



**RSA-1340-1997 (O&M) with
RSA-3261-1997 (O&M)**

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

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RSA-1340-1997 (O&M)

Date of decision :13.01.2026

MADAN SINGH & OHTERS

... APPELLANTS

VERSUS

SHAM LAL & OTHERS

...RESPONDENTS

RSA-3261-1997 (O&M)

SHAM LAL & OTHERS

... APPELLANTS

V/S

MADAN SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishal Pundir, Advocate
for appellant No. 3 (in RSA-1340-1997) and
for respondent No. 3 (in RSA-3261-1997).

Mr. Namit Gautam, Advocate
for appellant Nos. 1 and 2 (in both cases).

PARMOD GOYAL, J. (ORAL)

1. Learned counsel for the parties are in agreement that respondent Nos. 11 to 14 are proforma respondents and need not to be served, as no relief is claimed against them. Moreover, they did not contest the case before the Courts below. Accordingly, service upon them is dispensed with.

2. Two appeals have been preferred against the judgment and decree dated 28.11.1991 passed by the learned Civil Judge (Junior Division), Rajpura, and the judgment and decree dated 13.11.1996 passed by the learned Additional District Judge, Patiala whereby the suit filed by the plaintiffs, namely Sham Lal



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and others, seeking declaration claiming to be owners in possession of the suit property on account of the failure of the defendants–mortgagors to redeem the suit land despite the lapse of more than 60 years, was decreed.

3. Both the Courts below concurrently held that since the mortgagor had not redeemed the suit land and more than 60 years had elapsed, the plaintiffs–mortgagees had become owners in possession of the suit property. Consequently, a declaration in favour of the plaintiffs was granted by the Court of first instance, and the first appeal preferred by the contesting defendants, i.e. defendant Nos. 1 to 8, was dismissed.

4. It is pertinent to mention that plaintiff-appellants Nos. 1 and 2 had also placed reliance upon a Will dated 23.12.1974, whereby Ram Chand had bequeathed the suit property in favour of plaintiff No. 1 Sham Lal and plaintiff No. 2 Jaspal Singh, along with their pre-deceased brother Rameshwar. The will was accepted by Court of first instance, however, First Appellate Court in appeal preferred by defendants had concluded that will dated 23.12.1974 has not been proved as attesting witness was not examined.

5. The plaintiffs–appellants had preferred Appeal No. 3261 of 1997 against the above-noted impugned judgments and decrees, being aggrieved by the finding recorded by the learned First Appellate Court holding that the Will dated 23.12.1974 was not proved. It is contended that, in present proceedings, the issue relating to the Will was not the main issue between the parties and was only referred incidentally by the plaintiffs-appellants. It is further submitted that defendant No. 12, Parbhi, widow of Ram Chand, who had executed the Will in favour of plaintiff Nos. 1 and 2, had duly admitted the execution thereof.

Therefore, the learned First Appellate Court has erred in concluding that the Will dated 23.12.1974 was not proved.



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6. Civil Appeal No. 1340 of 1997 has been filed by defendants. Defendants-appellants in Civil Appeal No. 1340 of 1997 have argued that the present case is one of usufructuary mortgage and, therefore, no period of limitation is prescribed for redemption. Consequently, it is contended that the conclusion drawn by both the Courts below that the plaintiffs have become owners in possession of the suit property by efflux of time is erroneous and unsustainable.

7. On consideration, I find merit in the submission made on behalf of the defendants-appellants. In the case of a usufructuary mortgage, the period of limitation of 30 years for seeking redemption is not applicable, and the mortgagor has a right to seek redemption at any time so long as the mortgage subsists. Usufructuary mortgage cannot be extinguished merely by efflux of time.

8. The aforesaid conclusion is drawn by the judgments of the Hon'ble Supreme Court in ***Singh Ram (d) through LRs Vs. Sheo Ram and others***, 2014 AIR Supreme Court 3447; judgments of this Court in '***Ram Kishan and others Vs. Sheo Ram and others***', 2008(1) RCR (Civil) 334; '***Budhi Vs. Jeet Ram and others***', 2024 NCPHHC 131841; and '***Ajaib Singh (deceased through LRs) and Anr. Vs. Ved Parkash and Ors.***', 2025 AIR Punjab and Haryana 12.

9. In these circumstances, the finding recorded by the learned Courts below that the plaintiffs-appellants along with proforma defendants have become owners in possession of the suit property by efflux of time, on the ground that the suit property was not redeemed by the mortgagor-defendants, cannot be sustained and is accordingly set aside. Consequently, the appeal filed by the defendants-appellants bearing Civil Appeal No. 1340 of 1997 is allowed.

10. I also find merit in the contention raised by the learned counsel for the plaintiffs-appellants that both the Courts below erred in entering into the controversy relating to the Will inter se between the plaintiffs, as the said issue



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was not directly in question in the present suit. In fact, all the plaintiffs-appellants have preferred the present appeal challenging the findings of the learned Courts below on the issue of the Will. Appellants who are challenging findings of Courts below on the validity of will includes even those plaintiffs-appellants who are not relying upon the Will and whose interests are adverse thereto. Accordingly, adjudication on the validity of the Will was wholly unnecessary in the present proceedings.

11. In these circumstances, it would be appropriate to set aside the judgments of both the Courts below, with liberty to the plaintiffs and proforma defendants to raise their respective rights either under the Will or by way of natural succession, in accordance with law, in appropriate proceedings. Accordingly, both the judgments and decrees dated 28.11.1991 and 13.11.1996 are set-aside. Both the appeals are allowed in the above terms. Sut preferred by plaintiffs-appellants is dismissed.

12. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

13.01.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No