

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

**RSA-2283-1997 (O&M)
Reserved on :-20.04.2026
Date of Pronouncement:-30.04.2026
Uploaded on:-30.04.2026**

Mulakh Raj (Deceased) Through his LRs and Others

... Appellants

Versus

Maya Wanti and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

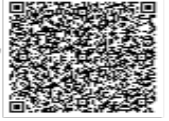
Argued by :-

Mr. H.S. Dhandi, Advocate
for the appellants.

Mr. Rakesh Kumar, Advocate
for the respondents No.1, 2, 3(i), 3(ii) and 5.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as the "RSA") has been preferred by the appellants-defendants assailing the judgment and decree dated 19.02.1997 passed by the learned Additional District Judge, Hoshiarpur, whereby the findings returned by the learned Trial Court were affirmed in toto. The learned Trial Court, vide judgment and decree dated 23.09.1994 rendered by the learned Senior Sub-Judge, Hoshiarpur, had decreed the suit filed by the respondents-plaintiffs seeking a declaration. The appellants, by way of the present appeal, impugn the

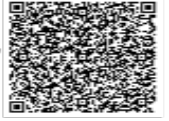


concurrent findings of both the Courts below as being legally untenable and factually unsustainable.

2. The appellants' case, as set up in the pleadings, is that the plaintiffs have averred that Nandu, son of Ralla, being the recorded owner of land measuring 10 Kanals 3 Marlas comprised in Khasra No. 1133, situated in Village Haryana, had created a usufructuary mortgage with possession in favour of Dalip Singh and Ishar Singh for a consideration of ₹150/- vide a duly registered mortgage deed dated 01.04.1958, pursuant to which a corresponding mutation was sanctioned in the revenue record. It is further pleaded that during the consolidation proceedings carried out in or about the years 1961–62, the land presently in dispute, namely Khasra No. 12, Rectangle No. 22, Khewat No. 534, and Khatauni No. 658, was allotted in lieu of the originally mortgaged property, whereupon the mortgagees continued in uninterrupted and settled possession thereof.

2.1. It is further pleaded that Ishar Singh died issue-less, whereupon his interest devolved upon Dalip Singh, and upon the latter's death in 1974, the estate devolved upon Ajit Singh and Jit Kaur. Subsequently, upon the demise of Ajit Singh and Jit Kaur, their respective shares devolved upon the legal heirs of Ajit Singh, as duly reflected in the sanctioned mutations.

2.2. On this basis, it is contended that the mortgage has remained unredeemed for over 30 years, and the plaintiffs, being successors of the mortgagees in continuous possession, have acquired ownership by efflux of time. Accordingly, a decree for declaration and correction of revenue entries has been sought.



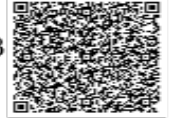
3. The defendants, while admitting the original mortgage dated 01.04.1958 and possession of Dalip Singh up to 14.06.1971, have raised a distinct defence. It is pleaded that Nandu died unmarried, and his estate devolved upon Babu Ram Saini and thereafter upon his successors, including defendant No. 1.

3.1. It is further averred that upon partition, the suit property fell to the share of defendant No. 1, who mortgaged the same with possession to Ajit Singh, son of Massa Singh, for ₹4,500/- vide registered mortgage deed dated 06.04.1971. Out of the said amount, ₹150/- was retained for redemption of the earlier mortgage, which was duly effected on 14.06.1971 upon payment to Dalip Singh, who delivered possession to the subsequent mortgagee.

3.2. It is thus asserted that the earlier mortgage stood redeemed, and Ajit Singh entered into lawful possession, which has continued thereafter. The defendants, therefore, deny the plaintiffs' claim of subsisting mortgage and acquisition of ownership by efflux of time, while controverting all other material averments.

