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

**207** **RSA-1798-1995 (O&M)**
**Date of Decision : 03.10.2024**

Budhi (deceased) through LRs ....Appellants

VERSUS

Jeet Ram (deceased) through LRs and Others ....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Parvinder Singh, Advocate for appellant No.1(ii).

Mr. Adarsh Jain, Advocate for LRs of respondent No.1.

**ALKA SARIN, J. (Oral)**

1. Present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 18.08.1993 passed by the Trial Court and the judgment and decree dated 07.04.1995 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession averring therein that he was in possession of the suit property and that the suit property was never mortgaged with the defendant-respondents by the predecessor-in-interest of the plaintiff-appellant and that the defendant-respondents have wrongly been shown as mortgagee with possession on the basis of an oral mortgage. The suit was contested by the defendant-respondents herein by pleading that they have acquired the prescriptive title of the suit land under the charge of mortgage since the year 1901 and, as such, the limitation prescribed for redemption thereof had since expired.

3. The suit was dismissed by the Trial Court vide judgment and decree dated 18.308.1993. Aggrieved by the same an appeal was preferred which appeal was also dismissed vide judgment and decree dated 07.04.1995 passed by the First Appellate Court. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellants would contend that while upholding the mortgage both the Courts have held that the defendant-respondents had become owners in possession since the mortgage had not been redeemed. Learned counsel for the plaintiff-appellants has relied upon a judgment of the Full Bench of this Court in the case **Ram Kishan & Ors. vs. Sheo Ram & Ors. [2008 (1) RCR (Civil) 334]** and that of the Hon'ble Supreme Court in case of **Singh Ram (D) through LRs Vs. Sheo Ram & Ors [AIR 2014 SC 3447]**.

5. Learned counsel for the legal representatives of respondent No.1 is not in a position to deny the legal position as laid down by the Full Bench of this Court in the case of **Ram Kishan** *(supra)* and the Hon'ble Supreme Court in the case of **Singh Ram (D) through LRs Vs. Sheo Ram & Ors [AIR 2014 SC 3447]**.

6. The Full Bench of this Court in the case of **Ram Kishan** (supra) has held as under :

> *"40. The limitation of 30 years under Article 61(a) begins to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum*

*secured in case of usufructuary mortgage, where rents and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and profits from the interest thereof, therefore, right of foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable.*

*41. The argument that after the expiry of period of limitation to sue for foreclosure, the mortgagees have a right to seek declaration in respect of their title over the suit property is not correct. From the aforesaid discussion, it is apparent that the mortgage cannot be* *extinguished by any unilateral act of the mortgagee. Since the mortgage cannot be unilaterally terminated, therefore, the declaration claimed is nothing but a suit for foreclosure. It is equally well settled that it is not title of the suit, which determines the nature of the suit. The nature of the suit is required to be determined by reading all the averments in the plaint. Such declaration cannot be claimed by an usufructuary mortgagee. Thus, we prefer to follow the dictum of law laid down by the larger Bench in Seth Ganga Dhar's case (supra) as well as judgments of Hon'ble Supreme Court in Jayasingh Dnyanu Mhoprekar's case (supra), Pomal Kanji Govindji's case (supra), Panchanan Sharma's case (supra) and Harbans's case (supra) in preference to the judgments relied upon by the mortgagees in Prabhakaran's case (supra) and Sampuran Singh's case (supra).*

*42. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where 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 to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held*

> *that once a mortgage always a mortgage and is always redeemable.*
>
> *43. Having answered the questions of law framed, we do not find any merit in the present appeal filed by the mortgagees to seek declaration in respect of their title. The appeal is dismissed."*

7. The said judgment of the Full Bench of this Court was affirmed by the Supreme Court in the case of **Singh Ram (D) through LRs** (supra).

8. In view of the above, the said finding of both the Courts *qua* the defendant-respondents having become owners in possession on the basis of mortgage is not sustainable and is set aside. The plaintiff-appellants would always be at liberty to proceed against the defendant-respondents in accordance with the law.

9. Present appeal stands disposed off accordingly in the above terms. Pending application, if any, also stands disposed off.

**( ALKA SARIN )**
03.10.2024 **JUDGE**
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO