



RSA No.2106 of 1992 (O&M)

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

Reserved on : May 24, 2024
Date of Decision : May 29, 2024

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Jaswant Singh (deceased)
through LRs and others

... Appellants

Versus

Sadhu Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: - Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the appellants.

Mr. G.S. Bhatia, Advocate for respondent No.1.

Mr. Manveen Pheruman, Advocate
for respondent No.2.

DEEPAK GUPTA, J.

The short and precise issue involved in the present appeal is as to 'whether the right to seek redemption in case of usufructuary mortgage would arise on the date of mortgage itself, when no time limit is fixed to seek redemption'; and further 'whether there is any time limit in case of a usufructuary mortgage, to get the property redeemed'.

2. Present regular second appeal has been filed by the defendants of the case against the concurrent findings of the Courts below, inasmuch as suit of plaintiffs (*respondents herein*) for declaration and permanent injunction regarding property in dispute was decreed by the Trial Court and the first appeal filed by the defendants (*appellants*

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herein) dismissed by the Court of learned Addl. District Judge.

3. Trial court record was called and perused. To avoid confusion, parties shall be referred as per their status before trial court.

4.1 Uttam Chand, the predecessor-in-interest of defendants had mortgaged 2/15 share of the suit property by virtue of mortgage deed dated 04.12.1905 (Ex. P16) in favour of Mehtab, the predecessor-in-interest of the plaintiffs, for mortgage amount of ₹99/-. The case of the plaintiffs as set up before the Court is that the defendants or their predecessors had failed to get the suit land redeemed despite the lapse of more than 30 years and as such, they (plaintiffs) had become owner of the suit land. They prayed for decree of declaration to this effect. They further prayed to restrain the defendants from interfering in their joint possession of the suit property.

4.2 Defendants denied the mortgage as well as the possession of the plaintiffs. They also alleged the entries of the revenue record showing the plaintiffs to be mortgagees as not binding on their interests. As per defendants, they were the owner in possession of the suit land.

4.3 After framing necessary issues and taking the evidence produced by the parties on record, oral as well as documentary, the Trial Court held that by virtue of mortgage deed dated 04.12.1905 (Ex.P16) executed by Uttam Chand, the predecessor of the defendants, plaintiffs were mortgages in possession to the extent of 2/15 share since the time of their predecessors. It was further held by the Trial Court that since the

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defendants or their predecessors had failed to get the suit land redeemed despite lapse of more than 30 years, therefore, plaintiffs have become owner thereof.

4.4 Suit was accordingly decreed on 25.07.1989. The First Appellate Court dismissed the appeal filed by the defendants on 27.05.1992.

5.1 Assailing the aforesaid findings, it is contended by learned Sr. counsel for the appellants-defendants that Courts below have ignored the judgments passed in other litigation produced as Ex. D-1 to D-10, holding that defendants were owner in possession of entire land. The Courts below also ignored the entries of the revenue record for the year 1984-85 and 1986-87 showing the possessions of the defendants as exclusive owner of the suit land. To support his contention, learned Sr. counsel has referred to:

- ***“Shri Raja Durga Singh of Solon v. Tholu and other”***, 1962 PLR 837 and
- ***“Mahant Gurdit Singh v. Shiromani Gurdwara Parbandhak Committee, Amritsar and others”***, 1972 PLJ 379.

5.2 Learned Sr. counsel further contended that in the mortgage deed dated 04.12.1905 (Ex.P-16) as relied by the plaintiffs, no period to redeem the land was mentioned and once it is so, there is no limitation for getting the mortgaged land redeemed, inasmuch as “once a mortgage always a mortgage”. Learned Sr. counsel refers to:

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- **“*Harbans v. Om Prakash and others*”** (2006) 1 Supreme Court Cases 129;
- **“*Ram Kishan and others v. Sheo Ram and others*”** (2008-1) PLR 1 (Full Bench of this Court); and
- **“*Singh Ram v. Sheo Ram*”** AIR 2014 SCC 3447.

5.3 With all these submissions, prayer is made for setting aside the judgments of both the Courts below and to dismiss the suit of the plaintiffs - respondents.

6.1 Contesting the appeal, learned counsel for the respondents contend that there is no reason to interfere in the concurrent findings of the Courts below regarding the mortgage deed dated 04.12.1905 (Ex.P-16) executed by the predecessors of the defendants in favour of the plaintiffs and that the Courts below have rightly relied upon the previous entries of the revenue record to hold the plaintiffs to be in joint possession to the suit land to the extent of 2/15 share and by ignoring the later revenue record in the absence of any evidence related to redemption. Learned counsel have referred to **“*Durga and others v. Milkhi Ram and others*”** 1969PLJ, 105.

6.2 However, learned counsel for the respondents fairly conceded the fact that with the Full Bench judgment of this Court in ***Ram Kishan's case (supra)***, which has been approved by the Hon'ble Supreme Court in ***Singh Ram's case (supra)***, there is no time limit for getting the usufructuary mortgage redeemed, when no time limit for

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redemption is mentioned in the mortgage deed.

