

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

RSA no.1743 of 1987 (O&M)

Date of Decision: 15.10.2018

State of Punjab and another

...Appellants

Vs.

Mahain Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Akshita Chauhan, AAG, Punjab,
for the appellants.

Mr. Deepak Verma, Advocate,
for the respondents.

Amol Rattan Singh, J.

This second appeal was filed by the State of Punjab and the Union of India in the year 1987, challenging therein the judgments of the learned Sub Judge, Ist Class Gurdaspur, dated 24.01.1986 and the learned Ist appellate Court, i.e. the Additional District Judge, Gurdaspur, dated 18.08.1986.

Vide the former judgment the learned trial Court decreed the suit of the respondents/plaintiffs, who were seeking a declaration to the effect that they are owners-in- possession of the suit land (to the extent of their shares), measuring 23 kanals and 18 marlas, fully described in the plaint, situated in village Gosal, District Gurdaspur. The consequential relief of prohibitory injunction sought, restraining the appellants herein from interfering in their lawful possession over the suit land, was also granted by that Court, with the said judgment and decree having been upheld by the learned Additional District Judge, upon an appeal filed by the present appellants.

2. The case of the plaintiffs was that one Swinder Singh was originally the owner of land, half of which he had sold to the plaintiffs for a consideration of Rs.2000/-, vide a registered sale deed dated 06.02.1970, also delivering possession of the land to them.

Thus the plaintiffs having purchased it for valuable consideration, with them also contended to be in possession of the land, upon the appellants/defendants allegedly threatening to alienate it in favour of other persons, without any right to do so, the suit came to be instituted on 31.01.1984.

3. Upon notice issued to them the appellants/defendants appeared and filed their written statement, contending that even as per the revenue record, the aforesaid Swinder Singh, alongwith other co-sharers, had mortgaged the suit land in favour of '*Muslim* evacuees' (who had left for Pakistan in the year 1947) and that in the *jamabandi* (record of rights) for the years 1968-69, Swinder Singh and Achhar Singh were recorded to be mortgagors in equal shares, while the Custodian of Evacuee Property was recorded to be the mortgagee with possession, in respect of that part of the suit land which was comprised in khasra no. 7/12/2, 18 and 19.

The remaining land, comprised in khasra nos. 7/16 and 17/1, was also contended to be recorded in the possession of the Custodian.

These entries were stated to have been repeated in the subsequent *jamabandi* for the year 1973-74, though in the 'cultivation column' of that *jamabandi*, one Chanan Singh son of Buta Singh and another Chanan Singh, son of Lachman Singh, were entered as *Ghair-Dakhilkars*.

The same entries were incorporated in the subsequent *jamabandi* for the year 1978-79.

Hence, the contention of the appellants herein, i.e. the defendants, was that as per revenue record, the land having been mortgaged to Muslim evacuees, with it not having been redeemed by the mortgagors or their predecessors-in-interest within “the statutory period of 30 years”, it vested in the Custodian on behalf of the Central Government, free from all encumbrances in terms of a notification dated October 21, 1981.

4. It was further pleaded by the appellants in their written statement, that the sale of land by Swinder Singh was subject to the mortgagee rights of the Custodian and in fact the plaintiffs were in unauthorised possession thereof, who could not be allowed to retain the same indefinitely and consequentially, were to be evicted therefrom.

It was next pleaded that the Tehsildar (Sales) was fully competent to dispose of the suit land under the relevant rules and therefore, the plaintiffs had no *locus* to institute the suit, which also was 'Package Deal Property' thereafter belonging to the Punjab Government, with the Civil Court having no jurisdiction to entertain the suit in terms of Section 16 of the Punjab Package Deal Properties (Disposal) Act, 1976.

In fact, as per the appellants, the plaintiffs' efficacious remedy was before the authority concerned under the said Act.

No valid notice having been issued in terms of Section 80 of the CPC, was the next ground taken by the appellants in their written statement, to refute the claim of the plaintiffs.

5. On the aforesaid findings, the followings issues were struck by the learned Sub Judge Ist Class:-

- “1. Whether the plaintiffs are owners in possession of the property in dispute?OPP
2. Whether the civil court has no jurisdiction to try the

suit?OPD

3. What is the effect of non-service of notice U/s 80 C.P.C.?OPD
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the Punjab State has not been sued through a competent person?OPD
6. Whether the plaintiffs are entitled to the injunction prayed for?OPP
7. Relief.”

