

2025 LiveLaw (SC) 1252

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

B.V. NAGARATHNA; J., R. MAHADEVAN; J.

CIVIL APPEAL NO(s). 3358/2010; NOVEMBER 12, 2025

DALIP SINGH(D) THROUGH LRS. & ORS. *versus* SAWAN SINGH (D) THROUGH LRS. & ORS.

Limitation Act, 1963; Schedule Article 61(a) — Transfer of Property Act, 1882; Section 52 — Usufructuary Mortgage — Right of Redemption — Limitation Period - Held that in the case of a 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 - Mere expiry of the prescribed period does not extinguish the mortgagor's right to redeem - The right of the mortgagee to seek a declaration of title remains unaffected until such payment or discharge occurs – Appeal dismissed. [Relied on Singh Ram (Dead) through legal representatives Vs. Sheo Ram and Others (2014) 9 SCC 185; Paras 7-12].

For Appellant(s): Mrs. B. Sunita Rao, AOR

For Respondent(s): Mr. Rishi Malhotra, Sr. Adv. Ms. Ansuiya, Adv. Mr. Shivaansh Maini, Adv. Mr. Prem Malhotra, AOR Mr. Pardeep Gupta, Adv. Mr. Parinav Gupta, Adv. Mrs. Mansi Gupta, Adv. Mr. Rakshit Rathi, Adv. Dr. Mrs. Vipin Gupta, AOR Mr. Krishna Kumar, Adv. Mr. Bipin Bihari Singh, AOR Mr. Prem Malhotra, AOR Dr. Mrs. Vipin Gupta, AOR Mr. Bipin Bihari Singh, AOR

J U D G M E N T

NAGARATHNA, J.

We have heard learned senior counsel for the appellants and learned counsel for the respondents.

2. Briefly stated the facts of the case are that the petitioners herein, the original plaintiffs, are the mortgagees of the disputed property admeasuring 114 Kanals and 4 Marlas of land situated at Village Tamkot, Tehsil Mansa, district Bathinda. The said property was mortgaged by the ancestors of the respondents herein who were the original defendant in the Civil Suit No.291/1975 that was filed by the petitioners/original plaintiffs challenging the order of the Collector dated 17.09.1975. The respondents/defendants had filed an application under Section 6 of Redemption of Mortgage Act, 1913 for redemption of the said property that was mortgaged by the ancestors of the respondents/defendants. The said order was allowed by the collector vide order dated 17.09.1975, and therefore allowed the redemption of the mortgaged property in favour of the applicants i.e. respondents/defendants herein. Aggrieved by the Collector's order dated 17.09.1975, the petitioners/original plaintiff filed Civil Suit No. 291/1975. The said suit was decreed in the favour of the petitioners/original plaintiff vide order dated 22.09.1976 wherein the Trial Court observed that the application for redemption of mortgaged property preferred by the respondents/defendants was barred by limitation and therefore the Collector's order dated 17.09.1975 was set aside.

3. Aggrieved by the said judgment and decree, the respondents/defendants preferred first Appeal before Additional District Judge, Bhatinda in Civil Appeal No.107/R.T.-99 of 76/77 which was dismissed vide order dated 24.12.1980.

4. Aggrieved by the said judgment, the respondents/defendants preferred Regular Second Appeal No.1053/1981 before the High Court of Punjab and Haryana. The Regular Second Appeal No.1053/1981 was allowed by the Punjab and Haryana High Court vide

order dated 18.09.2001 thereby holding that the respondents/defendants' right to redeem the mortgage was not barred by limitation and that the fresh cause of action for redemption accrued based upon the adjustments made to the loan from the income arising from the land.

5. Aggrieved by the said judgment dated 18.09.2001, the petitioners/original plaintiffs preferred an appeal before this Court in Civil Appeal No.6084/2002. The said appeal was allowed, wherein vide order dated 16.04.2009, the case was remanded to the High Court of Punjab and Haryana on procedural grounds for re-adjudication as the High Court had failed to formulate substantial questions of law before allowing the appeal. Thereafter, after formulating substantial questions of law, the Punjab and Haryana High Court, in Regular Second Appeal No.1053/1981, again allowed the appeal vide order dated 25.01.2010 in favour of the respondents/defendants herein.

6. It was observed by the High Court, while placing reliance upon Ram Kishan and Ors. Vs Sheo Ram and Ors. 2008 (1) RCR (CIVIL) 334, that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise from the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or balance thereof and hence the order of the Collector dated 17.09.1975 was restored and the Civil Suit No.291/1975 filed by the petitioners/original plaintiffs was dismissed.

7. Aggrieved, by the said judgment in Regular Civil Appeal No.1053/1981 dated 25.01.2010, the petitioners/original plaintiffs are here before this Court.

8. We have perused the impugned judgment passed in RSA No.1053/1981. We find that the High Court had placed reliance on one of its judgments in the case of Singh Ram (Dead) through legal representatives Vs. Sheo Ram and Others to allow the appeal filed by the appellants therein who are defendants in the suit. Consequently, the plaintiff's suit was dismissed. Hence, being aggrieved by the dismissal of the suit, the plaintiffs are in appeal before this Court.

9. However, during the course of submissions, the judgment in *Singh Ram* (supra) referred to above, by a threejudge Bench of this Court reported in (2014) 9 SCC 185 has been brought to our notice. On a perusal of the said judgment, it is noted that when there is a usufructuary mortgage, the period of limitation does not run from the date of creation of the mortgage but from the date of payment of mortgage- either out of the usufructuary or partly out of the usufructuary or partly on payment of deposit by mortgager as provided under Section 52 of Transfer of Property Act, 1882. Till then the period of limitation would not start under Section 61 (a) of the Schedule to the Limitation Act. As such mere expiry of the period prescribed thereunder could not extinguish the mortgager's right of redemption and thereby the right of mortgagee to seek declaration of title and ownership over the mortgage property stands untouched.

10. It was contended by learned counsel for the respondents that if the ratio of the aforesaid judgment is applied to the present case, the suit filed by the appellant/plaintiffs would have to be dismissed and earlier order of the Collector would have to be restored.

11. We find force in the submissions of the learned counsel for the respondents.

12. In the circumstances, we follow the aforesaid dictum in the present case and consequently, we dismiss the appeal filed by the plaintiff(s). We affirm the judgment of the high court and dismiss the suit filed by the plaintiff(s).

13. Hence, the Appeal is dismissed in the aforesaid terms.

14. Consequently, the interim order of stay stands vacated.
15. Parties to bear their respective costs.
Pending application(s), if any, shall stand disposed of.

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