7. I have considered submissions of both the sides and have appraised the record.

8. Before this Court, the factum relating to mortgage has not been disputed. It is, thus, the admitted position that by virtue of mortgage deed dated 04.12.1905 (Ex.P-16), Uttam Chand, predecessor of the defendants had mortgaged the suit property to the extent of 2/15 share in favour of Mehtab, the predecessor-in-interest of the plaintiffs for mortgage amount of ₹99/-. There is no evidence that said mortgage has been redeemed till date.

9. The issue as to whether there is any limitation to get the usufructuary mortgage redeemed, when no time limit for redemption is mentioned, is no longer re integra.

10. In ***Ram Kishan's case (supra)***, following questions of law were considered by the Full Bench of this Court:-

- (i) Whether the right to seek redemption would arise on the date of mortgage itself in case of usufructuary mortgage when no time limit is fixed to seek redemption?
- (ii) Whether there is any time limit in the case of usufructuary mortgagor to get his property redeemed?

Answering the aforesaid questions, the Full Bench of this Court held that in case of usufructuary mortgage, when no time limit is 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

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to the mortgagee or deposits in Court the mortgage money or the balance thereof and thus, once a mortgage always a mortgage and is always redeemable.

11. The aforesaid decision of the Full Bench of this Court has been approved by Hon'ble Supreme Court in ***Singh Ram's case (supra)***, by holding that special right of usufructuary mortgage under Section 62 of the Transfer of the Property Act to recover possession commences in the manner specified therein, i.e. when the mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment of deposit by mortgagor. Until then, the limitation does not start for the purpose of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgage 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 mortgage.

12. same view was earlier also taken by Hon'ble Supreme Court in ***Harbans's case (supra)***, by referring to an earlier decision in ***Seth Ganga Dhar case, 1959 SCR 509***.

13. In view of the legal position as above, the findings of the Courts below to the effect that plaintiffs had become owner of the suit land due to lapse of time on account of failure of the defendants to get the land redeemed, are hereby set aside. The mortgage in this case was not for a fixed period. There is no evidence on file that plaintiffs or their predecessor-in-interest ever demanded the mortgage amount from the

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defendants or their predecessor-in-interest and as such, the present case being a case of usufructuary mortgage, the limitation period did not start.

14. Consequently, plaintiffs have not become owner of the suit land on account of failure of the defendants to get the suit land redeemed. Defendants will be well within their rights to get the suit land redeemed in accordance with law.

15. As far as possession over the suit land is concerned, the courts below have rightly come to the conclusion that plaintiffs are in possession of the suit land to the extent of 2/15 share, jointly with the defendants and they are entitled to protect their joint possession alongwith the defendants. Learned Trial Court has referred to the entries in the revenue record right from 1903-04 onwards to find out that till 1976-77, possession of the plaintiffs/their predecessors has been shown on the suit land jointly with the owners/mortgagors. It is only in the later revenue record from 1982-83 onwards and the jamabandi for the years 1984-85 and 1986-87 that possession of the entire land is shown to be that of defendants. There is no evidence on file to show as to how the consistent entries of the revenue record since the time of mortgage of 1905, till 1976-77, showing the possession of the plaintiffs/their predecessor jointly with the owners/mortgagors have been changed, so as to show the exclusive possession of the defendants.

16. In ***Durga's case (supra)***, on which learned Trial Court has rightly placed reliance, it has been held by the Hon'ble Supreme Court

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that when alteration in the entries in the record of rights is not based on any order passed by the revenue authority and there is no mutation for deleting the name of the plaintiffs ever entered or attested by the revenue authority, then presumption of truth attached to the later record of rights under Section 44 of the Punjab and Revenue Act stands rebutted.

17. In *Shri Raja Durga Singh of Solon's case (supra)*, relied by learned Sr. counsel for the appellants, it has been held that when there is conflict between the previous and later entries in the record of rights, it is the new entry, which will prevail, unless and until it is established to be wrong or substituted by other entries.

18. In the present case, in view of the consistent entries in the record of rights right from the year 1905 onwards till the year 1976-77, revealing the joint possession of the plaintiffs over the suit land to the extent of 2/15 share alongwith the owners/mortgagors; and in the absence of any cogent evidence to show as to how the names of the plaintiffs/their predecessors have been removed from the joint possession of the suit land, the later entries in the record of rights from 1982-83 onwards, showing exclusive possession of defendants, cannot prevail. As such, presumption attached to later entry stood rebutted. Consequently, the findings of learned Courts below, on the aspect of possession, are hereby affirmed.

19. Learned Courts below have also rightly ignored the judgments Ex.D-1 to D-10 relied by the defendants to claim their



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exclusive possession, after noticing that those judgments came during the pendency of the present suit, when the issue in this earlier instituted suit was already pending and so, principle of res sub-judice or res judicata was not applicable.

20. As a result of entire discussion above, present appeal is partly allowed to the extent that plaintiffs-respondents have not become owner in joint possession of the suit land on account of the failure of the defendants/ their predecessor to get the suit land redeemed. However, suit is decreed to the extent that plaintiffs are entitled to protect their joint possession of the suit property alongwith the owners/mortgagors to the extent of 2/15 share, until it is redeemed in accordance with law. Defendants – appellants will be well within their right to get the suit property redeemed in accordance with law. Decree sheet be prepared accordingly.

May 29, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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