6. The parties having led their respective evidence, including the notification of the Central Government dated 21.10.1981 and the relevant revenue record, the learned trial Court eventually recorded a finding that the defendants, in paragraph 4 of the written statement, had admitted that the plaintiffs were in unauthorised possession of the disputed land, after it was sold to them vide the sale deed of 1970, pursuant to which a mutation entry was also sanctioned by the revenue authorities (*qua* the change of ownership), with the plaintiffs thereby stepping into the shoes of Swinder Singh.

Further, upon appraising the evidence, led by way of the *jamabandis* and *khasra girdawris*, it was also found by that court that the cultivating possession of the suit land was that of Baldev Singh son of Chanan Singh and the 'other' Chanan Singh, with the Government never actually having obtained possession thereof, even as a mortgagee.

It was next found by that Court that from nowhere on the record had it been shown by the appellants herein (defendants), as to who the *Muslim* mortgagees were, who had gone to Pakistan and in whose shoes the Central Government and the Punjab Government had stepped into.

Even no revenue record was produced to show as to whether possession of the suit land was ever delivered to the Muslim evacuees, in

terms of the mortgage entered into by Swinder Singh and his co-owners, or not.

Consequently, it was further held by the trial Court, that if the original mortgagees, and thereafter the Custodian, did not obtain possession of the disputed land within a period of 12 years, as prescribed by Article 63 of the Limitation Act, 1963, such mortgagees and their successors-in-interest lost all rights to obtain possession thereof.

7. Noticing the notification dated 21.10.1981, it was held that undoubtedly by that notification the rights of mortgagees who had abandoned possession and gone to Pakistan, passed on to the Central Government, but with that Government never having been shown in possession of the disputed land, it had lost all rights to it, even though plaintiff no.2, Surain Singh, in his testimony as PW1, had admitted that after he purchased the land, he came to know that it had been mortgaged by Swinder Singh to Muslims and he had consequently deposited the amount for which land had been mortgaged, in the year 1973, though he contended that he had lost the receipts issued *qua* that payment.

Even so, the trial Court held that the admission with regard to mortgage having been entered into in favour of Muslim evacuees would not change the legal position, with the Muslims never having been shown to have actually obtained possession thereof, and the Government in any case never having been in actual possession. Hence, mortgagee rights could not be claimed by it.

8. On the issue of lack of jurisdiction of the Civil Court, it was held that with the possession of the suit land never having been with the Central Government or with the State Government, the provisions of the Package

Deals Act, 1976, could not be resorted to by the defendants, and consequently, the Civil Court would have jurisdiction to entertain the suit.

9. On the fact of non-issuance of notice under Section 80 of the CPC, it was found that as a matter of fact such notice had been waived off by the trial court vide its order dated 31.01.1984 (obviously under sub section 2 of the provision) and the defendants in any case had duly appeared in Court to contest the suit and therefore it could not be rejected on that ground.

Issue no.4, on non-maintainability of the suit, was also decided in favour of the plaintiffs, holding that they would be naturally concerned with the land, they being the owners thereof.

The 5th issue, on the Punjab State not having been sued through a competent person, was again decided in favour of the plaintiffs, as the State was duly impleaded through the Collector, Gurdaspur, with the suit land situated in the said district and therefore, there was no mis-impleadment of parties.

10. All the aforesaid issues having been decided in favour of the plaintiffs, the 6th issue, of them being entitled to a decree of prohibitory injunction, was also consequently decided in their favour, with the suit decreed in terms of the prayers made therein.

11. The Union of India and the State of Punjab both having filed an appeal before the learned Additional District Judge, that too was dismissed, on the same grounds as given by the learned trial Court.

12. When this 2nd appeal against those judgments and decrees was admitted by this Court in the year 1987, no substantial question of law had actually been framed at that time, but in the opinion of this Court, the substantial questions of law that do arise in this appeal are as follows:-

“(1) Whether the Union of India, by virtue of the notification dated 21.01.1981, and subsequently the State of Punjab, can be considered to have stepped into the shoes of any Muslims to whom the land was stated to have been mortgaged by the original owner, and if so, whether by efflux of time, or despite the fact that possession never passed on to the State, would the land stand vested in the Union or the State any point of time?

