

**XOBJ-11-C-2014 and
RSA No.3637 of 2012 (O&M)**

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

**XOBJ-11-C-2014 and
RSA No.3637 of 2012 (O&M)
Date of Order:16.02.2018**

Rajinder Pal Singh @ Rajinder Singh and others **..Appellants**

Versus

Surjit Singh and others **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate,
for the appellants.

Mr. Nitesh Singhi, Advocate,
for the respondents-cross objectors.

ANIL KSHETARPAL, J(Oral)

Plaintiffs have filed this regular second appeal against the concurrent findings of fact arrived at by the courts below. Defendants have also filed the cross objections.

Plaintiffs had filed a suit claiming that they are in possession of the land and they have become owner by lapse of time as the period of redemption of the mortgage i.e. 30 years have lapsed. Whereas, on the other hand, defendants have filed counter claim claiming that the mortgage money has been deposited and therefore, the mortgage stands redeemed.

Both the courts below have thoroughly examined the evidence produced by the parties and have returned the findings that neither the plaintiffs have become owner of the property as the mortgage was usufructuary mortgage nor the defendants have paid the money. Hence, there is no redemption.

I have heard counsel for the parties at length and with their able

assistance gone through the judgments passed by the courts below.

It is not in dispute that the Hon'ble Supreme Court in *Singh Ram(D) throuhg L.Rs v. Sheo Ram and others, 2014 AIR (SC) 3447* has held that in case of usufructuary mortgage without providing for time for redemption, time does not begun to run from the date of mortgage.

In view of the aforesaid judgment, no error can be found in the judgments passed by the courts below on this aspect of the matter.

Learned counsel for the plaintiffs have vehemently contended that the plaintiffs had also prayed for a decree for permanent injunction as the plaintiffs are in possession as mortgagees.

On the other hand, learned counsel for the defendants-cross-objectors has submitted that the defendants had already filed an application for redemption of the mortgage and they shall take the possession in accordance with law.

In view of the stand taken by the parties, while upholding the judgments and decrees passed by the courts below with regard to the declaration filed by the plaintiffs, the judgments and decrees of the courts below are modified to the extent that the plaintiffs shall be entitled to injunction against their forcible dispossession. Defendants shall be entitled to take possession from the plaintiffs in accordance with law.

In view thereof, the appeal filed by the plaintiffs-appellants is partly allowed, whereas the cross objections filed by the defendants are dismissed.

**February 16, 2018
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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No