

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

RSA No.2324 of 1987 (O&M)

Date of decision : 16.07.2018

Gurnam Singh

...Appellant

Versus

Karam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Mahajan, Advocate for the appellant.

Mr. Sunil Garg, Advocate for respondent No.1(i).

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the trial Court.

The plaintiff-respondent filed a suit for declaration to the effect that the plaintiffs have become the owners by lapse of time with respect of land measuring 11 kanals being half share of land measuring 22 kanals on the ground that the property which was under mortgage has not been redeemed within the time prescribed and, therefore, the order of redemption passed by the Assistant Collector, Ist Grade, Patti exercising the powers of Collector is void and illegal and not binding on the rights of the plaintiff.

Some facts would be required to be noticed.

On 06.06.1953, the land measuring 20 kanals and 11 marlas

was mortgaged by Baj Singh in favour of Tehal Singh (half share), Karam Singh and Arjan Singh (half share). Tehal Singh sold mortgage rights i.e. half of land measuring 20 kanals 11 marlas in favour of Teja Singh son of Bagga Singh. Baj Singh, original mortgagor died issueless and his estate was inherited by his cousins Jasso and Dhanno. Dhanno executed the sale deed in respect of land measuring 75 kanals and 6 marlas including the land inherited from Baj Singh in favour of Gurnam Singh-defendant-appellant. Similarly, Jasso also agreed to sell the land measuring 75 kanals 6 marlas including the land inherited from Baj Singh in favour of defendant-appellant-Gurnam Singh. Since, the sale deed was not executed, the civil suit for specific performance was filed which was decreed on 29.08.1972 and the sale deed was executed in favour of Gurnam Singh on 26.09.1980. Thus, Gurnam Singh stepped into the shoes of mortgagor Baj Singh. Gurnam Singh filed an application on 12.04.1984 for redemption of the mortgage against Karam Singh, Arjan Singh, Teja Singh (transfer of half share of mortgagee rights from Tehal Singh) before the Assistant Collector, Ist Grade, Patti. Application for redemption was allowed vide order dated 30.11.1984. The plaintiffs-respondents filed a suit for declaration that they have become owners of the suit land by efflux of time and order passed by the Collector is illegal, null and void. The trial Court dismissed the suit whereas the First Appellate Court reversed the finding on the ground that more than 30 years have elapsed and, therefore, redemption of the land is not possible.

Learned counsel for the appellant has proposed the following questions of law:-

- “(i) Whether right to seek redemption in case of usufructuary mortgage would arise on date of mortgage itself when no period of mortgage is fixed or will arise when amount of mortgage is tendered, paid or deposited in Court by mortgagor for payment to mortgagee?*
- (ii) Whether there is any limitation for redemption of usufructuary mortgage?*
- (iii) Whether finding of Lower Appellate Court that time for redemption of mortgage is 30 years from date of mortgage and has expired, suffer from perversity being contrary to law?”*

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

In the considered opinion of this Court, all the substantial questions of law as reproduced above have already been answered by the Larger Bench of Hon'ble the Supreme Court in the case of **Singh Ram (deceased) through LRs Vs. Sheo Ram and others, 2014(9) SCC 185.**

In the present case, it is not in dispute that the mortgage was a usufructuary mortgage with delivery of possession and there was no period prescribed for redemption of the mortgage. Mutation of mortgage was sanctioned on 28.08.1953 Ex.P14 on the record. Mutation shows that no period for redemption was prescribed. In view of the judgment passed by Hon'ble the Supreme Court in the case of Singh Ram's case (Supra), the period of redemption does not begin to run till mortgagor requests for redemption and mortgagee refuses to redeem. In the present case, the mortgagor moved an application before the Assistant Collector on

12.04.1984 which was allowed on 30.11.1984 permitting redemption of the mortgage.

Learned First Appellate Court has erred in recording a finding that the plaintiffs have become owners by efflux of time as more than 30 years have elapsed. The First Appellate Court has also erred in calculating the limitation for redemption from the date of mortgage.

Hence, questions framed are answered in favour of appellant.

In view thereof, the judgment under appeal cannot be sustained. Hence, the present appeal is allowed. Judgment passed by the first Appellate Court is set aside and that of the trial Court is restored.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

16.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No