

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

**RSA No.1130 of 1991 (O&M)  
Date of Decision.20.07.2018**

Hari Singh and others

.....Appellants

Vs

Harnam Singh

.....Respondent

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. H.S. Bhullar, Advocate  
for the appellants.

Mr. Sanjiv Kumar Aggarwal, Advocate  
for the respondent.

-:-

**AMIT RAWAL J. (ORAL)**

The appellants-plaintiffs have preferred the regular second appeal against the judgment and decree dated 04.02.1991 rendered by the Additional District Judge, Faridkot whereby their suit claiming declaration of having become owners in possession of the suit property on the premise that defendant had lost the right for redemption decreed by the trial Court, has been dismissed.

The appellants-plaintiffs instituted the suit claiming declaration of ownership in possession of half share of the suit land bearing Khasra Nos.192//6(0-13), 193//8(7-8)-9 Min Janub (4-0), 11 (5-18), 12 (8-0), 193//9 Min Janub (3-4) 10/1 (3-18) on the premise that the defendant had lost right of redemption on the premise that plaintiffs vide registered mortgage deed dated 29.03.1916 taken possession of the suit property for a sum of ₹1460/-. The original

mortgagor took additional mortgage amount vide registered mortgage deed dated 25.09.1926. The land under mortgage was allocated Khewat No.171, Khatauni No.558 in the year 1940-1941. During consolidation, the suit land was given in lieu of the land which was mortgaged by Partap Singh. Since Partap Singh had expired, he was succeeded by Harnam Singh, defendant. Even the original mortgagee also died and succeeded by Mehnga Singh and Wasakha Singh. Harnam Singh, defendant, redeemed half share from Mehnga Singh and the remaining half share pertained to Wasakha Singh son of Harnam Singh continued to remain under mortgage with possession for all intents and purposes as it was never redeemed. The plaintiffs being legal heirs of Wasakha Singh, who had also expired, claimed ownership in possession of the half share on the premise that the defendant had lost right of redemption as the stipulated period of 60 years had already elapsed.

The aforementioned suit was contested by the respondent-defendant on the premise that the suit was premature, for, two killas of land out of the mortgaged land were redeemed in the 1964 and at that time, the relationship of mortgagor and mortgagee was acknowledged by the concerned parties, therefore, the defendant had right to redeem the suit property.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled to the declaration as prayed for? (OPP)*
- 2. Whether the suit is not maintainable in the present*

*form? (OPD)*

*3. Relief.*

The trial Court on the basis of evidence brought on record and the pleadings decreed the suit vide judgment and decree dated 26.10.1988. The appeal preferred before the lower Appellate Court at the instance of the respondent-defendant was partly accepted by dismissing the suit of the plaintiffs qua 25 kanals 19 marlas of land comprising Khasra No.192//6 (0-13), 193//8(7-8), 9 Min (4-0), 11 (5-18), 12 (8-0) of Khewat No.199 Khatoni No.349 and decreeing to the extent of half share qua Khasra No.193//9 Min (3-4), 10/1(3-18).

Mr. H.S. Bhullar, learned counsel appearing on behalf of the appellants submitted that as per the provisions of Article 61 of the Limitation Act, 1963, period of 30 years had elapsed and defendant had not taken any steps to redeem the property, therefore, right accrued in favour of the mortgagees i.e. successor-in-interest of the original mortgagee to claim declaration in the suit filed in the year 1986. Even the other mortgage deed pertained to the year 1926 i.e. 25.09.1926. The lower Appellate Court did not grant declaration of the property which was found in possession of the appellants-plaintiffs on the premise that record of the jamabandi for the year 1982-83 was not brought on record, which is a misdirection as entire material had been placed on record.

The lower Appellate Court failed to notice the provisions of Section 27 of the Limitation Act, which extinguishes the owner's right over the property upon determination of limitation. It had been

proved on record that no demand was ever made to Wasakha Singh or to plaintiffs against the rejection and since over 60 years had expired, the plaintiffs have become owners of their half share on account of lapse of time. The defendant miserably failed to show possession over half share of the land of plaintiffs, therefore, the suit ought to have been decreed in toto.

The defendant failed to place on record any evidence that possession of half share of Wasakha Singh or plaintiffs had been transferred to the plaintiff. The entry in the revenue record since 1960 had been consistently in favour of the plaintiffs, which has been ignored, therefore, there is illegality, thus, urges this Court for setting aside the finding under challenge.

Per contra, Mr. Sanjiv Kumar Aggarwal, learned counsel appearing on behalf of the defendant-respondent submitted that suit for declaration was not maintainable in view of the fact that there is no limitation in seeking redemption, in view of the law laid down by Hon'ble Supreme Court in **Singh Ram (D) through LRs Vs. Sheo Ram and others (2014) 9 SCC 185**. In support of his contention, relied upon para 22 of the judgment *ibid*. It has nowhere been laid down whether the judgment would apply only retrospectively and therefore, the law as on today has to be looked into.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Bhullar. Article 63 of the Limitation Act which reads as under provided limitation to redeem the property by 30 years:-

|   |                                                    |              |                                                      |
|---|----------------------------------------------------|--------------|------------------------------------------------------|
| 1 | By a mortgagee –                                   |              |                                                      |
|   | (a) for foreclosure                                | Thirty years | When the money secured by the mortgagee becomes due. |
|   | (b) for possession of immovable property mortgaged | Twelve years | When the mortgagee becomes entitled to possession.   |

The aforementioned provisions had been pondered upon by Full Bench of this Court and later by the Hon'ble Supreme Court in **Singh Ram's case** (supra) and after deliberating all the case laws and the provisions of Limitation Act, it has been held that in the absence of any limitation whereby mortgage does not provide any period of limitation, there is no limitation to seek redemption. The relevant para 22 of the aforementioned judgments reads as under:-

*"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."*

If other party had failed to seek redemption then rigours of Limitation Act can definitely be invoked. Concededly, as per the

pleadings of the plaintiffs, they had claimed possession over suit property for 60 years and for all intents and purposes, irresistible conclusion is drawn that registered mortgage did not prescribe any time line for redemption.

For the reasons aforementioned, I am of the view that there is no force and merit in the submissions of Mr. Bhullar to enable this Court to form a different opinion than the one already formed by the lower Appellate Court. The second appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**July 20, 2018**  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable                  No