(2) Whether the civil court had jurisdiction to entertain the suit in view of the bar contained in Section 16 of the Punjab Package Deal Properties (Disposal) Act, 1976?”

13. Even when the turn of this appeal had come up for hearing in the year 2015, it kept getting adjourned for one reason or the other and eventually, it was first taken up for hearing on July 31, 2018, with none having appeared for the respondents/plaintiffs on that date and it consequently having been adjourned to August 09, 2018, with the counsel for the respondents still not having turned up. Hence, it was ordered to heard on September 07, 2018, on which date again none appeared for the respondents.

Therefore, upon hearing arguments of learned State counsel, (for the appellants), judgment had been reserved on that date, but before it could be pronounced, counsel for the respondents filed an application bearing CM no.15267-C of 2018, seeking recalling of the order reserving judgment, to enable him to address arguments.

In view of the reason given in the application, to the effect that he had missed the case 'inadvertently', and further, the appeal being of the year 1987, i.e. it already having remained pending for more than 30 years, it was considered appropriate to put it up for re-hearing, to enable learned counsel for the respondents to address arguments. It was then taken up for final hearing today, i.e. 15.10.2018.

14. As already noticed in the order dated September 07.2018, Ms. Akshita Chauhan, learned AAG, Punjab, had relied upon a judgment of the Supreme Court in **Custodian Evacuee Property, Punjab and others v. Jafran Begum**, AIR 1968 SC 169, to submit that, firstly, the civil court had no jurisdiction to deal with any property vested in the State under the Administration of Evacuee Property Act, 1950, which property was subsequently sold by appellant no.2, i.e. the Union of India, to the Government of Punjab, under the Punjab Package Deal Properties (Disposal) Act, 1976.

She had also argued that the property therefore having vested first in the Union Government and subsequently the State of Punjab, the respondents-plaintiffs could not have purchased it from the original land owners.

Learned counsel for the appellant-State had further relied upon a judgment of a coordinate Bench of this Court in **Sadhu Ram and others v. Union of India and others**, 1987 (1) CurLJ (CCR) 51.

15. The learned Assistant Advocate General, today reiterates what she had submitted earlier, to the effect that the suit property having been mortgaged by the original owners to Muslim mortgagees who left for Pakistan in the wake of the partition of 1947, the property first vested in the Union of India and then in the State of Punjab; and further, she submitted that 30 years having elapsed without redemption of the mortgage, the plaintiffs would have no claim over the property.

She also points to the judgment of the learned trial court (with reference to issue no.1, in paragraph no.6 thereof), submitting that as a matter of fact even one of the plaintiffs himself (PW-1), admitted to the suit land

having been mortgaged to Muslims who had left for Pakistan, and therefore the non-production of revenue record, (showing the 'Muslim mortgagees' to have actually been shown therein as such), was inconsequential.

16. *Per contra*, Mr. Deepak Verma, learned counsel for the respondents, first points to the fact that the 1st appellant, i.e. the State, had itself in its written statement, in paragraph 4 thereof, admitted that the respondents-plaintiffs continued to be in possession of the suit property, though its stand was that they were in illegal possession.

He further submits that the appellants in fact had purchased the suit property from the original owner, Swinder Singh, in the year 1970, vide a registered sale-deed duly proved before the learned courts below, that in any case not having been disputed, the sale-deed being Ex. P-3.

He next submits that no record whatsoever was led by way of evidence by the appellants herein, to prove as to when the suit property was mortgaged by the original owner (Swinder Singh), to such 'Muslim mortgagees', with the names of the mortgagees also not shown anywhere and consequently, simply because an admission was made by the respondents-plaintiffs that they had in fact got the property redeemed "upon hearing that it had been so mortgaged", by repaying the mortgage amount in the year 1973, would not prove the date of mortgage and as to who the 'Muslim mortgagees' were into whose shoes the State had stepped, after they left for Pakistan, if at all they did.

17. Having considered the aforesaid arguments, as also the judgments of the learned courts below, I see no ground to interfere with the decreeing of the suit of the respondents in their favour, even while answering the questions of law framed in paragraph 12 hereinabove, the first of which

has two parts; viz., (i) whether the mortgage stated to have been entered into by the original owner (predecessor-in-interest) of the respondents, i.e. Swinder Singh, would be deemed to have been extinguished, thereby perfecting the title of the mortgagees into one of ownership, by efflux of time; and/or (ii) whether the Union of India or State of Punjab, could be treated to be mortgagees as successors to the persons stated to be original mortgagees, i.e. Muslims who migrated to Pakistan, even though the State and the Union have never been shown to be in actual physical possession of the suit property?

18. First, the concurrent finding of fact by the Courts below has to be noticed, to the effect that, factually, neither the Union nor the State were ever proved, by way of any evidence led before those Courts (or even in this second appeal), in the form of revenue record or otherwise, to have ever entered into possession of the suit property, if any such 'Muslim migrants' were previous mortgagees in possession thereof, after the departure of whom the Union/State took possession of the suit property.

What also needs to be reiterated by this Court, in view of again a concurrent finding of fact, (not dislodged in any manner by reference to any record in that regard even in this second appeal), that even the Muslims to whom the property is contended to have been mortgaged by Swinder Singh, were ever actually shown to be in possession thereof, after which they abandoned the suit land, to go to Pakistan in the wake of the partition of the country.

In this context, undoubtedly it has been recorded by the learned trial Court (in paragraph 6 of its judgment), that respondent-plaintiff no.2, Surain Singh, while deposing as PW1, admitted that after the purchase of the

land he 'came to know' that it had been mortgaged by Swinder Singh to Muslims and consequently, he (PW1) had the 'mortgaged money' and therefore had redeemed the land in the year 1973.

However, he admitted that he had lost the receipt issued qua that payment (allegedly in floods that occurred in 1975).

19. That, admission, that “he came to know later” about the mortgage, still does not, in the opinion of this Court, lift the burden of proof from the shoulders of the defendants (the appellants herein), to have established what they had contended in their written statement, by showing from the revenue record as to which Muslim persons had been in possession of the suit property as mortgagees, and had thereafter left for Pakistan in 1947 or immediately thereafter.

As has been discussed by the Courts below, even the revenue record produced by way of evidence by the appellants-defendants, i.e. *jamabandis* for the year 1973-74 and 78-79 (Exs.DW1/1 to DW1/2), as also the *khasra girdawaris* (annual records) for the years 1974-75 and 1983-84 (Exs.DW1/4 and DW1/5), did not show the State to be in actual cultivating possession of the suit land instead showing Chanan Singh son of Buta Singh and another Chanan Singh son of Lachhman Singh, as also Baldev Singh son of Chanan Singh, to be in such possession as *gair dakhilkars*.

Though it has been noticed by the trial Court in paragraph 3 of its judgment that in its written statement the State had contended that in the *jamabandi* for the year 1968-69, the Union of India was actually shown to be in possession of the suit property as a mortgagee, that *jamabandi* obviously was not led by way of evidence.

20. In fact, at this stage before going into the second aspect of the

first question of law framed in this appeal, the second question of law needs to be discussed at this stage itself, on whether, by virtue of Section 16 of the Punjab Package Deal Properties (Disposal) Act 1976, the jurisdiction of the civil court, to even entertain the suit, was barred or not.

That would have first seen in the light of the notification dated 21.01.1981 (Ex.D1 before the courts below), which is reproduced in the judgment of the lower appellate Court, reads as follows:-

“All agricultural lands situated in the rural areas of Punjab State as were mortgaged by the local owners with the Muslim evacuees but had not been redeemed by the mortgagors within the period of limitation, and has therefore, vested in the Custodian.”

As regards the Punjab Package Deal Properties Act, first it is to be noticed that the said Act covers evacuee properties taken over by the State Government in terms of the letter issued by the Government of India, on June 03, 1961, which as per the State also covered the property in question, it being property mortgaged to Muslim evacuees, that had not been redeemed “within the period of limitation”.

21. In the aforesaid background, Section 16 of the Act of 1976 is reproduced as follows:-

“16. Bar of jurisdiction and finality of orders. (1) Save as otherwise expressly provided in this Act, every order made by any officer or a authority under this Act shall be final and no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the State Government or any officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Nothing in the Punjab Public Premises and Land

Eviction and Rent Recovery) Act, 1973, shall apply to package deal property.”

22. Thus, though the contention of the appellant State in its written statement had been that the property was such as had been mortgaged to Muslims who had migrated to Pakistan without redeeming it, in my opinion, even the names of those Muslims never having been proved, with neither proof of their possession of any such property mortgaged to them also led by way of evidence, the property itself could not be proved to be such kind of property.

This is other than the fact that now, after the judgment of the Supreme Court in Harbans v. Om Parkash and others 2005 (4) RCR (Civil) 841 (cited by learned counsel for the respondents-plaintiffs), as also the subsequent one in Singh Ram v. Sheo Ram (2014) 9 SCC 185, it has been held that a usufructuary mortgage can be redeemed at any time. In the latter case, it has also been held that the limitation to recover possession of the mortgaged land, commences when the mortgage money is paid, uptill which time limitation does not start at all, for the purposes of redeeming the mortgage.

23. That in fact, also answers the second aspect of the first question of law raised hereinabove, i.e. whether by efflux of time, the suit land would be deemed to have vested in the appellant-Union of India/State of Punjab, upon a period of 30 years having expired after the alleged mortgaged was entered into by the original owner of the land, which such mortgage not having been redeemed by payment of the mortgage money.

Thus, even though the statement of PW1, that he had paid the mortgage money in 1973, cannot be accepted in the absence of any firm proof exhibited by him, yet, even accepting that if there was a mortgage in favour of

any Mohammedan persons who left for Pakistan, the 'title of mortgagee' could not be deemed to have been perfected into one of ownership over the suit land, simply because 30 years had expired after the mortgage was entered into, even had the mortgage been proved.

24. The second question of law framed hereinabove is therefore answered to the effect that with limitation not having run out *qua* the suit property (even if the mortgage had been proved), there would be no applicability of the notification dated 21.01.1981, which stipulates that the unredeemed mortgaged land earlier in the hand of Muslims evacuees as had not been redeemed within the period of limitation, which would stand vested in the custodian for the Central Government.

In this context, what has been observed in *Harbans'* case is reproduced hereinunder:-

“6. The rule against clogs on the equity of redemption is that, a mortgage shall always be redeemable and a mortgagor's right to redeem shall neither be taken away nor be limited by any contract between the parties. The principle behind the rule was expressed by Lindley, M.R. In *Santley v. Wilde*, in these words:

“The principle is this: a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage: and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption and is therefore void. It follows from this, that “once a mortgage always a mortgage”.’

7. The right of redemption, therefore, cannot be taken away. The

courts will ignore any contract the effect of which is to deprive the mortgagor of his right to redeem the mortgage. One thing, therefore, is clear, namely, that the term in the mortgage contract, that on the failure of the mortgagor to redeem the mortgage within the specified period of six months the mortgagor will have no claim over the mortgaged property, and the mortgage deed will be deemed to be a deed of sale in favour of the mortgagee, cannot be sustained. It plainly takes away altogether, the mortgagor's right to redeem the mortgage after the specified period. This is not permissible, for 'once a mortgage always a mortgage' and therefore always redeemable. The same result also follows from Section 60 of the Transfer of Property Act. So it was said in *Mohd. Sher Khan v. Seth Swami Dayal* (IA at p. 65):

“An anomalous mortgage enabling a mortgagee after a lapse of time and in the absence of redemption to enter and take the rents in satisfaction of the interest would be perfectly valid if it did not also hinder an existing right to redeem. But it is this that the present mortgage undoubtedly purports to effect. It is expressly stated to be for five years, and after that period the principal money became payable. This, under Section 60 of the Transfer of Property Act, is the event on which the mortgagor had a right on payment of the mortgage money to redeem.

The section is unqualified in its terms, and contains no saving provision as other sections do in favour of contracts to the contrary. Their Lordships therefore see no sufficient reason for withholding from the words of the section their full force and effect.’

(Emphasis applied only in this judgment).

Thereafter, in *Singh Rams'* case (supra), it was held as follows:-

“21. We need not multiply reference to the other judgments. Reference to the above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the TP Act has been noted,

right to redeem has been held to continue till the mortgage money is paid for which there is no time-limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of the right of redemption after 30 years.

22. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the TP Act to recover possession commences in the manner specified therein i.e. when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by the mortgagor. Until then, limitation does not start for the purposes of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly.

23. On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High Court in *Bhandaru Ram v. Sukh Ram* will stand overruled. The appeals are dismissed.”

Consequently, there being no period of limitation to the period of redemption of a usufructuary mortgage, the question of the suit land vesting in the custodian and subsequently in the State of Punjab, in terms of the notification of 1981, does not arise.

25. Section 2 (1) of the Package Deal Property Act defines package deal property to mean surplus evacuee property taken over by the State Government and referred to in the Government of India letter dated June 03, 1961, read with the letter dated March 05, 1962.

Firstly of course, no evidence in the form of the aforesaid letters was led by the appellants herein to show that the suit property even actually falls within the scope of the aforesaid letters of 1961 or 1962 or any other

such letter; and secondly, it could not be shown to be such when the basic reliance is actually on the notification dated 21.01.1981 (Ex.D1), by which, as already seen earlier, properties mortgaged by local owners to Muslim evacuees as had not been redeemed by the mortgagors within the period of limitation, were deemed to be vesting in the Custodian.

Other than the fact that, to repeat yet again, even the factum of the property having been actually handed over to any Muslim who had left for Pakistan in terms of any mortgage entered into by Swinder Singh was never proved by the appellants, the period of limitation also in any case not having run out to redeem the mortgage, the question of it having vested in the Custodian for the Central Government did not arise, and consequently, such property could not have been transferred by the Central Government to the State Government (it not being property vesting in the Central Government itself).

26. As regards the ratio of the judgment cited by learned State counsel in *Jafran Begums'* case (supra), it was held by a 3 judge Bench of the Supreme Court, in the context of Section 46 of the Administration of Evacuee Property Act, 1950, that there is a complete bar on the jurisdiction of the civil court, though the bar could not oust jurisdiction of a High Court under Article 226 of the Constitution.

Again undoubtedly, this appeal is obviously not a 'proceeding under Article 226' but even as regards the jurisdiction of the civil court in this case, in my opinion, a similar bar contained in Section 16 of the Package Deal Property Act would not operate, the property, in fact, never having been proved to be possessed either by the Central or the State Government, or even by Muslims mortgagees who left for Pakistan.

It also needs to be noticed here that a property mortgaged to Muslim migrants to Pakistan was not subject matter of that case, the property therein being one which was in the ownership of a Muslim person who migrated to Pakistan. Hence, even on facts, the ratio of the said judgment would not be applicable to the present case.

That being so, even the bar contained in Section 16 of the Package Deal Property Act, 1976, ousting the jurisdiction of a civil court to entertain any suit in respect of any matter falling within the purview of the said Act, would not arise at all.

Hence, the learned courts below did not err in holding that the civil court had jurisdiction to entertain the suit of the respondents-plaintiffs.

That question of law is answered accordingly, against the appellants.

27. Coming last to the other aspect contained in the first question, i.e. whether despite the fact that possession never passed to the Union or the State, would the land stand vested in the State at any point of time.

The learned trial Court held that even in terms of Article 63 of the Schedule to the Limitation Act, 1963, the Union/State could not claim possession of the suit land, as a mortgagee, it never having remained in possession.

Though Article 63 would only be applicable if a mortgagee sued for either foreclosure of the mortgage or for possession of immovable property mortgaged to him/her/it, however, as already noticed, even if it had been proved that the State actually stepped into the shoes of any particular Muslim' evacuee mortgagees' (which it did not prove), the property would not vest in the Union or the State, there being no limitation to redeem a

usufructuary mortgage, even with in fact, the kind of mortgage entered into by Swinder Singh never having been proved by the appellants.

Consequently, the first question of law framed, in its entirety, is answered to the effect that the suit property at no time actually vested in the appellants.

28. That being so, there is no reason to interfere with the judgments of the Courts below and therefore, without making any comment on the rights of any person who was shown in the revenue record to be in actual cultivating possession of the suit land, such person not being a party to the present *lis*, this appeal is dismissed, with costs throughout.

Decree sheet be prepared accordingly.

15.10.2018
vcgarg/dharambir

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes