



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

**RSA-1954-1989 (O&M)  
Reserved on:-09.04.2024  
Pronounced on:-15.05.2024**

The State of Punjab and another

....Petitioners..

vs.

Bakshish Singh and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Siddharth Sandhu, AAG, Punjab.

Mr. A.S. Khinda, Advocate,  
for the respondents.

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**HARKESH MANUJA J. (Oral)**

1. By way of present appeal, challenge has been laid to the judgment and decree dated 02.03.1989 passed by the Court of Additional District Judge, Ropar, whereby the judgment and decree dated 21.12.1985, passed by learned Sub-Judge Ist Class, Kharar, stands reversed thereby decreeing suit for declaration as well as permanent injunction filed at the instance of respondents-plaintiffs.

2. Briefly stating, the respondents-plaintiffs filed a suit for declaration as well as permanent injunction, claiming themselves to be owner in possession of the suit property situated within the revenue estate of village Chapper Chiri, H.B. No.195, Tehsil Kharar, District Ropar (now in District SAS Nagar Mohali), besides challenging mutation Nos.1329, 1330

and 1331, sanctioned on 10.08.1981, recorded in favour of custodian department, treating it to be as evacuee property thereby affecting the rights of the respondents-plaintiffs. The respondents-plaintiffs also prayed for grant of permanent injunction for restraining the appellants-defendants from auctioning the property in question during pendency of the suit.

3. In the written statement, stand taken by the appellants-defendants was that the suit property was mortgaged by the respondents-plaintiffs in favour of one Bali Mohammed on 14.08.1946 and the same was never got redeemed even after the expiry of 30 years; the said person namely, Bali Mohammed having migrated to Pakistan, the property thus vested in custodian and therefore, belonged to the appellants-defendants and as such, the mutations entered in favour of Custodian Department on 10.06.1981 were valid and legal. In view of this, it was also pleaded that the suit property for its disposal was to be governed under the provisions of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short, 1976 Act).

4. The trial Court vide its judgment and decree dated 21.12.1985, dismissed the suit filed at the instance of respondents-defendants while holding that the suit property was mortgaged by respondents-plaintiffs in favour of Bali Mohammed on 14.08.1946 and the same been not got redeemed within 30 years, thereafter, vested with the Mortgagee Bali Mohammed and in turn to custodian, upon his migration to Pakistan and the impugned mutations were thus valid in law. Simultaneously, finding respondents-plaintiffs to be in possession of the suit property, a decree for permanent injunction was passed in their favour, restraining the appellants-defendants from dispossessing them except in due course of law.

5. Aggrieved of the judgment and decree passed by the trial Court, whereby relief of declaration was denied to the respondents-plaintiffs, they filed first appeal, which came to be allowed by the Court of the then Additional District Judge, Ropar, vide judgment and decree dated 02.03.1989 having recording that the respondents-plaintiffs were admittedly in possession of the suit property and the appellants-defendants having failed to file a suit for possession within 12 years from the expiry of 30 years period available to the respondents-plaintiffs for seeking redemption of the suit property, the right, title or interest vested with the respondents-plaintiffs qua the suit property did not get extinguish.

6. Impugning the aforesaid judgment and decree dated 02.03.1989, passed by the first appellate court, learned counsel for the appellants submits that once the period of 30 years from the date of mortgage stood expired, the right to seek redemption qua the suit property available to the respondents-plaintiffs got extinguished and the same vested with the custodian; the mortgagee having migrated to Pakistan, the mutations in question were validly entered. He further submits that mere non-filing of suit for possession at the instance of appellants-defendants within twelve years could not have extinguished their rights in the property being successor of mortgagee, who became owner thereof as there could not be any limitation for filing a suit for possession based on title and thus, the findings recorded by the first Appellate Court were wholly perverted and the appellants-defendants were therefore well within their right to put the suit land to auction, under the provisions of 1976 Act.

7. On the other hand, learned counsel representing respondents-

plaintiffs submits that even if the suit land had been mortgaged in the year 1946 in favour of Bali Mohammed who migrated to Pakistan, the same did not vest with the appellants-defendants upon expiry of 30 years as there was no limitation for claiming redemption of mortgage and thus the first appeal filed at the instance of respondents-plaintiffs was rightly allowed.

8. I have heard learned counsel for the parties and gone through the record. I am unable to find substance in the submissions made on behalf of the appellant.

9. As per the concurrent findings recorded by the Courts below while relying upon the evidence available on record in the shape of revenue document i.e. mutation (Ex.D1), the suit land was mortgaged by the respondents-plaintiffs in favour of Bali Mohammed in the year 1946 and there was no question of extinguishment of rights of the mortgagors/respondents-plaintiffs regarding title of the suit property even when no redemption proceedings were initiated at their instance within 30 years of mortgage, there being no limitation for the same, especially, when the mortgage was with delivery of possession to the mortgagee. The aforesaid view finds support from the decision rendered by the Hon'ble Apex Court in **"Singh Ram vs. Sheo Ram,** reported as **2014 Vol. 9 Supreme Court cases, (Page-185).** Relevant paras No.14 & 15 thereof are reproduced hereunder:-

*"14. 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.*

15. *We, thus, hold that special right of usufructuary mortgagor under [Section 62](#) 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.”*

10 Thus, the mutations No.1329, 1330 and 1331 (Ex. D3 to D5) entered in favour of appellants/defendants on 10.08.1981 have no value in the eyes of law being illegal, thereby, upholding the title of the suit property in favour of respondents-plaintiffs while declaring them to be owner in possession thereof.

11. Accordingly, in view of the discussion made herein above, finding no merits in the suit for declaration and permanent injunction filed at the instance of respondents/appellants is decreed and the present appeal, is dismissed.

15.05.2024

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**(HARKESH MANUJA)**  
**JUDGE**

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/ No