

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

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RSA No. 2675 of 2022 (O&M)

Date of decision : 08.12.2022

Shyam and others

...Appellants

Vs.

Hari Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

...

HARKESH MANUJA, J. (Oral)

CM-9285-C-2022

This is an application seeking condonation of delay of 1301 days in refiling the present appeal. For the reasons stated in the application, which is even supported by an affidavit of the learned counsel, sufficient cause has been made out for condonation of delay, as such, the application is allowed and delay of 1301 days in refiling the appeal is ordered to be condoned.

RSA No. 2675 of 2022

Challenge in the present regular second appeal has been made to the judgments and decrees dated 30.11.2016 and 17.01.2019 passed by the courts below whereby a suit for possession by way of redemption, filed at the instance of respondents has been decreed.

Brief facts of the case are that the respondents/plaintiffs filed a suit for redemption regarding suit property measuring 8 kanals 3 marlas situated within the revenue estate of Village Nangal Jat, Tehsil Hathin, District Palwal by alleging themselves to be owners/mortgagors of the same. It was pleaded at their instance that the suit property was previously mortgaged in favour of predecessor-in-interest of appellants-defendants and the same was got redeemed vide mutation No. 1509 dated 14.04.1906, however, the same

was again mortgaged in their name vide mutation No. 1510 dated 14.04.1906. Accordingly, respondents/plaintiffs prayed for redemption of usufructuary mortgage besides even claiming possession of the suit land.

Upon notice, appellants-defendants contested the suit by setting up a claim that they had become owner in possession of suit property as the period of redemption already stands elapsed. The trial Court vide its judgment and decree dated 30.11.2016 decreed the suit in favour of respondents/plaintiffs.

Aggrieved against the judgment and decree passed by the trial Court, appellants-defendants filed first appeal which was came to be dismissed by the court of District Judge, Palwal vide its judgment and decree dated 17.01.2019.

By way of present appeal, the judgments and decrees passed by the courts below have been impugned. It has been vehemently contended on behalf of the appellants that the courts below went wrong while dismissing the suit by misreading and misinterpreting the documentary evidence available on record. Learned counsel for the appellants further submits that the suit property mortgaged in question was never proved to be usufructuary mortgage and thus, the suit filed at the instance of respondent-plaintiff was barred by Limitation.

I have heard learned counsel for the appellants and gone through the paperbook and find no substance in the submissions made on behalf of appellant-defendant. Un-disputedly, the suit land was mortgaged in favour of predecessor-in-interest of appellants by the predecessor-in-interest of respondents. Based on a proper appreciation of the documentary evidence available on record, concurrent finding of fact has been recorded by the courts below that the mortgage in question happened to be usufructuary mortgage where possession was handed over to the mortgagee in lieu of money.

Learned counsel for the appellant has not been able to specifically

pointed out any documentary evidence which has been misread and misinterpreted or even not taken into consideration by the courts below. In this view of the matter, once mortgage in question was found to be usufructuary mortgage and there was no period fixed for redemption of the same as held by Hon'ble Supreme Court in case titled as '*Singh Ram Versus Sheo Ram, 2014 (4) RCR (Civil) 179*', the right of redemption was not lost by afflux of time and thus, the suit filed at the instance of respondents-plaintiffs was rightly decreed by both the courts below.

Accordingly, I do not find any merit in the present appeal as no question of law much less substantial question of law is involved therein. Resultantly, the appeal is ordered to be dismissed in limine.

Pending application(s), if any, shall also stand disposed of.

08.12.2022

Harish Kumar

(HARKESH MANUJA)
JUDGE

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