IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

CM No. 6086-C of 1999 in/and
RSA No. 3535 of 1999(O&M)
Reserved on: 21.01.2026
Pronounced on: 27.01.2026
Uploaded on: 28.01.2026

Nand Ram and others …Appellants

Versus

Charan and Anothers …Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. P.L.Verma, Advocate,
for the Appellants.

Mr. Amit Jain, Advocate,
for respondents.

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VIRINDER AGGARWAL,J

1. The present Regular Second Appeal (hereinafter referred to as "the appeal") has been preferred by the plaintiffs-appellants challenging the judgment and decree dated 01.05.1999 passed by the learned District Judge, Faridabad, whereby the appeal preferred by the defendants-respondents was allowed and the judgment and decree dated 24.03.1998 passed by the learned Civil Judge(Junior Division), Palwal, decreeing the suit in favour of the plaintiffs, was set aside and the suit was dismissed.

2. Briefly stated, the suit property pertains to agricultural land situated in village Ali Brahman. The admitted position between the parties is that the land in dispute was originally mortgaged with possession by the predecessors-in-interest of the respondents in favour of the predecessors-in-interest of the appellants. The plaintiffs instituted the civil suit seeking a declaration that they

had become owners in possession of 2/3rd share of land measuring 49 Kanals 1 Marla by lapse of time, contending that they and their predecessors had remained in continuous possession of the property for more than 30 years, that the period for redemption had expired and that the revenue entries reflected their uninterrupted possession. On this basis, it was pleaded that the right of redemption stood extinguished and the mortgage rights stood converted into ownership. The defendants contested the suit by filing written statement and specifically pleaded objections regarding maintainability, locus-standi, estoppal and cause of action. Also pleaded that the period of redemption has not expired as there is no limitation for redemption of mortgage with possession. The defendants denied that the plaintiffs had perfected any ownership rights and entries in their names , in the column of possession are null and void.

3. Upon a meticulous examination of the pleadings and the rival contentions of the parties, the learned Trial Court proceeded to frame the following issues for determination, so as to secure a precise and legally structured adjudication of the controversy:

1. *Whether the plaintiffs have become owners of the suit property detailed in para no.1 of the plain t on account of expiry of period of limitaion? OPP*
2. *Whether the suit is maintainable in the present form? OPD*
3. *Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD*
4. *Whether the plaintiffs are estopped to file the present suit by their act and conduct? OPD*
5. *Relief.*

4. Both parties were afforded full and adequate opportunity to adduce evidence in support of their respective claims and defences. Upon appreciation of the evidence on record, the learned Trial Court decreed the suit in favour of the plaintiffs and held that the plaintiffs had perfected their title on account of long possession over more than 30 years and lapse of time for redemption of mortgage. Aggrieved thereof, the defendants preferred an appeal before the learned First Appellate Court. The learned First Appellate Court, upon reappreciation of the entire oral and documentary evidence on record, recorded a categorical finding that the original transaction between the parties was a mortgage with possession and that the plaintiffs were holding possession only in their capacity as mortgagees. It was further held that mere continuance of possession for a long period and the existence of mutation or jamabandi entries in favour of the plaintiffs do not confer ownership nor extinguish the mortgagor’s right of redemption. The learned First Appellate Court observed that the equity of redemption is a valuable statutory right which cannot be defeated merely by lapse of time. On these premises, the findings of the learned Trial Court on ownership and extinguishment of rights of redemption were held to be legally unsustainable, and consequently, the judgment and decree of the learned Trial Court was set aside and the suit was dismissed. Dissatisfied, the plaintiffs have preferred the present Regular Second Appeal. During the pendency of appeal, an application under Order XLI Rule 27 was filed to place on record additional evidence in the form of certified copies of mutation no. 906 decided on 22.06.1926 and no.1414 decided on 11.09.1939 of village Ali Brahman (Annexure P-1 And P-2) and jamabandies for the year 1959-60 and 1976-77 (Annexure P-3 And P-4).

5. It is submits by the applicant that the documents sought to be produced are public/official records maintained by statutory authorities in discharge of their official duties. It is contended that the said documents are relevant for determining the true nature of the transaction and for effective adjudication of the controversy involved in the appeal. It is further submitted that the documents cannot be fabricated or manipulated at a later stage and their consideration would assist this Court in rendering a just decision.

6. On the other hand, it is contented by the respondent that that documents were well within the knowledge of applicant filing of suit and he has not proved the same during the pendency of suit it cannot be allowed to fill lacuna in evidence by allowing additional evidence.

7. It is evident that the documents now sought to be produced were very much within the knowledge of the appellants and could have been tendered before the Courts below. The explanation furnished for their non-production is not satisfactory and clearly reflects negligence and lack of due diligence on the part of the appellants. Ordinarily, such conduct would disentitle a party from invoking the provisions of Order XLI Rule 27 CPC. However, it is equally well settled that additional evidence may be permitted if the appellate Court finds that such evidence is necessary to enable it to pronounce judgment effectively or for any other substantial cause. The documents in question are certified copies of public records prepared by public authorities in the discharge of their official functions. Such documents carry a statutory presumption of correctness and are not susceptible to subsequent manipulation or fabrication. The controversy in the present appeal essentially relates to the nature of the transaction, for which the said documents may have some bearing.

