

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.687 of 1992 (O&M)

Date of Order:21.02.2024

Smt. Somwati and others

.Appellants

Versus

Munshi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Sansanwal, Advocate,for
Mr. Keshav Pratap Singh, Advocate
for the appellants.

None for the respondents.

ANIL KSHETARPAL, J

1. In this second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiffs' suit for grant of decree of declaration that they have become owners of the property as the period of limitation for redemption of mortgage has lapsed.

2. The defendants contested the suit on the ground that the suit land was not mortgaged and the plaintiffs are not in possession. In fact, the defendants are owners in possession of the property.

3. Both the courts on appreciation of the evidence came to a conclusion that the property was mortgaged with possession and the period of redemption has lapsed, therefore, they have become owners of the property.

4. It is evident that the date of mortgage has not come on record, however, it was proved that the plaintiffs through their forefathers are in continuous possession of the suit property as mortgagee from the year 1940-

1941. Thus it was the case of usufructuary mortgage. The plaintiffs do not claim that the mortgage was not usufructuary mortgage.

5. A larger Bench of the Supreme Court in *Singh Ram (deceased) through LRs vs. Sheo Ram and others, 2014 AIR SC 344* has held that in case of usufructuary mortgage, the limitation for redemption of the mortgage does not begin to run from the date of the mortgage. Both the courts have held that from the date of mortgage 30 years have elapsed and therefore, the plaintiffs have become owners. The aforesaid finding arrived at by the courts below is against the spirit of declaration of law by a larger Bench of the Supreme Court.

6. Keeping in view the aforesaid facts and discussion, the judgment passed by both the courts below are not sustainable. Hence, set aside. The appeal is allowed. The plaintiffs' suit shall stand dismissed.

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

February 21, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO