

Before Jitendra Chauhan, J.

SARWAN SINGH DECEASED THROUGH HIS L.RS.,—

Appellants

versus

SUKHMANDER SINGH DECEASED THROUGH HIS L.RS

AND OTHERS,—Respondents

R.S.A.No.2698 of 1984

20th September, 2011

Code of Civil Procedure - O. XXXIV- Limitation Act 1963 - Arts. 60, 61 & 62 - Whether mortgagee can become owner of land by efflux of time - Case of Ram Kishan and others Vs. Sheo Ram and others followed 2008 (1) RCR (Civil) 334 - Held that mortgagee did not become owner of land by efflux of time - No time limit is fixed to seek Redemption - Mortgage redeemable even after thirty years - Appeal allowed.

Held, That in view the entire case law, it is held that the legal representatives of Mehnga Singh, the mortgagee did not become owner of the land by efflux of time. In this case admittedly it is usufructuary mortgage. No time limit is fixed to seek redemption. Once a mortgage always a mortgage and is always redeemable even after thirty years. Time limit of thirty years as mentioned in Articles 60, 61 and 62 of the Indian Limitation Act, to seek redemption will not begin to run from the date of mortgage itself but will arise when the mortgagor pays or tenders to mortgagee or deposits in Court, the mortgage money. If the land is not redeemed within thirty years, the mortgagees or their successors in interest cannot seek declaration that they have become owners of the mortgaged land because the mortgaged land could be got redeemed at any time. Any mortgage including usufructuary mortgage can be extinguished only by the act of the

parties or by a decree of the court and not by efflux of time. In essence, it is held that the land is still under mortgage and can be get redeemed at any time by the successors of mortgagors.

(Para 13)

Further Held, That both the above questions are decided in favour of the appellants who are legal representatives of Khem Singh, the original mortgagor. Sadhu Singh, Malkiat Singh, Harbans Kaur, Kulwant Kaur and Smt Gurdial Kaur, L.Rs of Sarwan Singh son of Khem Singh, appellants, are held to be entitled to get the remaining part of the mortgaged land redeemed at any time as per law, as there is no time limit. It is further held that Civil suit No.434 of 1979, filed by Sukhmandar Singh and others against Sarwan Singh is not maintainable and the mortgagee or any body else on his behalf has no right to file suit for declaration that the mortgagee became owner of the land by efflux of time.

(Para 14)

Gaurav Chopra, Advocate for the appellants.

Gurvinder Singh Dhillon, Advocate, for the respondents-

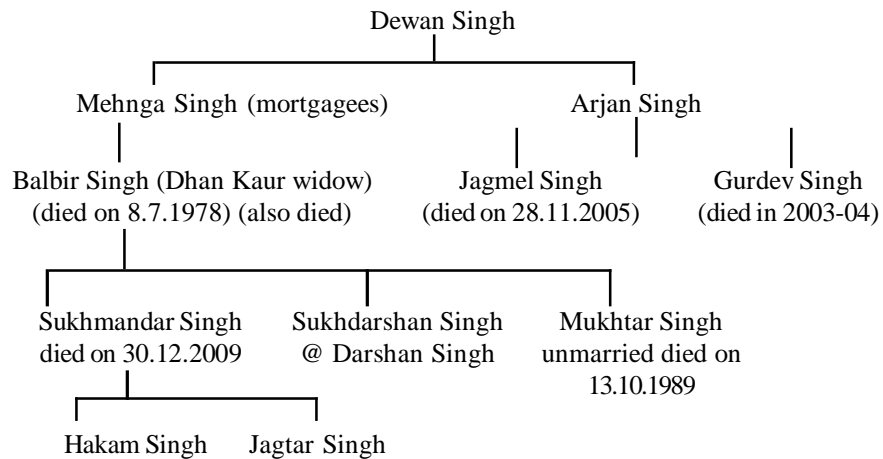
Hakam Singh, Jagtar Singh and Darshan Singh

JITENDRA CHAUHAN, J.

