

109 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-1608-1991 (O&M)  
Date of decision: 01.03.2024

State of Haryana and others  
....Appellants

Versus

Mohammad Hanif and others  
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S.Pannu, AAG, Haryana  
for the appellants  
  
Mr. Rajinder Goel, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. The State of Haryana and its officials assail the correctness of the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial court.
2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.
3. Sh.Khuda Bux, the predecessor-in-interest of the plaintiffs (respondents herein) was owner of the land in village Gangani Tehsil Nuh. From time to time, he mortgaged his land by separate mortgages. The First Appellate Court has summarized the information in a tabulated compilation, which is extracted as under:-

|      |                   |                                     |
|------|-------------------|-------------------------------------|
| (i)  | Name of mortgagor | Khuda Bux, Rasula, sons of Rai Khan |
| (ii) | Name of mortgagee | Daulat son of Arjan                 |

|       |                           |                                                                                        |
|-------|---------------------------|----------------------------------------------------------------------------------------|
| (iii) | Date of mortgage          | 21.12.1934, vide mutation No.329                                                       |
| (iv)  | Amount of mortgage        | Rs.124/-                                                                               |
| (v)   | Details of mortgaged land | Khasra No.425/1(1-5) situated in Village Gangani, Tehsil Nuh, Distt. Gurgaon           |
| (vi)  | Rate of interest          | Interest and income were equal                                                         |
| (vii) | Other conditions          | It was agreed that on payment of mortgage money, the mortgaged land would be redeemed. |
| (b)   |                           |                                                                                        |
| (i)   | Name of mortgagor         | Khuda Bux, Rasula, sons of Rai Khan                                                    |
| (ii)  | Name of mortgagee         | Bhobla s/o Ujjagar                                                                     |
| (iii) | Date of mortgage          | 29.9.1935, vide mutation No.259                                                        |
| (iv)  | Amount of mortgage        | Rs.32/-                                                                                |
| (v)   | Details of mortgaged land | Khasra No.328(0-15) situated in Village Gangani, Tehsil Nuh, Distt. Gurgaon            |
| (vi)  | Rate of interest          | Interest and income were equal                                                         |
| (vii) | Other conditions          | It was agreed that on payment of mortgage money, the mortgaged land would be redeemed. |
| (c)   |                           |                                                                                        |
| (i)   | Name of mortgagor         | Khuda Bux, Rasula, sons of Rai Khan                                                    |
| (ii)  | Name of mortgagee         | Daulat son of Arjan                                                                    |
| (iii) | Date of mortgage          | 3.2.1935, vide mutation No.260                                                         |
| (iv)  | Amount of mortgage        | Rs.72/-                                                                                |
| (v)   | Details of mortgaged land | Khasra No679/339(1-2) situated in Village Gangani, Tehsil Nuh                          |
| (vi)  | Rate of interest          | Interest and income were equal                                                         |
| (vii) | Other conditions          | It was agreed that on payment of mortgage money, the mortgaged land would be redeemed. |
| (d)   |                           |                                                                                        |
| (i)   | Name of mortgagor         | Khuda Bux and Rasula, ss/o of Rai Khan                                                 |
| (ii)  | Name of mortgagee         | Daulat, Chahat, Ashraf, sons of Arjan                                                  |
| (iii) | Date of mortgage          | 3.2.1935, vide mutation No.261                                                         |
| (iv)  | Amount of mortgage        | Rs.72/-                                                                                |
| (v)   | Details of mortgaged land | Khasra No.680/339(1-8) situated in Village Gangani, Tehsil Nuh.                        |
| (vi)  | Rate of interest          | Interest and income were equal                                                         |
| (vii) | Other conditions          | It was agreed that on payment of mortgage money, the mortgaged land would be redeemed. |
| (e)   |                           |                                                                                        |
| (i)   | Name of mortgagor         | Khuda Bux and Rasula, ss/s of Rai Khan                                                 |
| (ii)  | Name of mortgagee         | Arjan s/o Mangli                                                                       |

|       |                           |                                                                                                                                                                          |
|-------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (iii) | Date of mortgage          | 11.1.1925,, vide mutation No.177                                                                                                                                         |
| (iv)  | Amount of mortgage        | Rs.405/-                                                                                                                                                                 |
| (v)   | Details of mortgaged land | Khasra No.678/67 min (0-11), 181 (0-12) 314(0-9) 678/67 min (0-9) 181 min (0-6) 678/67 min (0-11) 181 min (0-13) situated in Village Gangani, Tehsil Nuh, Distt. Gurgaon |
| (vi)  | Rate of interest          | Interest and income were equal                                                                                                                                           |
| (vii) | Other conditions          | It was agreed that on payment of mortgage money, the mortgaged land would be redeemed.                                                                                   |
| (f)   |                           |                                                                                                                                                                          |
| (i)   | Name of mortgagor         | Khuda Bux, Rasula, ss/o of Rai Khan                                                                                                                                      |
| (ii)  | Name of mortgagee         | Nisar Khan s/o Meda, Fateh Khan s/o Khunti                                                                                                                               |
| (iii) | Date of mortgage          | 11.1.1925, vide mutation No.175                                                                                                                                          |
| (iv)  | Amount of mortgage        | Rs.480/-                                                                                                                                                                 |
| (v)   | Details of mortgaged land | Khasra Nos.58(1-5), 677/67 (1-13) 105 (1-0), 601 (111 and 602/111) (1-10) 171 (0-6) situated in Village Gangani, Tehsil Nuh, Distt. Gurgaon                              |
| (vi)  | Rate of interest          | Interest and income were equal                                                                                                                                           |
| (vii) | Other conditions          | It was agreed that on payment of mortgage money, the mortgaged land would be redeemed.                                                                                   |
| (g)   |                           |                                                                                                                                                                          |
| (i)   | Name of mortgagor         | Khuda Bux, Rasula, ss/s of Rai Khan                                                                                                                                      |
| (ii)  | Name of mortgagee         | Bhobla son of Ujagar                                                                                                                                                     |
| (iii) | Date of mortgage          | 5.3.1938, vide mutation No.286                                                                                                                                           |
| (iv)  | Amount of mortgage        | Rs.15/-                                                                                                                                                                  |
| (v)   | Details of mortgaged land | 1/2 share of khasra no.479, 480 (3-2) situated in Village Gangani, Tehsil Nuh, Distt. Gurgaon                                                                            |

4.                   At the time of partition of the country in the year 1947, the mortgagees migrated to the area, which now forms a part of Pakistan. Khuda Bux’s land was treated as evacuee property and allotted to the displaced persons. Jolle Khan s/o Khuda Bux filed an application before the Rehabilitation Department for return of the land. Realizing the mistake, the Rehabilitation Department on 07.03.1960 allotted 30 kanals 6 marlas land to Sh.Jolle Khan and his family in Village Behripur, Tehsil

F.P. Jhirka, District Gurgaon now District Nuh. The aforesaid letter is extracted as under:-

*“Now, therefore, in exercise of the powers conferred by section 16 of the Administration of Evacuee Property Act, 1950, the Central Government hereby declares the applicant to be entitled to the restoration of the evacuee property described in the schedule and directs that action may be taken in regard the said property under section 20 A of the Displaced persons (Compensation and Rehabilitation) subject to the condition that the amount due to the Custodian in respect of the property or the management thereof shall be paid by the applicant to the Custodian.”*

5. On 12.03.1987, children of Sh.Jolle Khan filed a suit for possession by way of redemption of the agricultural land. They prayed for the deposit of the mortgage money and prayed for possession with respect to land located in Village Behripur, which was alternatively allotted to their father Sh.Jolle Khan. The civil suit was contested by the State claiming that the rights of mortgagor and mortgagees vested in the Government and the plaintiff have no right. It was also claimed that by the efflux of time, the Government has become the owner, as the period of redemption of the mortgage has come to an end.

6. Learned trial court dismissed the suit on the ground that the limitation period for redemption of the mortgage has already come to an end. The First Appellate Court, on re-appreciation of evidence, held that the limitation will begin to run only from the date when Sh.Jolle Khan was allotted alternate land in the year 1960. Thus, the appeal filed by the respondent was allowed. This appeal has been filed by the State to

assail the correctness of the judgment and decree passed by the First Appellate Court.

7. It is not in dispute that Sh.Khuda Bux had created various mortgages by the delivery of possession of the property to the mortgagees. The amount of interest on the mortgage money and the amount of income were equal. The mortgages were redeemable on repayment of the mortgage amount. In other words, it was a case of usufructuary mortgage. Though, the First Appellate Court has held that the limitation period for redemption will begin to run from 07.03.1960, the date on which the allotment was issued, however, this Court does not find it appropriate to interfere particularly when a larger Bench of the Supreme Court in **Singh Ram (D) through L.Rs vs. Sheo Ram and others 2014 AIR (SC) 3447** has held that in case of usufructuary mortgage, the period of limitation will not begin to run from the date of mortgage. While concluding the larger Bench has held as under:-

*“ We, thus, hold that special right of usufructuary mortgagor under Section 62 of the TP 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 the mortgagor. Until then, limitation does not start for the 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.”*

8. Learned State counsel has not made any other submission.
9. Keeping in view the aforesaid facts and discussions, there is no merit in the appeal.
10. Hence, dismissed.

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

01.03.2024  
rekha  
Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No

(ANIL KSHETARPAL)  
JUDGE