



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

State of Haryana
Vs.
Jai Singh and others

.....Appellant

.....Respondents

1.	Judgment reserved on	24.02.2026
2.	Judgment pronounced on	25.02.2026
3.	Judgment uploaded on	26.02.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	Full
5.	The delay, if any of the pronouncement is in full judgment and reason thereof.	Nil

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Argued By:-Mr. Praveen Kumar, DAG, Haryana
for the appellant.

Yashvir Singh Rathor, J.

1. This regular second appeal has been preferred against the judgment and decree dated 25.08.2001 passed by the Court of Additional District Judge, Panipat, vide which appeal preferred by the defendant- appellant against the judgment and decree dated 19.09.1996 vide which suit filed by the plaintiffs had been decreed, has been dismissed.
2. Case of plaintiffs is that plaintiffs and proforma defendants No.2 to 10 are owners in possession of the suit property detailed in para No.4 of the plaint.



Plaintiffs No.1, 2 and defendants No.3 and 4 over half share and plaintiffs No.2 and 3 and defendants No.5 to 10 are owners to the extent of remaining half share. As per version of plaintiffs, Kishan Lal and Jeetu, sons of Mathura were owners in possession of the suit land being holders of Marusi rights under Section 5 of Punjab Tenancy Act, 1887. Though in the revenue record, Pana Shamlat Hinduwan is recorded as owner in the column of ownership yet actually these persons had become owners being Marusi tenants. The suit land owned by Kishan Lal and Jeetu was mortgaged with possession in favour of Amrit and Nanak verbally in equal shares for a sum of Rs.150/- as apparent from Mutation No.1837 sanctioned on 17.06.1924. This mutation was entered in the revenue record by Halqa Patwari on 16.06.1921 and the actual cultivating possession of the suit property was delivered to the mortgagees. As such, relationship of mortgagers and mortgagees came into existence between Kishan Lal and Jeetu on the one hand and Amrit and Nanak on the other hand. Thereafter, Amrit expired and his share in the suit land was inherited by Duli Chand and Khem Chand and Mutation No.2402 was sanctioned in this regard on 4.12.1934. Said Duli Chand also expired and his share was inherited by Dharam Singh, Dharam Pal, Jai Pal and Jai Singh and Mutation No.2743 was sanctioned on 30.08.1940. Jai Pal also expired issueless and his share was inherited by Dharam Singh, Dharam Pal and Jai Singh. The share enjoyed by Nanak had also been inherited by plaintiffs and proforma defendants No.2 to 10. It is further alleged that mortgagers could not get the land redeemed within the prescribed period of limitation and mortgagees thus have acquired the right of ownership qua the suit land.



3. It is further alleged that Kishan Lal and Jeetu- mortgagers died issueless and after their death, State Government i.e. defendant No.1 has been recorded as heir of Kishan Lal and Jeetu by way of escheat and Mutation No.5443 has been sanctioned in favour of State Government on 18.11.1975. However, since the mortgagees had already become owners in possession of the suit property, therefore, the entries showing defendant No.1 as owner being heir of deceased Kishan Lal and Jeetu Lal are illegal, null and void and not binding upon their rights. Presently also, plaintiffs and proforma defendants are in actual cultivating possession of the suit property as owners and mutation sanctioned in favour of defendant No.1 is void ab initio. Now defendant No.1 is threatening to oust them and proforma defendants from the suit land and is also intending to alienate the same which necessitated the present suit.

4. By way of present suit, plaintiffs have sought declaration to the effect that they along with proforma defendants No.2 to 10 are owners in possession of the suit land as per their shares and mutation sanctioned in favour of defendant No.1 is illegal and null and void. Consequential decree for permanent injunction has also been sought restraining defendant No.1 from dispossessing them and proforma defendants from the suit property and from alienating the same.

5. Defendants No.1 in its written statement has opposed the suit preliminary on the ground of mis-joinder, non-joinder of necessary parties, the suit being bad for want of notice under Section 80 CPC, locus standi, cause of action and that the minor defendants have not been properly sued. On merits, it is submitted that defendant No.1 is owner in possession of the suit property.



Previous entries in the revenue record in favour of plaintiffs, if any, are wrong and not binding upon it. It has been denied that Kishan Lal and Jeetu being marusi tenants had acquired the absolute right of ownership in the suit property. It has been denied that the plaintiffs are in possession over the suit property. It is further submitted that the plea regarding mortgage and its consideration as alleged by the plaintiffs are fabrication of mind to grab the suit property. It is submitted that the relationship of mortgagors and mortgagees never came into existence & that the right of the mortgagors had extinguished by lapse of time on account of non-redemption of the mortgage. It has been denied that Tehsildar Samalkha has tried to take the possession forcibly from the plaintiffs and dismissal of the suit has been prayed for.