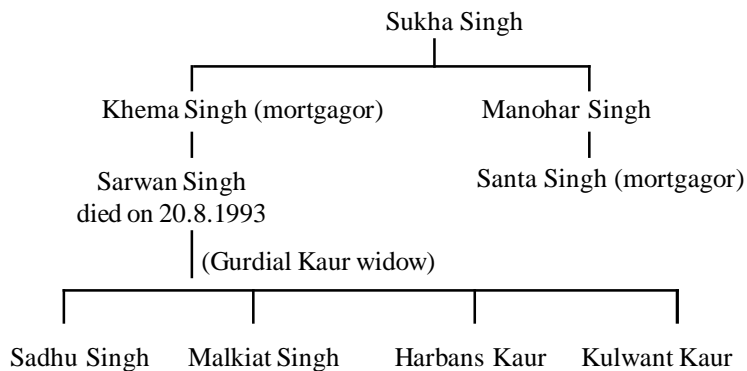
(1) The present appeal has been filed against the judgment and decree dated 18.07.1984, passed by the Additional District Judge, Faridkot, in Civil appeal No.62/257 A of 1982/1983 preferred against the judgment and decree dated 21.12.1981 of Sub Judge I class, Moga, titled as Sukhmandar Singh and others vs Sarwan Singh by which the suit of the mortgagees for declaration was decreed.

(2) The relevant facts gathered from the case file are as under: On 9.5.1951/18.06.1951, Khem Singh and Santa Singh (herein referred to as the mortgagor) mortgaged his land with Mehnga Singh and Arjan Singh sons

of Dewan Singh (herein referred to as the mortgagors). The following pedigree table will be helpful in understanding the facts:-



Mortgagors



(3) On 18.07.1979, Sarwan Singh son of Khem Singh, the deceased mortgagor, filed a civil suit No.295 of 1979, for permanent injunction restraining the defendants i.e. the legal representatives of the mortgagors, from dispossessing him from the land measuring 17 kanals 13 marlas comprising of Rect no.3, killa Nos. 12(4-0), 18(4-0), 19/2(2-9), 19/1(0-13), and 23/1(6-11) situated in village Daroli Tehsil Moga. The suit was dismissed by the Sub Judge Ist class, Moga, vide his judgment and decree dated 21.12.1981. Against this judgment and decree, the present appellant Sarwan Singh preferred Civil appeal No.61/257 of 1982/1983 on 04.03.1982 before the Additional District Judge, Faridkot. The learned Ist

appellate Court, vide its judgment and decree dated 18.7.1984, set aside the judgment and decree dated 21.12.1981 passed by the learned Sub Judge I class, Faridkot and the suit was decreed against the legal representatives of the mortgagees restraining them from dispossessing him from land measuring 17 kanals 13 marlas. It is worthwhile to mention here that this judgment and decree dated 18.7.1984 has attained finality as no appeal was filed by the mortgagees.

(4) On 11.10.1979, Sukhmandar Singh and others the legal representatives of the mortgagees Mehnga Singh and Arjan Singh filed Civil Suit No.434 of 1979 against Sarwan Singh, the legal representative of the mortgagor, for declaration to the effect that they have become absolute owner of the mortgaged land as the mortgagor has lost his right for redemption by efflux of time and the right to redeem the suit land stood extinguished. The learned Sub Judge Ist class, Moga, vide his judgment and decree dated 21.12.1981, decreed the suit for declaration to the effect that Sukhmandar Singh and others have become owners of the suit land mentioned in the head note of the plaint. Sarwan Singh also preferred another civil appeal no.62/257 A of 1982/1983 on 4.3.1982, wherein the Ist Appellate Court, Faridkot, disposing of both the civil appeals on 18.7.1984 by single judgment, modified the judgment and decree passed in Civil Suit No.434 of 1979, decreeing the suit for declaration that Sukhmander Singh, Sukhdarshan Singh alias Darshan Singh, Mukhtiar Singh and Dhan Kaur, legal representatives of Mehnga Singh mortgagee have become owners of half share of Rect no.3, khasra nos.20, 19/1, and 1/4th share in Rect.No.3 khasra nos.18, 19/2, 23/1, 19/3, 23/2 and Rect.No. 11, Khasra No.3/1 situated in Village Daroli Bhai. The suit of Jagmel Singh and Gurdev Singh sons of Arjan Singh, the mortgagee, for grant of declaration claimed by both of them was dismissed. It is relevant to mention here that neither Jagmel Singh nor Gurdev Singh filed any regular second appeal before this Court, so, the judgment and decree passed by the Ist Appellate Court became final qua both of them. It is against this judgment and decree that Sarwan Singh appellant son of Khema Singh, the mortgagor, has filed this regular second appeal no.2698 of 1984, which was admitted on 22nd January, 1985. It is necessary to mention here that at the request of the learned counsel for the appellant the names of respondents no.5 and 6 i.e. Jagmel Singh and Gurdev Singh sons of Arjan Singh mortgagee were struck off from the memo of parties vide order dated 18.3.1985 of this Court.

