

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 775 of 1990 (O&M)

Date of Decision: 29.11.2022

Dharam Chand (Since Deceased) through his Legal Representatives

... Appellant(s)

Versus

Smt. Sama Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashok Arora, Advocate
for the appellant(s).

Mr. M.J.S.Bedi, Advocate
for Dr. Parveen Hans, Advocate
for the respondent No.5.

Mr. Rahul Sharma, Advocate
for the respondent No.15.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. While assailing the concurrent findings of facts arrived at by both the Courts below, the defendants have come up in the second appeal.

3. The plaintiffs' suit for grant of decree of declaration that they have become owners of the property, as the defendants have failed to redeem the mortgage within the prescribed period, has been decreed. The execution of the mortgage deed dated 11.12.1877 by Sh.Sedhu, predecessor-in-interest of the defendants for a sum of ₹ 200/- is not in dispute between the parties.

3. The learned counsel representing the parties admit that as per the deed of mortgage, the period of redemption was three years from the

date of its execution. Both the Courts below have held that the limitation period for redemption of mortgage began to run after the expiry of the aforesaid period of three years i.e. on 11.12.1880.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book along with the requisitioned record.

5. The learned counsel representing the appellant, while relying upon the judgment rendered by the Supreme Court in *Singh Ram (D) through L.Rs v. Sheo Ram and Others 2014 AIR (Supreme Court) 3447* submits that in a usufructuary mortgage, the period of limitation will not begin to run from the date of mortgage and no suit for declaration at the behest of the mortgagee claiming ownership is maintainable. He further contends that the suit filed by the plaintiffs for grant of decree of declaration is barred by the law of limitation.

6. On the other hand, the learned counsel representing the respondents, while referring to the judgment passed in *Singh Ram's case (supra)*, contends that the Supreme Court has laid down that the limitation for purpose of Article 61 of the Schedule attached to the Limitation Act, 1963 (hereinafter referred to as "the 1963 Act") would not begin to run from the date of the mortgage. He contends that if in a usufructuary mortgage, the period for redemption has been agreed upon between the parties, the limitation for redemption will start from the date when the agreed period for redemption comes to an end. The Supreme court has not laid down that in a usufructuary mortgage, there is no period for redemption at all.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. In *Singh Ram's case (supra)*, the Supreme Court has upheld a decision of the Full Bench of the High Court in *Ram Kishan and Others v. Sheo Ram and Others 2008(1) PLR 1*. In that case, the Court was called upon to decide as to "Whether the limitation for redemption in case of a usufructuary mortgage without prescribing the period for redemption would begin to run from the date of mortgage or not?" In that context, it was held that the limitation will not begin to run from the date of mortgage. The aforesaid view was approved by the Supreme Court in *Singh Ram's case*

(*supra*). However, it does not been as a *ratio decidendi* lay down that in case of a usufructuary mortgage, the limitation would not begin to run even if a period has been prescribed for its redemption in the contract.

9. The next argument of the learned counsel representing the appellant with regard to the suit having been filed beyond the prescribed time, is noted and rejected by this Court. This suit is, in substance, a suit for foreclosure. Hence, there is no substance in the argument of the learned counsel representing the appellant.

10. Keeping in view the aforesaid facts, there is no merit in this appeal. Hence, the present appeal is dismissed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

November 29, 2022

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No