6. Replication to the written statement was filed and following issues were framed for trial:-

1. Whether the plaintiffs and proforma defendant no.2 to 10 are owners in possession of the suit land, as alleged?OPP
2. Whether Kishan Lal and Jitu son of Mathura acquired Marusi rights (ownership rights) under Section 5 of the Punjab Tenancy Act, as alleged?OPP.
3. Whether the suit land was mortgaged by Kishan Lal and Jitu in favour of Amrit and Nanak, as alleged. If so, to what effect? OPP
4. If issue no.3 is proved, whether the mortgagor rights to redeem the suit land stood extinguished?OPP



5. Whether mutation no.5433 in favour of deft. no.1 is wrong; illegal and not binding upon the rights of the plaintiff and proforma defts. no.2 to 10?OPD.
6. Whether the suit is bad for want of notice u/s 80 CPC?OPD
7. Whether the plaintiffs have no locus standi to file the present suit?OPD.
8. Whether the plaintiffs have no cause of action to file the present suit?OPD.
9. Whether the suit is not maintainable?OPD
10. Relief.

7. The parties led evidence in support of their respective case and after hearing the parties, learned trial Court came to the conclusion that plaintiffs and proforma defendants have become owners of the suit property by prescription of time as the mortgagors had failed to get the suit land redeemed in accordance with law and issues No.1 to 5 were decided in favour of plaintiffs and proforma defendants. Issue No.6 was also decided against defendants on the ground that at the time of institution of the suit, an application was moved seeking exemption from serving prior notice under Section 80 CPC which was allowed. Issues No.7 to 9 were also decided against defendants and the suit was decreed to the effect that plaintiffs and proforma defendants are owners in possession of the suit property as per their shares and the entry in the revenue record in favour of defendant No.1 was declared to be illegal, null and void and not binding upon their rights. A direction was issued to correct the entries in favour of plaintiffs and



proforma defendants. A decree for permanent injunction was also passed restraining defendant No.1 from dispossessing the plaintiffs and proforma defendants from the suit property and from alienating the same.

8. Feeling aggrieved, defendants filed appeal but the same was dismissed by the Court of Additional District Judge, Panipat vide judgment and decree dated 25.08.2001.

9. Feeling aggrieved, the present Regular Second Appeal was instituted. Plaintiff and proforma respondents have been proceeded ex parte and while service upon respondents No.2 to 12 has been dispensed with.

10. I have heard learned State Counsel and have gone through the record.

11. Before proceeding further, it is pertinent to mention that vide order dated 19.12.2012, following substantial questions of law were framed at the time of admission of the appeal:-

“1. Whether impugned judgment and decree passed by both the learned Courts below while recording a finding that the plaintiffs/ respondents have become owner of the land in dispute by afflux of time is legally sustainable in view of the Full Bench Judgment in Ram Kishan’s case (supra) or not?”

2. Whether the Civil Suit for declaration filed by the plaintiffs/ respondents was/is barred by limitation while challenging mutation entered in the year 1975 in favour of State of Haryana or not?”

12. The stand of plaintiffs is that the suit land was mortgaged with possession by previous owners namely Kishan Lal and Jeetu for a sum of Rs.150/- in favour of their predecessors and Mutation No.1837 was sanctioned in this regard on 17.06.1924. Relationship of mortgagers and mortgagees thus came into



existence between Kishan Lal and Jeetu on the one hand and their predecessors Amrit and Nanak on the other hand. However, the mortgagers failed to get the suit property redeemed within the prescribed period of limitation and the mortgagees thus acquired ownership rights by prescription of time. It is also their case that both the mortgagers namely Kishan Lal and Jeetu died issueless and after their death, Mutation No.5443 has been sanctioned in favour of State Government on 18.11.1975 by way of escheat.

13. The short point to be determined is whether the plaintiffs and proforma defendants have become owners of the suit land by efflux of time on account of failure of the mortgagors to get the suit property redeemed within the prescribed period of limitation. The answer is certainly in the negative for the following reasons.

14. The term *Usufructuary Mortgage* has been defined in Section 58(d) of Transfer of Property Act which is reproduced as under:-

“58(d): **Usufructuary Mortgage:** Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money, or partly in lieu of interest or partly in payment of the mortgage money, the



transaction is called an usufructuary mortgage and the mortgage an usufructuary mortgage.”

