



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

(102)

RSA-2027-1995 (O&M)
Date of Decision:-**30.01.2026**

Swaran Singh and Others

... Appellants

Versus

Sardul Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Vikas Singh, Senior Advocate with
Ms. Anamika Sheoran, Advocate
for the appellants.

Ms. Rupinder K. Thind, Advocate with
Mr. Balsher Singh, Advocate
for the respondents.

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal (hereinafter referred to as “RSA”) has been instituted by the appellants–plaintiffs to challenge the judgment and decree dated 01.02.1995 rendered by the learned Additional District Judge, Amritsar, whereby the findings of the Trial Court were affirmed in their entirety. The Trial Court, by its judgment and decree dated 16.03.1992, passed by the learned Sub-Judge, 1st Class, Tarn Taran, had decreed the suit instituted by the appellants–plaintiffs seeking a declaratory relief.

1.1. The appellants now impugn the concurrent findings of both courts below, contending that the same are legally untenable and factually



erroneous, and seek appropriate redress through the appellate jurisdiction of this Court.

2. Briefly stated, the facts giving rise to the present litigation, as set out in the civil suit instituted by the plaintiffs-appellants, are as follows:-

“Assa Singh and Mangal Singh were the original owners of the agricultural land situated in village Dhotian. It was pleaded that the said owners had mortgaged the land with possession in favour of Ran Singh son of Wasawa Singh for a period of seven years, for an ostensible consideration of Rs. 2,500/-, by way of a registered mortgage deed dated 09.04.1947.

It was further averred that, upon consolidation of holdings, the land presently in dispute was allotted in lieu of the land earlier mortgaged by Assa Singh and Mangal Singh in favour of Ran Singh. The plaintiffs-appellants claimed to be the legal heirs and successors-in-interest of the original mortgagors, who had since passed away. It was specifically pleaded that the mortgage period stipulated in the deed had long expired and, consequently, the plaintiffs-appellants had become entitled to redeem the mortgaged land upon payment of the mortgage money of Rs. 2,500/- to the defendants, who were stated to be the legal heirs and successors-in-interest of the original mortgagee.

The plaintiffs-appellants further pleaded that Sardul Singh and Shangara Singh, defendants No. 1 and 2, along with Ishar Kaur, Joga Singh and Niranjana Singh (since deceased), claiming themselves to be the legal heirs of Ran Singh, had earlier instituted a suit against Assa Singh and Mangal Singh seeking a declaration of ownership over the suit land by way of efflux of time. In the said suit, they had obtained an ex parte decree dated 31.10.1986 from the Court of Shri N.S. Mundra,



the then Additional Senior Sub Judge, Tarn Taran, against Assa Singh and Mangal Singh, the original mortgagors.

It was specifically averred that, at the time of institution of the aforesaid suit, Assa Singh and Mangal Singh had already expired and, therefore, the decree dated 31.10.1986 had been fraudulently obtained against deceased persons. The plaintiffs-appellants, being the legal heirs of the mortgagors, were neither impleaded nor heard in the said proceedings and, consequently, were not bound by the said decree. It was further pleaded that Ishar Kaur, Joga Singh and Niranjana Singh, who were plaintiffs in the earlier suit, had also since died, and their legal heirs and successors-in-interest, namely defendants No. 3 to 9, were impleaded in the present suit on that account.

On these premises, the plaintiffs-appellants asserted that the decree dated 31.10.1986 obtained by Sardul Singh, Shangara Singh and others was void, illegal, and not binding upon their rights. It was pleaded that the said decree did not affect their statutory and equitable right of redemption and that the plaintiffs-appellants, being the legal heirs and successors-in-interest of the original mortgagors, were entitled to redeem the suit land upon payment of the mortgage consideration of Rs. 2,500/- to the defendants, who are the legal heirs and successors-in-interest of Ran Singh, the original mortgagee, along with any other relief to which they may be found entitled by the Court.”

3. Defendants No. 1, 8 and 9 entered appearance and contested the suit. Separate written statements were filed, one on behalf of Shangara Singh, defendant No. 1, and the other on behalf of Puro and Guro, defendants No. 8 and 9. In their respective pleadings, the said defendants asserted that they had acquired ownership of the suit land by virtue of the civil court decree dated 31.10.1986 and that, consequently, the plaintiffs were divested of all rights, title and interest therein. It was further pleaded



that the suit land had not been redeemed within the prescribed period of limitation and that the defendants and their predecessors-in-interest had, in any event, perfected their title by efflux of time. An objection that the suit was barred by limitation was specifically raised. The defendants also took the plea that the suit had not been properly valued for the purposes of court fee and jurisdiction. All other material averments made in the plaint were categorically denied.

3.1. The remaining defendants, despite due service, chose not to contest the suit and were proceeded against in accordance with law.

4. Upon a comprehensive and careful scrutiny of the pleadings on record, as well as the rival contentions advanced by the parties, the learned trial Court deemed it appropriate to crystallize the matters in controversy and, for the purposes of a systematic and legally coherent adjudication, proceeded to frame the following issues for determination:-

1. Whether the plaintiffs are the owners in possession Singh of the land in dispute as claimed in the plaint ? OPP.
2. Whether the plaintiffs are entitled to redemption of the suit land from the defendants on payment of Rs. 2500/- or any other amount as claimed? OPP.
3. Whether the judgment & Decree dated 31.10.1986 passed by Sh.N.S.Mundra in suit o. 25 of 1985 is a nullity and is not binding on the plffs.? OPP.
4. Whether the suit for declaration is not maintainable ? OPD.
5. Whether the Sardul Singh, Joga Singh, Naranjan Singh, Shangara Singh and Smt. Ishar Kaur have become owners of the land in dispute by efflux of time? OPD.
6. Whether the suit is within time? OPP.



7. Whether the suit is properly valued for the purpose of court fee & jurisdiction ? OPP.
 - 7-A. Whether the plaintiff has any cause of action to file the present suit ? OPP.
 8. Relief.
5. Both parties were afforded a full and fair opportunity to lead evidence following the framing of issues. Upon a careful consideration of the entire record, the learned Trial Court **dismissed** the suit. The appellants–plaintiffs preferred an appeal before the First Appellate Court, which, after examining the submissions and material on record, also **dismissed** the appeal. Aggrieved by the concurrent findings of the courts below, the appellants have invoked the appellate jurisdiction of this Court through the present RSA.
6. The appellants have instituted the present appeal before this Court, challenging the concurrent judgments and decrees rendered by the learned Courts below. Upon being found fit for consideration, the appeal was formally admitted for regular hearing, and notice was duly issued to the respondents, who appeared through their counsel and contested the proceedings. The appeal was thereafter heard in its entirety on the submissions advanced by learned counsel for the parties.
- 6.1. To enable a thorough, informed, and effective adjudication of the issues arising in the appeal, the complete record of the Courts below was requisitioned and placed before this Court for careful perusal and consideration.
7. I have heard learned counsel for the appellants at considerable length and have given anxious and thoughtful consideration to the submissions advanced, in light of the pleadings of the parties, the evidentiary material brought on record, and the concurrent findings returned by the Courts below. The entire record has been subjected



to meticulous and comprehensive scrutiny to determine “whether the impugned concurrent judgments and decrees suffer from any jurisdictional error, manifest perversity, misappreciation of evidence, or any other legal infirmity warranting interference in the exercise of this Court’s appellate jurisdiction”?

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. The learned counsel for the appellants submitted that the learned Courts below erred in concluding that the period for redemption of the mortgage had expired. It was contended that the findings recorded by the courts below are founded upon a misinterpretation of the applicable legal provisions. It is settled law that in the case of a usufructuary mortgage, no specific period of limitation is prescribed. Limitation commences only from the date when the mortgage money is paid or tendered, and a period of thirty years is to be computed from that date.

10. On the contrary, learned counsel for the respondents, however, contended that there is no illegality or infirmity in the findings recorded by the learned Courts below. It was rightly concluded that the period for



redemption of the mortgage has expired. The land in question was mortgaged on 09.04.1947 for a period of seven years, thereby becoming redeemable on 09.04.1954. The thirty-year period is to be reckoned from 09.04.1954, which expired on 09.04.1984. Since the suit was filed on 07.11.1989, it is barred by limitation and is not maintainable. Learned counsel relied upon the decisions of this Court in ***Manjit Kaur and Others vs. Kaushalya Devi and Others, 2011 AIR (P&H) 75***, and ***Gurnam Singh and Others vs. Hazara Singh and Another, 2015 (1) Punjab Law Reporter 856***, and prayed that the appeal be dismissed.

11. The facts leading to the institution of the suit, including the relevant dates and events, are not in dispute. It is admitted that the mortgage was executed for a period of seven years, which expired on 09.04.1954. The sole question that arises for determination is whether the period of limitation to redeem the mortgage commences upon the expiry of the mortgage term or from the date following the expiry of the mortgage term when the mortgage money is tendered.

