

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

**Regular Second Appeal No. 517 of 2005 (O&M)
Date of Decision: January 09, 2019.**

Gram Panchayat Ugra Kheri

.....APPELLANT

VERSUS

Molu Ram and others

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Shantanu Bansal, Advocate
for respondent No. 1.

SURINDER GUPTA, J.(Oral)

Heard.

Plaintiffs/respondents No. 1 to 4 filed suit seeking declaration that they have become owners in possession of agricultural land comprising in Khewat No. 568, Khatauni No. 844, Khasra No. 11/2 of Rect. No. 29 (3-2) and Khasra No. 16/1 of Rect. No. 30 (0-13), total measuring 3 kanals 15 marlas as per jamabandi for the year 1986-87, situated in village Ugrakheri, Tehsil and District Panipat as the right of redemption of the defendants in relation to the suit land has lapsed with the passage of time.

The suit was decreed and the plaintiffs were declared owners in possession of the suit land. The appellant-Gram Panchayat with Raghbir Singh filed appeal which was dismissed by the Ist Appellate Court and findings of learned Civil Judge (Jr. Division), Panipat that plaintiffs have

become the owners of land by prescription after expiry of period of limitation to seek redemption was affirmed.

It has been admitted by both the counsel that the mortgage in this case was usufructuary mortgage and as per the law settled by the Hon'ble Apex Court in the case of ***Singh Ram (D) Thr. L.R.s Versus Sheo Ram & Ors., 2014 (4) RCR Civil 179***, right to seek the redemption of usufructuary mortgage does not lapse after expiry of period of 30 years. This right continues till the mortgage money is paid for which there is no time limit. The observation of the Hon'ble Apex Court in para No. 14 and 15 of the judgment to the above facts are reproduced as follows:-

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 the 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.*

Learned counsel for the respondent could not cite any law contrary to the observations of the Hon'ble Apex Court in the above referred case. Consequently, this appeal has merits and same is allowed. The judgments of the Courts below are set aside and suit of plaintiffs seeking declaration of attaining title over the suit land by prescription is dismissed as they have not become owners of the suit land due to lapse of period of 30 years after the mortgage.

January 09, 2019.
Jyoti-II

(SURINDER GUPTA)
JUDGE

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