

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

RSA-64-2017 (O&M)

Date of Decision:28.09.2018

Jaggo & others

... Appellants

Versus

Rasu & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Gagneshwar Walia, Advocate and
Mr. M.S. Longia, Advocate for the appellants.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Plaintiff, Smt. Rasu filed a suit seeking a decree for declaration to the effect that the order dated 14.01.2010 passed by the Collector, Ganaur dismissing the redemption application pertaining to the suit land of the plaintiff is void. Further decree for redemption with possession of the suit land was also prayed for. Suit of the plaintiff was decreed by the trial Court on 16.09.2013. Civil appeal preferred by the defendants stands dismissed vide judgment dated 09.08.2016 passed by the learned Additional District Judge, Sonapat.

Resultantly, the defendants/appellants are in second appeal before this Court.

The solitary submission raised by counsel representing the appellants is that as per Limitation Act, 1963, a mortgage of immovable property could be got redeemed within a period of 30 years. It is urged that the Court below have erred in overlooking this aspect that the suit land was

mortgaged on 08.05.1944 and after expiry of 30 years the mortgagors become absolute owners of the suit land on 08.05.1974. No other point has been urged.

Having heard counsel for the appellants at length, this Court is of the considered view that the same deserves to be dismissed.

The case of the plaintiff/respondent was that Kundan S/o Mohinder was the occupancy tenant of old khasra No.149 measuring 2 bighas and 17 biswas. There was an oral mortgage of the suit land on 08.05.1944 for a sum of Rs.155/- to Sh. Lachhman Gir and Malkhan Gir in equal shares. Mutation of the mortgage was sanctioned vide mutation No.962 dated 17.05.1944. It was a usufructuary mortgage without mentioning the period of limitation of redemption. Plaintiff/respondent had asserted that the mortgagees, Lachhman Gir and Malkhan Gir had died and the defendants/present appellants are their legal representatives. The plaintiff/respondent had purchased the mortgagor rights of the suit land through different sale deeds for valuable consideration and as such she had become mortgagor along with the defendants in the suit who are the legal representatives of Kundan. Plaintiff/respondent had filed an application for redemption of the suit land in the Court of Collector, Ganaur, District Sonapat and had deposited the mortgage amount of Rs.155/- in the treasury in the names of defendants No.1 to 11 but such application for redemption was dismissed on 14.01.2010. Defendants No.1 to 11 had contested the suit and filed a written statement admitting that Kundan had mortgaged with possession the suit land vide mutation No.962 dated 17.05.1944.

The argument raised by counsel that the suit land could be

redeemed only within a period of 30 years is not tenable. It is by now well settled that in the case of usufructuary mortgage, the right to recover possession commences when the mortgage money is paid, out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. In the case of usufructuary mortgage after the expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor as regards redemption. A reference in this regard may be made to the decision of the Apex Court in **Singh Ram (deceased) through L.Rs. Vs. Sheo Ram and others, 2014 (4) RCR (Civil) 179.**

Applying the dictum laid down in **Singh Ram's case (supra)**, no infirmity is found in the impugned judgments.

No merit.

Appeal is dismissed.

28.09.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |