

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

**RSA No. 285 of 2000 (O&M)
Date of Decision: 7.9.2017**

Karnail Singh and others

... Appellants

Versus

Dharam Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Arinder Singh, Advocate for the appellants

Mr.R.N.Moudgil, Advocate for the respondent

RAJIV NARAIN RAINA, J. (Oral)

The defendants are in second appeal. The plaintiff has succeeded in both the courts below when defendants' first appeal was dismissed vide judgment and decree dated 25th October, 1999 passed by the Additional District Judge, Ropar. The plaintiff was a mortgagee in possession and claimed in the suit ownership of suit property by way of adverse possession claiming that by efflux of time, he became owner. There is no doubt that the present is a case involving a usufructuary mortgage.

The issue is no longer *res integra* and the legal principle has been settled by the Supreme Court in **Singh Ram (dead) through Legal Representatives v. Sheo Ram and others**, (2014) 9 SCC 185 while upholding the view of the Full Bench of this Court in **Ram Kishan and others v. Sheo Ram and others**, 2008 (1) RCR (Civil) 334 that a mortgagee cannot require rights of ownership by prescription or by effluxion of time. The mortgagee's right of redemption can be curtailed only when limitation of 30 years ends after payment of mortgage money, for which, there is no time limit. In cases of mortgage other than usufructuary mortgage, the right to redeem would accrue on the date of mortgage resulting in extinguishment of

mortgage like the present one, the mortgagee's right cannot ripen into ownership by effluxion of time.

In view of the above, this appeal is allowed. The judgments and decrees of both the courts below are set aside and the suit filed by the plaintiff is dismissed.

7.9.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No