

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

**RSA-848-1997 (O&M) with
XOBJ-117-C-1997
Decided on: 06.03.2020**

Chura (since deceased) through his LRs and others Appellants

Versus

**Babu Ram (since deceased) through his LRs and others
..... Respondents**

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Jai Bhagwan, Advocate
for the appellants.

Mr. K.S. Sidhu, Senior Advocate with
Mr. Sushant Sharma, Advocate
for the respondents/cross-objectors.

MAHABIR SINGH SINDHU, J (ORAL)

Present regular second appeal has been filed by the appellants/plaintiffs against the impugned judgment & decree dated 17.01.1997 passed by learned Additional District Judge, Ambala whereby an appeal of the defendants-respondents (cross-objectors) was partly allowed and the judgment & decree dated 28.10.1993 of learned Additional Senior Sub Judge Ambala, decreeing the suit of the plaintiffs-appellants for redemption of land pertaining to mutation Nos.333, 334, 447 and 790 was set aside.

Respondents/defendants are in cross-objections against the same very impugned judgment & decree dated 17.01.1997, whereby their claim regarding mutation No.879 was declined and decree of learned trial Court to that extent was maintained.

It is noteworthy that Hon'ble Supreme Court in **(2019) 7 SCC 219** titled as “**Kirori (since deceased) through his LRs. Vs. Ram Parkash and others**” has held that framing of substantial question of law by this Court while deciding the regular second appeal by this Court is not required.

At the outset, it has been pointed out by learned counsel for the appellants that controversy in the present case is squarely covered by the judgment of Hon'ble Supreme Court reported as “**Singh Ram vs. Sheo Ram (2014), 9 SCC 185**” and thus the impugned judgment & decree passed by learned first Appellate Court qua mutation No. 333, 334, 447 and 790 is liable to be set aside.

On the other hand, learned Senior counsel for the respondents is also not able to dispute the law laid down by Hon'ble Supreme Court regarding the point of limitation for usufructuary mortgage as well as applicability of the same to the facts of the present case.

Paper book reveals that the appellants filed a suit for possession by way of redemption of land comprising in Khewat/Khatauni No.108/111, Khasra No.39/1 (7-8), 2 (8-00), 3/1 (2-12), 8/2 (6-4), 9/1 (6-8), 10/1 (1-11) & 54/11 (8-0), total measuring 40 Kanal 13 Marlas situated in Village Rampur, Tehsil and District Ambala as per the Jamabandi for the year 1978-79, on payment of Rs.1600/- being mortgage money. Suit was contested by the respondents, but the same was decreed as prayed for by learned trial Court vide judgment & decree dated 28.10.1993 and the appellants were directed to pay the mortgage money of Rs.1600/- on or before 28.12.1993 and in that eventuality, the respondents were mandated to transfer the land in dispute to the appellants.

Undisputedly, an amount of Rs.1600/- in terms of the decree of learned trial Court was deposited by the appellants within the stipulated period.

Aggrieved against the judgment & decree passed by learned trial Court, the respondents preferred an appeal and the same was partly allowed qua mutation Nos. 333, 334, 447 and 790 on the point of limitation being beyond 30 years in a usufructuary mortgage vide impugned judgment and decree dated 17.01.1997, but the decree regarding the remaining land i.e. mutation No.879 was affirmed.

Appellants have challenged the impugned judgment and decree passed by learned first Appellate Court whereby their claim was invalidated qua mutation Nos. 333, 334, 447 and 790; whereas the respondents are in cross-objections qua rejection of relief regarding mutation No.879.

This Court on 24.10.2009 passed the following order:-

“Present: Mr. Arun Palli, Sr. Advocate with
Mr. Parminder Singh, Advocate and
Mr. RPS Ahluwalia, Advocate,
for the appellants.

Mr. K.S. Sidhu, Sr. Advocate with
Mr. G.S. Benipal, Advocate,
for the respondents.

Learned senior counsel for the appellants had placed reliance on decision of the Full Bench of this Court in **Ram Kishan and others v. Sheo Ram and others (2008-1) Vol.CXLIX** to support his argument that in case of usufructuary mortgage where no time limit has been fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or

deposits in Court the mortgage money or the balance thereof.

Learned senior counsel for the respondents, on the other hand, has submitted that the said decision of the Full Bench was subjudice and SLP filed against the said judgment was pending in the Apex Court and had been ordered to be placed before appropriate larger Bench vide order dated 18.8.2008.

A copy of the order dated 18.8.2008 has been placed on record. Hence, it would be appropriate to list this appeal for hearing after the decision of the Apex Court in CC No.11029 of 2008.

Accordingly, office is directed to list this appeal for hearing after the decision of the Apex Court.”

Perusal of the impugned judgment reveals that learned first Appellate Court had set aside the judgment & decree passed by learned trial Court qua mutation Nos. 333, 334, 447 and 790 while observing that right to redeem the land was barred by limitation being beyond 30 (thirty) years. It was further observed that appellants have filed the suit after a period of 30 years from the date of mortgage, thus on that count, the appeal of the respondents was partly accepted.

Now the legal position is well settled by Hon'ble the Supreme Court to the fact that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right of redemption would not arise on the date of mortgage, but on the date when the mortgager pays or tender to the mortgagee or deposits in the Court the mortgage money or the balance thereof. In other words, in such like case(s), once a mortgage always a mortgage and the same is always redeemable and

para Nos. 21, 22 and 23 of the judgment passed by Hon'ble Supreme Court in **Singh Ram's case (supra)** being relevant are extracted as hereunder:-

“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 61 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 vs. Sukh Ram will stand overruled. The appeals are dismissed.”

As per findings recorded by both the Courts below, relationship of mortgagor and mortgagee is duly established and the same has not been disputed by the parties.

Concededly, the SLP (C) 11029 of 2008 filed against the Full Bench decision in **Ram Kishan's and others case (supra)** of this Court, has already been dismissed by the Hon'ble Supreme Court on 21.08.2014 in **Singh Ram's case (supra)**, thus the view taken by the Full Bench is duly affirmed.

In view of the facts and circumstances discussed herein above as well as the fair stand taken by learned Senior counsel for the respondents, this Court has no option except to allow the present regular second appeal and set aside the impugned judgment & decree dated 17.01.1997 passed by learned Additional District Judge, Ambala qua mutation Nos. 333, 334, 447 and 790. Consequently, the present regular second appeal is allowed; the impugned judgment & decree passed by learned Additional District Judge, Ambala to the extent referred above is set aside and the judgment & decree dated 28.10.1993 passed by learned trial Court is restored and affirmed in *toto*.

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Learned Sr. Counsel on behalf of the cross-objectors/respondents has fairly stated that in view of the decision in the main regular second appeal, cross-objections have been rendered infructuous.

Ordered accordingly.

Pending application(s), if any, stand(s) disposed off.

(MAHABIR SINGH SINDHU)
JUDGE

06.03.2020

Dinesh Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No