

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

361

RSA No.24 of 1990 (O & M)
Date of Decision:22.01.2018

Raj Kumar

...Appellant

Versus

Sahjad (deceased) through LRs and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the appellant.

Mr. B.R. Rana, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

In the considered opinion of this Court, the issue which requires determination is whether a mortgagee, in a usufructuary mortgage which does provide any period for redemption is entitled to seek declaration that he has become owner of the property by lapse of time or not?

Plaintiffs filed a suit for declaration claiming that they have become owner in possession of the suit property on account of lapse of time as the mortgage was on 08.06.1949 and 30 years has lapsed but the property has not been redeemed. Defendants came present and contested the suit on the ground that the property has been redeemed on 13.08.1957.

Both the Courts have recorded a concurrent finding that the alleged redemption dated 13.08.1957 is not proved on file. However, the

Courts have granted declaration to the plaintiffs that they have become

owner on account of lapse of time.

Hon'ble Supreme Court in the judgment “**Singh Ram vs. Sheo Ram**” (2014) 9 SCC 185 has held that in case of usufructuary mortgage without stipulating any period for redemption, the limitation for redemption does not begin to run. In other words, it has been concluded by the Hon'ble Supreme Court that in case of usufructuary mortgage, which does not provide for any period of redemption, the mortgagee is not entitled to file a suit for claiming himself to have become owner of the property by lapse of time.

In view thereof, the judgments under appeal cannot be sustained. Hence, the regular second appeal is allowed and the judgments of the Courts below are set aside.

22.01.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No