11.1. In this regard, the Hon'ble Apex Court, in ***Singh Ram (Dead) through LRs vs. Sheo Ram and Others, 2014 (9) SCC 185***, has considered the legal position. Paragraph 13 of the judgment, which is relevant for the present dispute, reads as follows:-

13. xxxxx

d. *The above observations do not take into account the special right of usufructuary mortgagor under Section 62 of the TP Act to recover possession which commences after mortgage money is paid out of rents and profits or partly out of rents and profits*



and partly paid or deposited by the mortgagor. Thus, we are unable to accept the same as correct view in law.

12. In the said case, the Hon'ble Apex Court, while considering the relevant legal principles, held in paragraph No. 22 as follows:-

22. *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.*

13. In the present case, unlike the situation in Singh Ram (supra), which concerned a usufructuary mortgage with no specific terms agreed between the parties, the mortgage in question was executed for a fixed term of seven years. It is, therefore, necessary to determine whether the mortgage becomes redeemable immediately upon the expiry of the stipulated term, or whether mere expiry of the term does not give rise to a right of redemption, such that the period of limitation to redeem the mortgage does not commence merely on the expiry of the mortgage term.

13.1. Section 62 of the Transfer of Property Act is directly relevant for the resolution of this question, and its provisions read as follows:-

11. xxxxxxxx

62. *Right of usufructuary mortgagor to recover possession. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property together with the mortgage deed and all*



documents relating to the mortgaged property which are in the possession or power of the mortgagee-

(a) where the mortgagee is authorised to pay himself the mortgage when such money money from the rents and profits of the property, is paid;

(b) where the mortgagee is authorised to pay himself from such rents and profits or any part thereof a part only of the mortgage money, when the term (if any) prescribed for the payment of the mortgage money has expired and the mortgagor pays or tenders to the mortgagee the mortgage money or the balance thereof or deposits it in court hereinafter provided."

14. Clause (b) of Section 62 of the Transfer of Property Act is directly relevant for the decision of present case. Under this clause, in the context of a term mortgage, two conditions must be satisfied for the right of redemption to accrue. The first condition is the expiry of the mortgage term, and the second is the payment or tender of the mortgage money by the mortgagor. Both conditions are mandatory and must be fulfilled. If either condition remains unfulfilled, the mortgage does not become redeemable. For instance, if the mortgagor tenders the mortgage money before the expiry of the mortgage term, the right of redemption does not arise. Similarly, if the mortgagor fails to pay or tender the mortgage money after the expiry of the term, no right to redeem accrues. The right of redemption arises only when both conditions are satisfied sequentially and not alternatively.

14.1. In other words, a mortgage with a fixed term does not become redeemable before the expiry of the stipulated period, whereas a mortgage without a fixed term becomes redeemable immediately upon payment or tender of the mortgage money. The essential distinction between a term



mortgage and a mortgage without a fixed term lies in the timing of the accrual of the right to redeem: in a term mortgage, the right cannot arise before the expiry of the agreed term.

14.2. The authorities cited by the respondents' counsel are not germane to their case. In **Manjit Kaur's** case (supra), the provisions of Section 62 were not considered, and in Gurnam Singh and Others (supra), the findings do not support the respondents' position. Paragraph 7 of the judgment reads as follows:-

“The learned First Appellate Court has erred in recording that the plaintiff has become owners by efflux of time as more than 30 years has elapsed. The learned First Appellate Court has also erred in calculating the limitation for redemption from the date of mortgage.”

15. The authority relied upon by the respondents is inapplicable to the facts of the present case. Accordingly, the finding recorded by the learned First Appellate Court, that the mortgage became redeemable on the expiry of the term on 09.04.1954 and that the period of limitation for filing a suit to redeem the mortgage expired on 09.04.1984, cannot be sustained. It is not the case of the respondents that the mortgage money was paid or tendered to the mortgagee upon the expiry of the mortgage term.

15.1. Since the mortgage money was neither paid nor tendered, the mortgage continued to subsist, and the right of the appellants to redeem it did not lapse by efflux of time. In these circumstances, the mortgage is redeemable, and the appeal of the appellants is **allowed**. The judgments and decrees of the learned Courts below, to the extent they held that the suit filed by the appellants-plaintiffs seeking possession through redemption of the mortgage was barred by limitation, are set aside. The suit



is decreed in its entirety, and the appellants-plaintiffs are entitled to redeem the suit land upon deposit of the mortgage money, which shall be paid forthwith. The respondents/defendants are directed to hand over possession of the suit land to the appellants-plaintiffs immediately upon such payment.

16. In view of the adjudication of the principal matter, all pending miscellaneous applications, if any, stand disposed of by necessary implication. No further orders are required in this regard.

30.01.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No