

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

RSA No.4224 of 2015 (O&M)

Date of decision:26.04.2018

Asru and others

... Appellants

Vs.

Mehmood and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Tewatia, Advocate
for the appellants.

Mr. Varun Gupta, Advocate
for respondents No.1 to 3.

AMIT RAWAL J. (Oral)

C.M.No.10206-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 5 days in filing the appeal, is condoned.

C.M stands disposed of.

C.M.No.10207-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 12 days in re-filing the appeal, is condoned.

C.M stands disposed of.

C.M.No.10208-C of 2015

The application is allowed, subject to all just exceptions. Legal

representatives of appellant-Kasam as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.4224 of 2015 (O&M)

The appellant-plaintiffs instituted a suit for declaration to the effect that they were owners in possession of the suit land as detailed in para 1 of the plaint and the defendants had no right, title and interest in the same and the revenue entries showing the defendants and their predecessors in interest as mortgagees in possession of the suit land to be treated as illegal, null, void, ineffective; with a further prayer for permanent injunction restraining the defendants from interfering into peaceful possession.

It was averred that suit land measuring 3 kanals 8 marlas had been in possession of the plaintiffs and enjoying the same very peaceful and un-interrupted possession. The status of the defendants was referred as of mortgagees.

The suit was contested by the defendants by taking a plea that suit land was mortgaged by the predecessor in interest of defendants more than 10 years ago and defendants and their predecessors have been cultivating the suit land for the last 100 years.

Both the parties led evidence in support of their respective cases. The trial Court dismissed the suit on the ground that suit property had not been redeemed and remedy was to file a suit for redemption.

Learned counsel for the appellants submits that 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**, there is no limitation prescribed to file the suit for redemption. He submits that he wants to withdraw the suit with liberty to file suit for redemption and the defendants can always take up a legal plea regarding maintainability and other in an appropriate proceedings, in case, the suit for redemption is filed.

Learned counsel for the respondents submits that suit would be hit by provisions of Order 2 Rule 2 CPC. The factum of mortgage was in the knowledge of the plaintiffs and rightly so, the Courts below have declined the relief.

I have heard the learned counsel for the parties and appraised the judgments and decrees of Courts below.

The law laid down by the Hon'ble Supreme Court in paragraphs 21 to 23 of Singh Ram's case (supra) reads as under:-

“21. 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.

22. 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.

23. 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.”

leaves no manner of doubt that there is no limitation for seeking redemption of the property until and unless the mortgagor prescribed the period for the purpose of redemption. The appellant-plaintiffs instituted a suit claiming declaration challenging the entries in the revenue record describing the defendants as mortgagees, which was dismissed. The appellant-plaintiffs admitted the defence of the defendants taken in the

written statement. In my view, suit for declaration was not maintainable and was required to be converted into suit for redemption.

Since the learned counsel for the appellants has made a request for withdrawal of the suit, I am of the view that such liberty cannot be granted without any caveat. In case, such suit is filed, defendants shall be at liberty to take all possible objections which shall be subject matter before the trial Court at an appropriate state.

The trial Court shall decide the suit as per the averments made independently without influence of the findings rendered in the judgments and decrees aforementioned.

Accordingly, Regular Second Appeal stands disposed of.

April 26, 2018

savita

(AMIT RAWAL)

JUDGE

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