8. This Court is conscious of the principle that Order XLI Rule 27 CPC is not intended to permit parties to fill up omissions or lacunae in their case. At the same time, the ultimate object of the Court is to render substantial justice and to decide the matter on the basis of the best available material, particularly when the documents sought to be produced are official in nature and their authenticity is not in serious dispute. In the facts and circumstances of the case, this Court is of the considered view that, despite the negligence of the appellants in not producing the documents earlier, the interest of justice would be better served if the documents are taken on record for limited purposes, so as to enable the Court to effectively appreciate the nature of the transaction and render a just adjudication.

9. Accordingly, the application under Order XLI Rule 27 CPC is **allowed**, subject to all just exceptions. The additional documents are taken on record and shall be read in evidence for the purpose of appreciating the nature of the transaction.

CONTENTIONS

10. Learned counsel for the appellants contends that the learned First Appellate Court has committed a serious error of law in reversing the well-reasoned judgment of the learned Trial Court. It is argued that the appellants and their predecessors have remained in uninterrupted possession of the suit land for more than 30 years and that the period prescribed for redemption has long back expired. It is contended that the mortgagor failed to redeem the mortgage within the prescribed period, thereby extinguishing the right of redemption and vesting ownership rights in the appellants. It is further argued that the revenue records consistently show the appellants in possession and such

continuous possession, coupled with expiry of period of limitation, entitles them to declaration of ownership. Prayer is made for setting aside the impugned judgment and restoration of the decree passed by the learned Trial Court.

11. Per contra, learned counsel for the respondents supports the judgment and decree passed by the learned First Appellate Court and submits that the transaction is admittedly a mortgage with possession and the character of the property cannot change merely by lapse of time. It is submitted that the possession of a mortgagee is permissive and referable to the mortgage and cannot ripen into ownership unless hostile animus is clearly pleaded and proved. It is further contended that mutation entries do not confer title and are meant only for fiscal purposes. Reliance is placed upon the Full Bench judgment of this Court in ***Ram Kishan and others v. Sheo Ram and others 2008 (1) RCR(Civil) 334***, as well as judgments of the Hon’ble Supreme Court, to submit that the equity of redemption is a valuable right which cannot be extinguished except in a manner known to law.

OBSERVATIONS AND FINDINGS

12. I have heard learned counsel for the parties with due thoroughness and have undertaken a careful and comprehensive examination of the entire record. The appeal was admitted to consider essentially the following substantial question of law:

> *“Whether a mortgagee in possession can acquire ownership of the mortgaged property merely by lapse of time and mutation entries, in view of the settled principle that once a mortgage always remains a mortgage?”*

13. The foundational fact that the suit land was mortgaged with possession is not in dispute. The entire claim of the appellants rests upon the assumption that mere long possession and alleged expiry of limitation automatically converts a mortgage into ownership. The legal position on this issue is no longer res integra. It is a settled principle of law that once a mortgage, always a mortgage. The right of redemption is an inseparable incident of a mortgage and cannot be defeated by lapse of time, contractual stipulation or prolonged possession of the mortgagee. Unless the mortgage is lawfully foreclosed or the right of redemption is extinguished by a decree of a competent court or by a valid act of parties, the mortgagor continues to retain the equity of redemption. Moreover, the law on the issue of redemption of mortgage is well established that the bar of limitation of 30 years for redeeming a mortgage would not be applicable in case of usufructuary mortgage, which is the nature of mortgage in question. It is also settled that usufructuary mortgagee is not entitled to file a suit for declaration claiming ownership of the mortgaged property on the expiry of 30 years from the date of mortgage.

14. The Full Bench of this Court in ***Ram Kishan and others v. Sheo Ram and others, 2008 (1) RCR(Civil) 334,*** has categorically held that in the case of a usufructuary mortgage, the right of redemption does not stand extinguished merely because the mortgagee has remained in possession for a long period and that limitation by itself does not confer ownership upon the mortgagee. Similarly, Reference in this regard can be made to law laid down by the Hon'ble Supreme Court in ***Singh Ram (Dead) through LRs v. Sheo Ram, 2014 (9) SCC 211.*** has reiterated that the equity of redemption is a valuable statutory right and cannot be defeated except in accordance with law. Mere inaction or

delay on the part of the mortgagor does not result in automatic extinction of such right. While upholding Full Bench judgment of this Court, the Apex Court held, in case of usufructuary mortgage mere expiry of 30 years from the date of creation of mortgage does not extinguish the mortgagor's right to redeem the mortgage under Section 62 of the Transfer of Property Act, 1882. The relevant part of the judgment reads as under:

> *"Para15. 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."*

15. Moreover, the Mutation entries or jamabandi records, howsoever old, do not create or extinguish title. They are maintained primarily for fiscal purposes and, at best, reflect possession. They cannot override substantive rights flowing from the nature of the original transaction. The possession of a mortgagee is permissive and traceable to the mortgage itself. In order to claim perfection of title by adverse possession, there must be clear pleadings and cogent evidence

of hostile animus and open denial of the mortgagor's title to his knowledge. No such plea or proof is forthcoming in the present case. Even the additional documents placed on record do not alter the fundamental nature of the transaction. On the contrary, they reinforce the subsistence of relationship of mortgagor and mortgagee. The findings recorded by the learned First Appellate Court are based upon proper appreciation of evidence and correct application of settled principles of law. No perversity or jurisdictional error is demonstrated warranting interference by this Court.

16. In view of the foregoing discussion, the present Regular Second Appeal is **dismissed**. The judgment and decree dated 01.05.1999 passed by the learned District Judge, Faridabad is affirmed.

17. Since the main appeals stand decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

27.01.2026
Saurav Pathania

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