

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

**Regular Second Appeal No.1391 of 2013 (O&M)
Date of Decision: November 21, 2018.**

Smt. Sukhwati and others

.....APPELLANT(s).

VERSUS

Ram Karan and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Surinder Dagar, Advocate
for the appellant (s).

Mr. C.M. Munjal, Advocate
for the respondents.

SURINDER GUPTA, J.

Heard.

Respondents No.1 to 11 and father of respondent No.12 filed suit seeking declaration to the effect that they along with proforma respondents No. 16 to 23 have become owners in possession of land measuring 7 kanals 14 marlas as fully described in the head note of the plaint situated in village Mandkola, Tehsil Hathin, District Faridabad.

As per case of the plaintiffs, this land was mortgaged with possession about 80 years ago and has not been redeemed so far.

On notice, appellants-defendants admitted the mortgage but took the plea that the same was redeemed on 12.02.1973.

Learned lower Court upheld the plea taken by appellants-

defendants about redemption of the land and dismissed the suit. However,

the finding of learned lower Court about redemption of land, was set aside by learned first Appellate Court Faridabad and the plaintiffs, by way of prescription, were declared to be owner of the suit land.

Learned counsel for the appellants has not challenged the finding of first Appellate Court to the effect that land had not been redeemed and has argued that it was usufructuary mortgage. In case of ***Singh Ram (D) through LRs Vs. Sheo Ram and others 2014(4) RCR (Civil) 179***, full Bench judgment of this Court in case of ***Ram Kishan and others Vs. Sheo Ram and others 2008 (1) PLR 1***, that there is no limitation for redemption of usufructuary mortgage was upheld by the Apex Court. Even if, the land is held to be under mortgage of respondents-plaintiffs and proforma respondents, still the appellants have right to get the same redeemed and the finding recorded by first Appellate Court that they with lapse of time for seeking redemption have attained title over the suit land, are bad in the eyes of law.

Learned counsel for respondents-plaintiffs has argued that the plea of appellants-defendants in their written statement that suit land was redeemed on 12.02.1973, was discarded by the first Appellate Court and by way of prescription, the plaintiff and proforma respondents were declared to be owner of the suit land. Appellants, who have not filed any counter claim, seeking redemption of the land, cannot challenge those findings on the basis of observations in case of ***Singh Ram (D) through LRs Vs. Sheo Ram and others (supra)***.

This fact is not disputed that the mortgage in this case is a usufructuary mortgage. Full Bench of this Court while deciding RSA

No.1029 of 1988 on 12.12.2007 in case of ***Ram Kishan and others Vs. Sheo Ram and others (supra)***, has observed in para 42 of the judgments as follows:-

“42. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable.”

The above finding of Full Bench were upheld by Hon'ble Apex Court while deciding Civil Appeal arising out of Special Leave Petition against this judgment. As per law settled by Hon'ble Apex Court, usufructuary mortgage can be redeemed at any point of time and redemption is open for all time to come and the right to seek redemption arise on the date when the mortgagor pays or tenders the mortgage money to the mortgagee or deposits it in the Court. The question that the appellants have not filed any counter claim or cross-appeal seeking the redemption of the mortgage, in no manner, helps the respondents-plaintiffs in seeking declaration of their title. The right to seek redemption vests with the mortgagor and they can exercise this right at any point of time as per their choice in view of law settled by Hon'ble Apex Court.

In view of well settled proposition of law as discussed above, this appeal has merits and the same is allowed and judgement and decree passed by first Appellate Court declaring the plaintiffs and proforma respondents as owners of the suit land by prescription, is set aside.

Appellants-defendants have a vested right to seek the redemption of the mortgage at any point of time. Keeping in view the facts and circumstances of the case, parties are left to bear own costs.

November 21, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>