103

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

RSA No.5319 of 2017 (O&M)
Date of Decision: 29.08.2018

Nawal Singh and others

......Appellants

Vs

Sukhi Ram and others

....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. R.S. Budhwar, Advocate
for the appellants.

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RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for possession by way of redemption.

[2]. Brief facts of the case are that predecessors-in-interest of the plaintiffs mortgaged the suit land in favour of the predecessors-in-interest of defendants No.1 to 7 for a mortgage amount of Rs.86/- on 05.05.1906. Mutation No.1804 was sanctioned in respect of aforesaid mortgage on 05.05.1906. The nature of mortgage was usufructuary as usufruct of the suit land was to be adjusted towards interest of the mortgage amount. At

the relevant time, *khasra* numbers of the mortgage land were 801-802. In the settlement of 1907-08, the khasra numbers of the suit land were changed and one *khasra* number i.e. 571 was assigned to the land in question. Thereafter in the settlement of 1938-39, new *khasra* No.603 was assigned to the suit land and the said number was changed subsequently into Killa No.21 in the consolidation proceedings.

[3]. Both the Courts below after appreciating the evidence on record, held that since the mortgage was usufructuary in nature, therefore, no limitation is attracted for seeking redemption of the same.

[4]. I have considered the arguments made by learned counsel for the appellants.

[5]. In view of judgment of Full Bench of this Court in ***Ram Kishan and others vs. Sheo Ram and other, 2008(1) CivCC 414***, period of 30 years under Article 61(a) of the Limitation Act begins to run, when the right to redeem or the possession accrues to the mortgagor. Right to redeem or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage where rents and profits are to be set off against interest on the mortgaged amount, right of foreclosure is co-extensive with the right to seek redemption.

[6]. Since right to seek redemption accrues only on payment of mortgage amount, therefore, right of foreclosure will not accrue to the mortgagees, till such time mortgagee remains in possession of the mortgaged property and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. The ratio in ***Ram Kishan and others'*** case (supra) was further upheld by the Hon'ble Apex Court in the case of usufructuary mortgage when there was no recital of any specified period in the mortgage deed, no limitation is attracted.

[7]. The contest made before the trial Court by the defendants was only on the ground of limitation that after expiry of 30 years the limitation would attract and they had become owner by efflux of time. No such arguments can be entertained as the controversy on the concept of usufructuary mortgage is no more res *integra* on the strength of ***Ram Kishan and others'*** case (supra).

[8]. In view of above, the findings recorded by the Courts below cannot be said to be on account of misreading of the evidence or suffered with any perversity. No question of law worth consideration is involved in the present appeal, the same is accordingly dismissed.

[9]. Since the appeal is being dismissed on merits, therefore, there is no necessity of passing any order in the

application for condonation of delay. The same is disposed of accordingly along with other applications.

August 29, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No