

RSA-3566-1998(O&amp;M)

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

(211)

**RSA-3566-1998(O&M)**  
**Reserved on: 28.04.2026**  
**Pronounced on: 05.05.2026**  
**Uploaded on: 05.05.2026**

Tarlok Singh

... Appellant

Versus

Chaman Lal (Since deceased) Through his LRs and Others .... Respondents

**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present: Mr. Vishal Sharma, Advocate  
for the appellant.

Mr. C.L.Sharma, Advocate  
for the respondents No.1 and 2.

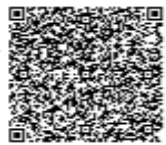
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**VIRINDER AGGARWAL, J.**

1. The present Regular Second Appeal (hereinafter referred to as the “RSA”) has been preferred by the appellant-defendant no.16 assailing the judgment and decree dated 24.03.1998 passed by the learned Additional District Judge, Hoshiarpur, whereby the findings returned by the learned Trial Court were affirmed. The learned Trial Court, vide judgment and decree dated 29.03.1996 rendered by the learned Civil Judge (Junior Division), Hoshiarpur, had decreed the suit filed by the respondents-plaintiffs seeking a declaration. The appellants, by way of the present appeal, impugn the concurrent findings of both the Courts below as being legally untenable and factually unsustainable.

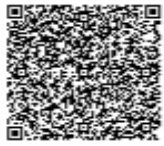
**BACKGROUND FACTS**

2. The appellants’ case, as set up in the pleadings, is that the defendant no.1 and predecessor-in-interest of the other defendants had mortgaged the suit land measuring 10 kanals 2 marlas comprised in Khewat No. 556,558, Khatauni



No.683,685 bearing Khasra No. 23/3/3(3-16), 23//6/4(0-17) 7/2(04), 14/2(0-16), 15/1(3-13), 16/3(3-13), 17/1(0-3) situated in Village Bassi Gulam Hussain, H.B.Mo.360,362 Tehsil and District Hoshiarpur, in favour of the predecessor of the plaintiffs vide registered mortgage deed dated 17.09.1953 (Ex.P1) for consideration of ₹2000/-. It was pleaded that the mortgage was with possession and the mortgagees continued in possession of the suit land. It was further pleaded defendant no.1 sold 1/3 share out of land in dispute to appellant/defendant no.16 Tarlok Singh vide sale deed dated 22.08.1989 (Ex.DW2/A) i.e. after the expiry of period of limitation to get the land redeemed. Then Tarlok singh filed application for redemption of 1/3rd share of land in dispute before collector, Hoshiarpur on 27.05.1991 and get redemption order vide order dated 30.10.1991. Plaintiffs further alleged that the predecessor of the plaintiffs had already expired in June 1963 and June 1977, who were made respondent in the redemption application. Thus, the redemption order having been passed against the dead person is nullity and is no order in the eyes of law. Moreover,, it was further averred that the said mortgage was never redeemed by the defendants within a period of 30 years and, therefore, their right of redemption stood extinguished. On this premise, the plaintiffs claimed that they had become owners of the suit property by efflux of time, and accordingly sought a decree for declaration and consequential relief.

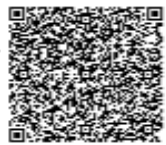
3. The defendants contested the suit and admitted the execution of the mortgage deed dated 17.09.1953 (Ex.P1). However, it was specifically pleaded that the predecessors of defendants have only mortgaged the Mango trees standing on the land in dispute. Further took the defense of non-maintainability, no locus standi of plaintiff to file the suit and of pre maturity of suit. They further admitted the execution of the mortgage deed no period for



redemption had been fixed in the mortgage deed. It was further averred that the defendants continued to have a subsisting right of redemption. The defendants also relied upon proceedings initiated for redemption before the competent authority, culminating in order dated 30.10.1991 (Ex.D1) passed by the learned SDM, whereby the appellant Tarlok Singh sought redemption of his 1/3rd share upon deposit of mortgage money.

4. Upon a comprehensive and meticulous consideration of the pleadings on record, as well as the rival submissions advanced by the parties, the learned Trial Court deemed it appropriate to crystallize the controversies in issue and, for the purpose of a structured and legally coherent adjudication, framed the following issues for determination:-

1. *Whether the Amrit lal deft.No.1 and late Shri Milkhi Ram as well as Thakur Dass mortgaged the suit land to Banarsi Dass, father of the plaintiffs, Milkhi Ram grand father of the plaintiffs and deft. No.17 to 23 for a consideration of Rs.2000/- vide mortgaged deed dated 17.09.53? OPP*
2. *Whether only the trees standing on the land in dispute were mortgaged vide mortgage deed dated 17.9.53 as alleged by the contesting defts? OPD, 1,2,5 to 16.*
3. *Whether the mortgagees have lost their right of redemption by afflux of time? OPD 1,2,5 to 16*
4. *Whether the suit is not maintainable in the present form ? OPD.*
5. *Whether the suit is barred by limitation ? OPD*



6. *Whether the suit is backed not properly valued for the purposes of court fee and jurisdiction? OPD.*

7. *Whether the plaintiffs are estopped from filing this suit by their act and conduct ? OPD.*

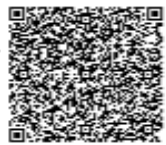
8. *Whether the plaintiffs are entitled to the relief of declaration sought for? OPP.*

9. *Relief.*

5. The parties were afforded adequate and fair opportunity to lead evidence in support of their respective stands. Upon an appraisal of the entire evidentiary material on record, the learned Trial Court decreed the suit in favour of the respondents-plaintiffs and, inter alia, held that since the mortgage had not been redeemed within 30 years from 17.09.1953, the right of redemption stood extinguished and the plaintiffs had become owners by efflux of time. Aggrieved thereby, the appellant/defendant no.16-Tarlok Singh preferred an appeal, which came to be dismissed by the learned First Appellate Court, affirming the findings of the Trial Court. Dissatisfied with the concurrent findings recorded by the Courts below, the appellant has instituted the present Regular Second Appeal impugning the said judgments and decrees as being legally untenable.

### **CONTENTIONS**

6. Learned counsel for the appellant has vehemently contended that both the Courts below have disregarded the settled legal position governing usufructuary mortgages, namely that no limitation is prescribed for redemption thereof, as authoritatively enunciated by the Hon'ble Apex ***Court in Singh Ram (D) through LRs vs. Sheo Ram and Others, 2014 INSC 554***. It is submitted that the Courts below have gravely erred in holding that the



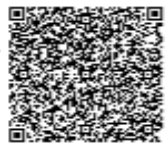
limitation for redemption commenced from the date of the mortgage, i.e. 17.09.1953, and that upon expiry of a period of 30 years, the right of redemption stood extinguished, thereby vesting ownership in the mortgagee. Such a conclusion, it is argued, is ex facie contrary to the binding precedent and has resulted in an erroneous declaration of title in favour of the respondent-plaintiff by mere efflux of time.

7. *Per Contra*, learned counsel for the respondents-plaintiffs has contended that the impugned findings do not suffer from any illegality or infirmity and are founded upon a proper appreciation of the evidence on record. It is urged that the appellants/defendants themselves took a categorical plea that the mortgage was never redeemed by defendants within a limitation period of 30 years. Consequently, it is submitted that the appellants are left with no subsisting right, title, or interest in the suit property, and the present appeal, being devoid of merit, deserves dismissal.

### **OBSERVATION AND FINDINGS**

8. I have heard learned counsel for the parties at considerable length and have given thoughtful and anxious consideration to their respective submissions, in the backdrop of the pleadings, the evidence on record, and the concurrent findings returned by the Courts below.

9. 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,***



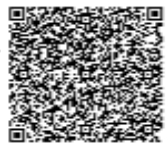
***(2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12)***

**Scale 92.** Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

10. It is an admitted position between the parties that the suit land was mortgaged in favour of the respondents-plaintiffs on 17.09.1953 vide mortgage deed Ex.P1. The core issue that arises for determination in this appeal is whether, in the absence of any stipulated period of redemption in the mortgage deed dated 17.09.1953 (Ex.P1), the right of redemption could be said to have been extinguished merely by lapse of 30 years, thereby vesting ownership in the mortgagees.

