

**RSA No.511 of 2016 (O&M)**

**{1}**

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

**RSA No.511 of 2016 (O&M)**

**Date of decision:13.11.2018**

Fauza Singh (since deceased) through LR's and others ... Appellants

Vs.

Balkar Singh and others

... Respondents

**RSA No.4363 of 2016 (O&M)**

Partap Singh

... Appellant

Vs.

Fauza Singh (since deceased) through LR's  
and others

... Respondents

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

Present:- Mr. Umesh Sharma, Advocate for  
Mr. Karanjit Singh, Advocate  
for the appellants in RSA No.511 of 2016.

Mr. G.S.Saini, Advocate  
for the appellant in RSA No.4363 of 2016.

**AMIT RAWAL J. (Oral)**

**C.M.No.1462-C of 2016 in RSA No.511 of 2016**

The application is allowed, subject to all just exceptions. Legal representatives of appellant no.1-Fauza Singh as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

**C.M.No.11418-C of 2016 in RSA No.4363 of 2016**

For the reasons stated in the application which is duly supported by an affidavit, delay of 16 days in filing the appeal is condoned.

C.M. stands disposed of.

**RSA Nos.511 and 4363 of 2016 (O&M)**

This order of mine shall dispose of two Regular Second Appeals bearing Nos.511 of 2016 arising out of decision rendered in civil suit no.899 of 2005 (hereinafter referred to as “first suit”), wherein, appellant-Fauza Singh and others have not been successful in claiming declaration that they alongwith defendants No.4 to 6 being successors-in-interest of Sunder Singh son of Bahadar Singh son of Ganesha Singh had become owners owing to lapse of period of redemption of mortgage, thus, defendants no.1 to 3 were left with no right, title or interest with any part of the said land; RSA No.4363 of 2016 is arising out of decision rendered in civil suit no.73 of 2007 titled as “Fauza Singh and others vs. Partap Singh and another” (hereinafter referred to as “second suit”) seeking injunction restraining Partap Singh and Balkar Singh from causing any interference in the lawful, peaceful, actual, physical and cultivating of the land measuring 95 kanals 6 marlas, dismissed by the trial Court but decreed by the Lower Appellate Court.

Since the property in dispute is identical and therefore, both Regular Second Appeals are decided vide common order. Atma Singh was owner of the property. He had mortgaged the property to Bahadar Singh.

Bahadar Singh had four sons, namely, Narain Singh, Sunder Singh, Hukam Singh and Makhan Singh. Makhan Singh transferred mortgaged rights in favour of Sunder Singh. Puran Kaur, sister of Atma Singh claimed the redemption of property by filing a petition before the Collector under Section 4 of the Punjab Land Redemption and Mortgagees Act, 1913. The aforementioned petition was allowed by the Collector on 22.11.1976. The said order was assailed before the Civil Court which vide order dated 06.02.1981 was allowed in favour of the mortgagees. The appeal taken before the Lower Appellate Court on behalf of the successor-in-interest of Puran Kaur was dismissed on 04.02.1988.

It is a matter of record that Balbir Singh and Kashmir Singh, successor-in-interest of Puran Kaur, filed a suit for injunction which was dismissed but thereafter, again obtained ex-parte injunction decree on 18.4.1991. It is also a matter of record that mutation effected in favour of Puran Kaur alias Puran Devi on 31.12.1969 was rejected by the Assistant Collector in the month of April, 2001. Since Partap Singh and Balkar Singh derived the interest from Puran Kaur by virtue of sale deed, attempted to dispossess the plaintiffs, cause of action accrued to file the second suit. The trial Court dismissed the first suit and so did the Lower Appellate Court but the Lower Appellate Court in second suit reversed the findings as indicated above.

Mr. Umesh Sharma, learned counsel appearing on behalf of the appellants in RSA No.511 of 2016 submitted that once Puran Kaur had lost the right of redemption, the right and title in the property as owner was

conferred, for, the mortgage had expired by efflux of time. The filing of suit for redemption itself reflects that possession of the suit property was with the plaintiffs. The ex-parte judgment and decree would not change the possession and therefore, Balkar Singh and Partap Singh had rightly been enjoined causing interference.

Mr.G.S.Saini, learned counsel appearing on behalf of the appellants in RSA No.4363 of 2016 submitted that the ex-parte judgment and decree dated 18.04.1991 had not been challenged. Atam Singh was unmarried and therefore, Puran Kaur being co-lateral had the right in the property. There is no limitation to seek redemption, in view of the law laid down by the Hon'ble Supreme Court in **Singh Ram (D) through LRs Vs. Sheo Ram and others 2014 AIR (SC) 3447**. The trial Court was justified in declining the injunction in view of the ex parte decree but the Lower Appellate Court abdicated.

I have heard the learned counsels for the appellants and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of learned counsels.

The factum of law with regard to seeking redemption of mortgage without any timeline is no longer *res integra*, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Singh Ram's case (supra)**, wherein, it has been held that suit for redemption can be filed beyond 30 years but equally so, suit claiming declaration of having become owners by efflux of time has held to be not maintainable. The law laid down

by the Hon'ble Supreme Court in paragraphs 14 to 16 of Singh Ram's case (supra) reads as under:-

*“14.. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under [Section 62](#) of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.*

*15.. We, thus, hold that special right of usufructuary mortgagor under [Section 62](#) of the T.P. 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 mortgagor. Until then, limitation does not start for 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.*

*16.. On this conclusion, the view taken by the Punjab and*

*Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High Court in Bhandaru Ram (D) Thr. [L.R. Ratan Lal vs. Sukh Ram](#) (supra) will stand over-ruled.”*

Filing of the suit for redemption at the instance of Puran Kaur and her successor-in-interest established the possession of Fauza Singh being successor-in-interest of Sunder Singh, i.e., mortgagee. Balkar Singh and Partap Singh in the second suit cannot be permitted to cause interference and dispossess the mortgagees in the absence of any redemption order, thus, findings of facts and law arrived at by the Lower Appellate Court granting injunction in favour of the plaintiffs in second suit is justified. However, the suit claiming declaration of having become owners was not maintainable and rightly so, the same has been dismissed by the trial Court and upheld by the Lower Appellate Court.

Resultantly, both appeals are dismissed.

(AMIT RAWAL)  
JUDGE

November 13, 2018  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |