaged with the predecessors of the plaintiffs Pohap Khan on 12.06.1943 for a consideration of Rs.670/-. It was pleaded that the mutation of redemption sanctioned by the revenue authorities is illegal and does not effect the rights of the plaintiffs.

On the other hand, defendants pleaded that the suit for declaration is not maintainable. It is further asserted that the land mortgaged was redeemed much prior to the consolidation and that is how the defendants are in possession of the land in dispute.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiffs, whereas learned first appellate Court after re-appreciating the evidence available on the file dismissed the suit while accepting the appeal filed by the defendants.

It is not in dispute that the mortgage was a usufructuary mortgage. As per the recent judgment passed by the Hon'ble Supreme Court reported as *Singh Ram(D) through L.Rs v. Sheo Ram and others, 2014(9) SCC, 185*, wherein a Full Bench judgment of this Court reported as *Ram Kishan and others v. Sheo Ram and others, 2008(1) R.C.R.(Civil), 334* was confirmed, the suit for declaration by a mortgagee in case of usufructuary mortgage that he has become owner by way of efflux of time is not maintainable.

Still further learned first appellate Court has found that before consolidation, the land was redeemed and a mutation was sanctioned. Although, it is true that Parat Sarkar i.e. original order of mutation was lost but Parat Patwar i.e. copy meant for Patwari was very much available, but this matter was once again considered by the revenue authorities in the year 1973 and they found that the mutation of redemption has rightly been sanctioned.

The learned first appellate Court has further noticed that the possession of the land is with the defendants and the possession with the defendants also lends credence to the redemption of the land.

The findings arrived at by the learned first appellate Court with respect to possession and redemption of the land is not shown to be erroneous.

In view of this, there is no scope for interference by this court

in the findings of fact arrived at by the learned first appellate Court. The regular second appeal is dismissed.

November 14, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No