11. The said issue stands settled by the Hon'ble Supreme Court in ***Singh Ram v. Sheo Ram, 2014 (9) SCC 185***, wherein it has been categorically held that in the case of a usufructuary mortgage, particularly where no time for redemption is fixed, the right of redemption is a continuing right and is not extinguished merely by lapse of time, and the period of limitation would commence only when the mortgage money becomes due. In paragraph 14-15 of the said judgment, it has been held as under:-

*“14. We need not multiply reference to other judgments. Reference to above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under section 62 of the Transfer of Property Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage*

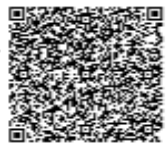


*resulting in extinguishment of right of redemption after 30 years.*

*15. We, thus, hold that special right of usufructuary mortgagor under section 62 of the Transfer of Property 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 mortgagor. Until then, limitation does not start for 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.”*

12. In the present case, a perusal of the mortgage deed Ex.P1 dated 17.09.1953 reveals that no specific period for redemption was prescribed. Moreover, there is also no evidence on record to show that any amount was ever demanded and refused so as to give rise to a cause of action resulting in extinguishment of the right of redemption. The entire claim of the plaintiffs is founded on the premise that 30 years having elapsed from the date of mortgage, the right of redemption of defendants stood extinguished. Such reasoning is directly contrary to the law laid down by the Apex Court.

13. In the conspectus of the aforesaid legal position, it is manifest that the right of redemption in respect of the suit property, vested in the defendants, has not been extinguished. The Courts below have, therefore, fallen into a patent error in holding that the respondents-plaintiffs acquired ownership and



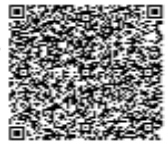
possession of the suit property merely by efflux of time. Such findings, being contrary to settled principles of law governing usufructuary mortgages, are legally unsustainable and are liable to be set aside. Consequently, the present appeal is allowed, and the suit instituted by the respondents-plaintiffs stands dismissed.

14. However, the appellant/defendant no.16 has further contended that the mortgage stood redeemed to the extent of 1/3rd share by him vide proceedings before the collector, Hoshiarpur culminating in order dated 30.10.1991 (Ex.D1), wherein a sum of ₹2000/- was deposited towards redemption. A careful examination of the said proceedings shows that the application for redemption was filed against the original mortgagees, who had already expired by that time, and no legal representatives were brought on record.

15. It is a settled principle of law that any proceedings conducted against a dead person are a nullity and do not confer any legal right. Therefore, the order dated 30.10.1991 (Ex.D1) cannot be treated as a valid redemption in the eyes of law. Thus, while the plaintiffs have failed to establish acquisition of ownership by efflux of time, the appellants have equally failed to prove a legally valid redemption of the mortgage. In such a situation, the mortgage created vide Ex.P1 dated 17.09.1953 must be held to be subsisting, and neither party can claim absolute ownership solely on the basis of the pleas raised in the present proceedings.

16. However, since the suit filed by the plaintiffs was specifically for declaration of ownership on the ground that the right of redemption stood extinguished by lapse of 30 years, and the said foundation has been found to be legally untenable, the decree granted in their favour cannot be sustained. It is, however, clarified that this judgment shall not preclude the parties from seeking





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appropriate remedy for redemption or enforcement of their respective rights in accordance with law.

17. Consequently, the present appeal is **allowed**. The judgments and decrees dated 24.03.1998 and 29.03.1996 passed by the Courts below are set aside, and the suit filed by the plaintiffs stands dismissed.

18. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

**05.05.2026**  
*Saurav Pathania*

**(VIRINDER AGGARWAL)**  
**JUDGE**

- (i) *Whether speaking/reasoned* : Yes/No  
(ii) *Whether reportable* : Yes/No