IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122 **2023:PHHC:085845**

RSA-1749-2019
Date of decision: 07.07.2023

AZAD AND OTHERS

..Appellants

Versus

HARI PARKASH (DECEASED) THROUGH LRS. AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Kumar Rohilla, Advocate
for Mr. Surinder Mohan Sharma, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. This Regular Second Appeal was filed in the year 2019.

2. On 01.03.2023, the learned counsel representing the appellants did not attend the hearing of the case resulting in dismissal of the appeal for non-prosecution.

3. On 13.03.2023, on the application filed by the learned counsel representing the appellants, the appeal was restored to its original number. Thereafter, the case was taken up on 05.07.2023, again a request for an adjournment has been made, which was accepted while notifying that no further request for an adjournment shall be entertained.

4. Again, a request has been made for an adjournment.

5. This Court has considered the request, however, finds no reasons to adjourn the case.

6. This Court has perused the paperbook.

7. The plaintiffs are challenging the correctness of concurrent findings of facts arrived at by the Courts below. They claim to be

mortgagees in possession. They claim that the passage of time, on account of failure to redeem the mortgage, they have become the owner. Both the Courts have found that it is the case of usufructuary mortgage. A Larger Bench of the Supreme Court in ***Singh Ram (D) through LRs Vs. Sheo Ram and others, 2014 AIR (Supreme Court) 344*** has held that the limitation for redemption of the mortgage will not begin to run from the date of mortgage. It is on the basis of the aforesaid judgment, both the Courts have dismissed the suit. This Court has also examined the grounds taken in the memorandum of appeal. It is stated that the defendants have not pleaded the ingredients of usufructuary mortgage and, therefore, it should be treated as anomalous mortgage.

8. It is evident from reading of para 21 of the trial Court judgment that this issue has been examined in detail. It has been found that the mortgage in question was a usufructuary mortgage and not anomalous mortgage. Even the First Appellate Court on reappreciation of evidence came to a conclusion that it was usually for usufructuary mortgage.

9. Hence, no ground to interfere is made out.

10. Dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

July 07th, 2023 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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