15. A perusal of the afore-said provision makes it clear that in case of usufructuary mortgage, possession is delivered to the mortgagee and he is authorised to retain such possession until payment of mortgage money, and to receive rent and profits accruing from the property in lieu of interest or in payment of mortgage money or partly in lieu of interest or partly in lieu of mortgage money while a mortgage which is not a simple mortgage, a mortgage by conditional sale, and usufructuary mortgage, and english mortgage and mortgage by deposit of title deeds within the meaning of Section 58 of Transfer of Property Act is called an anomalous mortgage. It is the own case of the plaintiffs that the land was mortgaged in favour of their predecessors on payment of mortgage money of Rs.150/- and mutation was sanctioned in favour of their predecessors. There is no averment in the plaint that any time limit was fixed to get the suit property redeemed which shows that the predecessor of plaintiffs and proforma defendants had been authorised to retain such possession until payment of mortgage money and to receive the rents and profits which gives rise to the only irresistible conclusion that it was a case of usufructuary mortgage.

16. Now the point to be determined is as to whether the mortgagers will loose the right to get the mortgage redeemed or that the plaintiffs and proforma defendants have become owners of the suit property by prescription of time. This question has been settled by a Full Bench decision of Punjab and Haryana High Court in 2008(1) PLR 1 – **Ram Kishan Vs. Sheo Ram** in which it has been held



that in the 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 tenders to the mortgagee or deposits in the court, mortgage money or the balance thereof and it was further held that once a mortgage always a mortgage and is always redeemable. It was further held that mortgage cannot be extinguished by any unilateral act of mortgagee and a usufructuary mortgagee cannot seek declaration in the nature of foreclosure and claim to have become owner of the mortgaged property.

17. Besides this, in 2005(4) RCR (Civil) 841 (Supreme Court) – **Harbans Vs. Om Parkash**, it has been held that once no time frame is fixed for getting the mortgage redeemed, mortgagor has the right to get the property redeemed and there is no limitation for the mortgagor to get the same redeemed. The judgment rendered by the Full Bench of Punjab and Haryana High Court in **Ram Kishan's case (supra)** has been upheld by Hon'ble Supreme Court vide judgment dated 21.08.2014 in Civil Appeal No.5198 of 2008 – **Singh Ram (D) Thr. Lrs Vs. Sheo Ram & Ors.** Besides this, in 2025 Live Law (SC) 1252, **Dalip Singh (D) through LRs & Ors. Vs. Sawan Singh (D) through LRs & Ors.** decided vide judgment dated 12.11.2025, while relying upon **Singh Ram's case (supra)**, it has been held that in case of usufructuary mortgage, the period of limitation for redemption does not commence from the date the mortgage is created. Instead, the right to seek redemption arises only when the mortgagor pays or tenders the mortgage money, or when the debt is discharged from the



usufruct of the property and mere expiry of prescribed period does not extinguish the mortgagor's right to redeem.

15. In the present case also, no time limit was fixed for getting the mortgage redeemed and as such, the right of the mortgagor to get the same redeemed has not expired by efflux of time as there was no limitation for mortgagors to get the same redeemed and they will continue to be the owners. Since the owners/ mortgagors admittedly died issueless, the land has rightly been mutated in favour of State on account of escheat. Resultantly, findings of both the courts below on issues No.1, 4 and 5 are not based on correct appreciation of law and are accordingly reversed and these issues are decided against the plaintiffs and proforma defendants.

16. Findings on issues No.2 and 3 do not call for any interference as both the Courts have concurrently held that Kishan Lal and Jeetu had acquired ownership rights under Section 5 of Punjab Tenancy Act and they had mortgaged the suit property in favour of predecessors of plaintiffs and proforma defendants namely Amrit and Nanak. Findings on issues No.2 and 3 are accordingly affirmed.

17. Along with the suit, the plaintiffs had moved an application under Section 80(2) CPC seeking exemption from serving prior notice under Section 80 CPC which was allowed and as such, suit cannot be termed as bad for want of notice under Section 80 CPC. Finding on issue No.6 is also affirmed.

18. In view of findings on issues No.1, 4 and 5, it has been held that once a mortgage always a mortgage and the plaintiffs and proforma defendants have



not acquired the ownership rights and as such, they have got no locus standi or cause of action to file the present suit and suit in the present form was thus not maintainable. Findings on issues No.7, 8 and 9 are accordingly reversed.

19. As a result of afore-said discussion, the present appeal is allowed and the judgments and decree dated 25.08.2001 and 19.09.1996 passed by both the Courts below are set aside and the suit filed by the plaintiffs is ordered to be dismissed. However, there shall be no order as to costs. Decree-sheet be drawn accordingly.

(Yashvir Singh Rathor)
Judge

February 25, 2026
renu

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No