



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

**RSA-1997-2005 (O&M)
Reserved on :-18.02.2026
Date of Pronouncement:-20.02.2026
Uploaded on:-20.2.2026**

State of Haryana through Collector and another

... Appellants

Versus

Partap Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

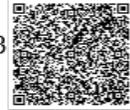
Argued by :-

Mr. Ved Parkash, Senior DAG, Haryana-Appellants.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal ('RSA' for short) has been instituted by the appellants-defendants/State assailing the concurrent judgments and decrees passed by the learned Courts below. By virtue of the impugned judgments and decrees, the suit filed by the respondent-plaintiff, Partap Singh, seeking a declaration to the effect that he has become owner in possession of the suit land on account of the mortgage not having been redeemed within the prescribed period of limitation, or in the alternative, that he has perfected his title thereto by way of adverse possession, has been decreed.

2. At the outset, it is apposite to notice that the appellants-defendants contested the suit by filing a comprehensive written statement,



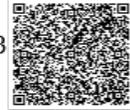
raising various preliminary objections touching upon the very maintainability of the action.

2.1. By way of preliminary objections, it was pleaded that the suit was not maintainable in the present form; that the plaintiff lacked *locus standi*; that no cause of action had accrued in his favour; that the suit was barred by limitation; and that it was liable to be dismissed for want of statutory notice under Section 80 of the Code of Civil Procedure.

2.2. On merits, it was specifically averred that Budh Ram son of Kushala was the recorded owner of the suit land and that upon his demise, the property stood escheated to the State vide mutation No.1934 dated 28.03.1996. The defendants categorically denied that the suit land had ever been mortgaged in favour of the plaintiff or his predecessor-in-interest and asserted that, consequently, no question of redemption arises. It was further contended that the possession of the plaintiff, if any, is wholly unauthorized and illegal, and that the defendants are legally entitled to dispossess him in accordance with law.

3. Thereafter, the plaintiff filed a replication, wherein the preliminary objections and substantive averments contained in the written statement were specifically traversed and denied, and the pleadings set forth in the plaint were reaffirmed in toto. Upon a meticulous consideration of the pleadings and the rival submissions of the parties, the learned trial Court, for the purpose of a structured and legally sound adjudication, framed the following issues for determination:-

1. *Whether the plaintiff and his predecessor-in-interest are in possession of the suit land as mortgagee under "Pardesh Sarkar"?*
OPP.



2. *Whether the plaintiff has be-come the owner of the suit land by way of adverse possession being in continuous possession for more than 60 years? OPP*
 3. *If issues No.1 and 2 are proved in affirmative, whether the plaintiff is entitled for relief claimed? OPD.*
 4. *Whether the possession of the plaintiff over the suit land is illegal and unauthorized? OPD*
 5. *Whether the suit of the plaintiff is not maintainable? OPD*
 6. *Whether the plaintiff has no locus-standi to file the present suit? OPD*
 7. *Whether the plaintiff has no cause of action to file the present suit? OPD*
 8. *Whether the Budh Ram son of Khusala owner of the suit land was transferred in the name of State Government vide mutation No.1934 sanctioned on 20.3.1996 if so what effect? OPD*
 9. *Relief.*
4. Upon the framing of issues, both parties were afforded full and adequate opportunity to lead their respective evidence. After an exhaustive appraisal of the entire material available on record, the learned Additional Civil Judge (Senior Division), Guhla decreed the suit, inter alia, holding that since the suit land stood mortgaged and the mortgagor, Budh Ram, had died issueless, the property having escheated to the State, the State could not evade the liabilities attached thereto. It was observed that the State, having stepped into the shoes of Budh Ram, inherited not only his rights but also his obligations as mortgagor. The Court further held that the State Government was competent to redeem the land within the statutory period of thirty years; however, as per the revenue record, the plaintiff had been in



possession as mortgagee since prior to the year 1958–59, and the prescribed period of limitation had long since expired. Consequently, the plaintiff was declared to have become the absolute owner of the suit land by efflux of the statutory period.

5. Aggrieved by the said judgment and decree, the appellants preferred an appeal, which came to be dismissed by the learned Additional District Judge, who, after hearing the parties, affirmed the findings and conclusions recorded by the learned Trial Court.

5.1. Dissatisfied with the concurrent findings of the Courts below, the appellants have invoked the jurisdiction of this Court by way of the present Regular Second Appeal.

6. The appeal was admitted for hearing, and notice thereof was duly issued to the respondents, who entered appearance through Mr. A.P. Bhandari, Advocate. Vide order dated 07.07.2006, this Court, being satisfied that substantial questions of law arose for consideration, formulated the following substantial questions of law for determination:-

- i) “Whether in the case of a usufructuary mortgage, the mortgagor can get the property redeemed at any time when the mortgage is not for a fixed period?
- ii) Whether in the facts and circumstances of the present case, can it be presumed that the mortgage was for a fixed period?
- iii) Whether judgment and decree passed by the courts below are based on misreading the evidence and thus legally unsustainable?”

6.1. When the matter was taken up for final hearing, none appeared on behalf of the respondents, despite due intimation having been duly conveyed to their learned counsel.



7. I have heard the learned counsel for the appellant at length and have meticulously perused the entire record of the case.

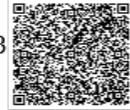
8. The findings on the substantial questions of law, framed hereinabove, are recorded as under:-

- i) **Whether in the case of a usufructuary mortgage, the mortgagor can get the property redeemed at any time when the mortgage is not for a fixed period?**

8.1. At the very outset, it is apposite to observe that the legal position governing the field is no longer *res integra*. It is well-settled that a usufructuary mortgage, where no specific period is fixed for redemption, is not circumscribed by any rigid period of limitation, and the mortgagor retains the right to redeem the mortgage at any point of time. This principle has been authoritatively affirmed by the Hon'ble Supreme Court in ***Ram Kishan and Others v. Sheo Ram and Others, 2008 (1) RCR (Civil) 334.***

8.2. Reliance has also been placed upon the judgment of the Full Bench of this Court, wherein, in paragraph 40, it has been emphatically observed that "once a mortgage, always a mortgage, and therefore always redeemable." Paragraph 40 of the said judgment reads as under:-

"The limitation of 30 years under Article 61(a) beings to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage, where rents and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and



profits from the interest thereof, therefore, right of foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable.”

ii) **Whether in the facts and circumstances of the present case, can it be presumed that the mortgage was for a fixed period?**

8.2 In the present case, there is no material available on record from which it can be inferred that the mortgage in question was created for any fixed or specified period. In the absence of any such stipulation, the mortgage must be construed in accordance with the settled principles governing usufructuary mortgages.

8.3. Even otherwise, it is trite law that where a mortgage is created for a fixed term, redemption cannot be sought prior to the expiry of that stipulated period; however, upon the lapse of such period, no bar of limitation operates so as to extinguish the mortgagor's right of redemption. The period of limitation, if any, commences only upon the expiry of the fixed term and the accrual of the right to redeem, i.e., when the mortgage money becomes due and is paid or duly tendered. This position has been reiterated by this Court in *RSA-1734-1997 titled Sukhdev Singh and Others v. Chajju Ram (Since Deceased) through his LRs and Others,* decided on 24.09.2025.



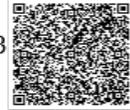
iii) **Whether judgment and decree passed by the courts below are based on misreading the evidence and thus legally unsustainable?**

8.4. In light of the findings returned on Substantial Questions of Law Nos. 1 and 2, the judgments and decrees rendered by the learned Courts below cannot be sustained in the eye of law, having been founded upon a manifest misapprehension of the settled legal position governing usufructuary mortgages.

8.5. It is well established that no period of limitation extinguishes the mortgagor's right of redemption in the case of a usufructuary mortgage, and the mortgagee cannot, by mere efflux of time, perfect title or assume the status of absolute owner of the mortgaged property. The contrary view adopted by the Courts below, therefore, runs afoul of binding legal principles. The respondent-plaintiff, at best, continues to hold the status of a mortgagee in possession.

8.6. It is not in dispute that Budh Ram, predecessor-in-interest of the appellant-State, was the owner of the suit property, and that upon his demise, the inheritance was duly mutated in favour of the State vide mutation sanctioned on 28.03.1996, whereby the appellant stepped into his shoes and inherited both rights and liabilities attached to the estate. Consequently, the appellant-State retains the lawful right to seek redemption of the mortgage and to recover possession in accordance with law.

8.7. Accordingly, the appeal preferred by the appellant-State is partly allowed. The judgments and decrees passed by the learned Courts



below are modified to the extent that the respondent–plaintiff is declared to be a mortgagee in possession of the suit land. The appellant–State is restrained from interfering with the possession of the respondent–plaintiff except in due course of law and by resort to appropriate proceedings for redemption.

9. As a natural corollary to the final adjudication of the principal lis, all pending miscellaneous applications, if any, arising out of or ancillary to the present proceedings, shall stand disposed of. In view of the conclusions recorded here-in-above, no separate or independent orders are warranted in respect of such applications, the issues raised therein having been rendered entirely academic and infructuous by virtue of the present determination.

20.02.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No