(5) Now lis is between the legal representatives of late Mehnga Singh, the mortgagor and the legal representatives of late Khem Singh the mortgagor. Balbir Singh son of Mehnga Singh died on 8.7.1978; Mukhtiar Singh son of Balbir Singh son of Mehnga Singh died unmarried on 13.10.1989; Sukhmandar Singh son of Balbir Singh son of Mehnga Singh died on 30.12.2009 and, in the meantime Dhan Kaur widow of Balbir Singh son of Mehnga Singh also died. Jagmel Singh and Gurdev Singh sons of Arjan Singh mortgagor also died in the years 2004/2005. Hakam Singh and Jagtar Singh sons of Sukhmandar Singh; and Sukhdarshan Singh alias Darshan Singh son of Balbir Singh are the surviving legal representatives of the mortgagor Mehnga Singh.

(6) Sadhu Singh and Malkiat Singh, the sons; Harbans Kaur and Kulwant Kaur, the daughters and Gurdial Kaur, the widow of late Sarwan Singh appellant, who is stated to be died on 20.8.1993 have also been brought on record.

(7) Learned counsel for appellant has argued that findings of the learned Sub Judge Ist Class that “Under these circumstances it appears that the suit land has not been redeemed. It has also come in the evidence the mortgage has taken place more than 30 years back and clearly therefore since redemption has not been taken place the defendant have become the owners of the suit land and the right of redemption now stands extinguished. Under these circumstances, the issue is decided in favour of the defendant and against the plaintiff “on issue no.1,” is erroneous and perverse. The learned Ist appellate Court held that the land qua the share of Mehnga Singh, the mortgagor, had not been redeemed and the right to redeem the share of Mehnga Singh stands extinguished by efflux of time. The learned counsel assailed the findings of both the courts below that the right to redeem the property has been extinguished by efflux of time of 30 years. He further argued that the suit for declaration to this effect filed by the legal representatives of the mortgagors that they have become owners of the mortgaged land is not maintainable and liable to be dismissed. He placed reliance on Full Bench of this Court in **Ram Kishan and others versus Sheo Ram and others (1)**.

(1) 2008(1) RCR (Civil) 334; 2008(1) PLR 1; AIR 2008 Punjab 77

(8) Learned counsel for the respondents, the legal representatives of mortgagee, argues that under Article 61 of the Limitation Act, 1963, the period to redeem or recover possession of immovable property mortgaged by a mortgagor is thirty years. The mortgage is of the year 1951. Since no redemption qua the share of Mehnga Singh mortgagee took place within 30 years, the mortgagee or their successors in interest became full owner of the mortgaged land and civil suit to this effect declaring themselves to be the owner is maintainable under Order XXXIV the Code of Civil Procedure. He prays for maintaining the judgments of both the courts below.

(9) This Court has heard the arguments of the learned counsel for the parties and carefully scanned the entire evidence on record with their able assistance.

(10) The substantial question of law arises for consideration are as under:

- (1) Whether there is any time limit for redemption in the case of a usufructuary mortgage?
- (2) Whether a suit for declaration instituted by a mortgagee or his successors in interest in case of usufructuary mortgage becoming full owner in respect of the unredeemed property by efflux of time, is maintainable?

(11) Before starting discussion on the above points, it is mentioned here that the land qua the share of Arjan Singh mortgagee stood redeemed as per findings of the learned Ist appellate Court and the mortgaged land reverted back to the successors in interest of the original mortgagor Khem Singh. The suit for declaration filed by Jagmel Singh and Gurdev Singh, sons of the mortgagee Arjan Singh was dismissed by the learned Ist appellate Court. Neither they came up in appeal nor did they file any cross objections challenging the findings of the first appellate Court, thus these findings have attained finality. Jagmel Singh and Gurdev Singh sons of Arjan Singh, the deceased mortgagor, were made pro forma respondents in this regular second appeal, filed by the legal representatives of co mortgagee Mehnga Singh but on 18.03.1985 their names were struck off by this Court. The controversy comes to an end here qua them.

(12) So, this Court has to decide the above questions of law pertaining to the land mortgaged by Khem Singh, the mortgagor, in favour of Mehnga Singh, the mortgagee, in the year 1951. Admittedly, in the meantime, the consolidation took place in the village and the numbers of khewat, khatauni and khasra might have been changed and another property might have been allotted to the mortgagee in lieu of the property originally mortgaged in the year 1951. But right to redeem will not be affected by it.

(13) Adverting to the main points referred to above, this regular second appeal is squarely covered by the decision of this Court in Full Bench in Ram Kishan and others vs Sheo Ram and others (supra). While referring the entire case law on the points including Ganga Dhar vs Shankar Lal, AIR 1958 Supreme Court 770; Jayasingh Dnyanu Mhoprekar vs Krishna Babaji Patil AIR 1985 Supreme Court 1646; Panchanan Sharma vs Basudeo Prasad Jaganani AIR 1995 Supreme Court 1743; Harbans vs Om Parkash AIR 2006 Supreme Court 686 and Pomal Kanji Gobindji vs Vrajalal Karsandas Purobhit AIR 1989 Supreme Court 436 the entire controversy has been set at rest by the Full Bench of Ram Kishan's case (supra). Keeping in view the entire case law, it is held that the legal representatives of Mehnga Singh, the mortgagee did not become owner of the land by efflux of time. In this case admittedly it is usufructuary mortgage. No time limit is fixed to seek redemption. Once a mortgage always a mortgage and is always redeemable even after thirty years. Time limit of thirty years as mentioned in Articles 60, 61 and 62 of the Indian Limitation Act, to seek redemption will not begin to run from the date of mortgage itself but will arise when the mortgagor pays or tenders to mortgage or deposits in Court, the mortgage money. If the land is not redeemed within thirty years, the mortgagees or their successors in interest cannot seek declaration that they have become owners of the mortgaged land because the mortgaged land could be got redeemed at any time. Any mortgage including usufructuary mortgage can be extinguished only by the act of the parties or by a decree of the court and not by efflux of time. In essence, it is held that the land is still under mortgage and can be get redeemed at any time by the successors of mortgagors.

(14) Both the above questions are decided in favour of the appellants who are legal representatives of Khem Singh, the original mortgagor. Sadhu Singh, Malkiat Singh, Harbans Kaur, Kulwant Kaur and Smt Gurdial Kaur, L.Rs of Sarwan Singh son of Khem Singh, appellants, are held to be entitled to get the remaining part of the mortgaged land redeemed at any time as per law, as there is no time limit. It is further held that Civil suit No.434 of 1979, filed by Sukhmandar Singh and others against Sarwan Singh is not maintainable and the mortgagee or any body else on his behalf has no right to file suit for declaration that the mortgagee became owner of the land by efflux of time.

(15) This regular second appeal is allowed; the judgments and decrees of both the courts below declaring Sukhmandar Singh and others, the legal representatives/successors in interest of Mehnga Singh, the original mortgagee to be the owner of mortgaged land not redeemed, are reversed/set aside by accepting this regular second appeal no.2698 of 1984. Civil suit No.434 of 1979 filed by Sukhmandar Singh and others is hereby dismissed. No costs.

A. Aggarwal

Before K. Kannan, J.

**PUNJAB STATE INDUSTRIAL DEVELOPMENT
CORPORATION LTD.,—*Petitioner***

versus

**CANARA BANK, BRANCH OFFICE, SECTOR 35-B,
CHANDIGARH AND OTHERS,—*Respondents***

C.W.P. No.18635 of 2009

9th August, 2011

Constitution of India - Art. 226/227 - Code of Civil Procedure 1908 - S.34 Finance Corporation Act, 1951 - S. 29 - Banking Regulation Act, 1949 - S.21-A - Companies Act, 1956 - S. 529-A - Debt recovery - Company ordered to be wound up - State Financial Corporation took possession of assets of the company U/s 29 of the Act - Money in surplus with PSIDC after satisfaction of own dues - DRAT provided 9% on money recoverable by banks - Whether interest rate awarded can be interfered with - Held discretion with court to determine rate of interest - Tribunal has found reasons to