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 plaintiffs have become owners of the suit land on account of its non-payment of defendant on the ground alleged in the plaint? OPP
2. Whether plaintiffs are entitled to declaration as prayed for? OPP



3. Whether suit is within time? OPP
 4. Whether the suit is bad for non-joinder of parties? OPD
 5. Whether the suit is not maintainable in the present form? OPD
 6. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
 7. 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 as under :-

“In view of the foregoing analysis and findings, the suit instituted by the plaintiffs is liable to succeed and is hereby decreed with costs. A decree for declaration is granted in favour of the plaintiffs to the effect that they have acquired ownership rights in respect of land measuring 8 Kanals 18 Marlas comprised in Khasra No. 12, Rectangle No. 22, Khewat No. 534, Khatauni No. 658, H.B. No. 76, as reflected in the Jamabandi for the year 1987–88, situated in the revenue estate of Village Hariana, Tehsil and District Hoshiarpur. The defendants are further permanently restrained from alienating or otherwise encumbering the said property in any manner prejudicial to the rights of the plaintiffs.”

- 5.1. Aggrieved thereby, the appellants-defendants preferred an appeal, which came to be dismissed by the learned First Appellate Court with the following observation:-

“Learned counsel for the appellants has failed to draw the attention of this Court to any material illegality, perversity, or infirmity in the impugned judgment and decree. No substantial or arguable point warranting judicial interference has been advanced.



In view of the detailed discussion here-in-above, this Court finds no merit in the present appeal. Consequently, the appeal preferred by Mulakh Raj and others against Maya Wanti and others, assailing the judgment and decree dated 23.09.1994 passed by Shri N.S. Mundra, learned Senior Sub Judge, Hoshiarpur, is hereby dismissed with costs.”

6. Dissatisfied with the concurrent findings recorded by the Courts below, the appellants have instituted the present Regular Second Appeal impugning the said judgments and decrees as being legally untenable. The appeal, upon *prima facie* consideration, was admitted to regular hearing, and notice thereof was duly issued to the respondents. Respondents No. 1, 2, 3(i), 3(ii), and 5 entered appearance through learned counsel and contested the appeal.

6.1. For the purpose of an effective and comprehensive adjudication, the complete record of the Courts below was requisitioned and has been duly perused, including the digital record available on DMS.

7. 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.

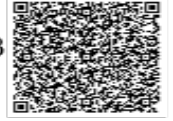
8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the 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.

9. Learned counsel for the appellants 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. 01.04.1958, 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.

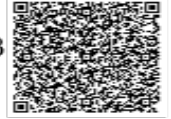
10. Per contra, learned counsel for the respondent–plaintiff has contended that the impugned findings do not suffer from any illegality or infirmity and are founded upon a proper appreciation of the evidence on record. It is urged that the appellants/defendants themselves took a categorical plea that the mortgage stood redeemed by Ajit Singh son of Mansa Singh vide receipt Ex.D1 dated 14.06.1971, which plea they have failed to substantiate. 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.



11. It is an admitted position between the parties that the suit land was mortgaged in favour of the respondent–plaintiff on 01.04.1958 vide mortgage deed Ex.P2. Although the appellants/defendants have set up a defence of redemption in the year 1971, they have failed to establish the same in accordance with law. Both the Courts below have, therefore, rightly held that Ex.DA, being a receipt purporting to affect rights, title, and interest in immovable property exceeding the value of ₹100/-, required compulsory registration and, being unregistered, was inadmissible in evidence.

12. However, even assuming that the appellants have failed to prove redemption in 1971, the only permissible inference is that the mortgage subsists; such failure cannot ipso facto divest the mortgagor of all rights, nor confer absolute ownership upon the mortgagee. In light of the authoritative pronouncement of the Hon’ble Apex Court in *Singh Ram’s case* (supra), it is well settled that no limitation is prescribed for redemption of a usufructuary mortgage, and the period of limitation would commence only when the mortgage money is paid. In para No.15 of the said judgment, it has been held as under:-

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, ie., 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.

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 appellant–defendants, has not been extinguished. The Courts below have, therefore, fallen into a patent error in holding that the respondent–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 respondent–plaintiffs stands dismissed.

14. As a natural corollary to the final adjudication of the principal lis, all pending miscellaneous or ancillary applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions arrived at herein, no separate or independent orders are warranted in respect thereof, the same having been rendered infructuous.

30.04.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No