has categorically stated that, "I am further of the opinion that no case is made out under Section 113 of the Code of Civil Procedure for making reference to the High Court for declaring the said Regulations as invalid or illegal". Thus, the discretion exercised by the trial Court cannot be interfered with under Section 115 of the Code of Civil Procedure, by this Court. Consequently, the revision petition is dismissed. However, counsel for both the parties agree that a direction be given to the trial Court that the suit be decided within three months from today, if possible. From the nature of the suit, I find that not much evidence may be required to be adduced by the parties. The matter can be disposed of expeditiously. It is, therefore, directed that the trial Court shall dispose of the suit within three months from the date already fixed in the suit. However, there will be no order as to costs.

H.S.B.

Before M. M. Punchhi, J.

JHAO LAL,—*Appellant.*

versus

KISHAN LAL and others,—*Respondents.*

Regular Second Appeal No. 1839 *of* 1968.

March 18, 1980.

Transfer of Property Act (IV of 1882)—*Section* 58—*Specific field numbers subjected to usufructuary mortgage—Certain other rights such as share of* shamlat deh *not specifically included—Such rights—Whether can be said to be impliedly included in the mortgage.*

Held, that a reading of section 58 of the Transfer of Property Act, 1882 would show that a mortgage is the transfer of an interest in specific immoveable property for the purpose of securing payment of money advanced. Advisedly, the legislature in insisting on specifications to immoveable property in the case of mortgage had a twin object in view (i) that the transfer was merely as a security and likely to revert back to the owner, and (ii) the security was likely to be retained by the mortgagee in the event of prescription. In this view of the matter in the case of usufructuary mortgage where possession has also passed there can be no mortgage of implied

immoveable property. If the mortgage deed did not make specific mention of having transferred the shamlat rights, it has to be inferred that the shamlat rights had not been transferred. In permitting implied transfers by way of mortgage, one has to do violence to the language of section 58 of the Act and although the Act may not be strictly applicable to the territories from which this cause has arisen but its general principles framed as they are on the basis of justice, equity and good conscience have to be applied to such transfers. As such, unless the rights transferred are specifically mentioned in the mortgage deed no mortgage rights can be deemed to be implied transferred. (Paras 3 and 4).

Regular Second Appeal from the decree of the Court of Shri Ved Parkash Aggarwal, Additional District Judge, Gurgaon, dated the 12th August, 1968 reversing that of Shri Man Singh Saini, Sub-Judge 1st Class, Ballabgarh, dated the 31st January, 1968 decreeing the suit of the plaintiffs and, leaving the parties to bear their own posts.

Roop Singh Choudhry, Advocate, *for the Appellant.*

Kartar Singh, Advocate, *for the Respondent.*

JUDGMENT

Madan Mohan Punchhi, J.—(Oral).

(1) This is a defendant's appeal against the judgment and decree of Shri Ved Parkash Aggarwal, HCS, District Judge, Gurgaon who decreed the suit against him in full. The trial Court had decreed the suit of the plaintiffs partially. It has arisen on the following premises:—

(2) One Smt. Phulian, widow of Bhura mortgaged land as given in the mortgage deed Exhibit P-1 executed on October 16, 1900, in favour of Tota and others. The defendants are the successors-in-interest of Smt. Phulian and the plaintiffs are the successors-in-interest of Tota and others mortgagees. Undoubtedly, the mortgage deed specifically provided field numbers of the land, the interests in which were subjected to usufructary mortgage. Along therewith there was a recital, which is the subject matter of controversy between the parties i.e., in the words "BAMAI HAKUK DAKHLI VA KHARJI VA MANSAB BISWADARI YANI BANJAR VA CHAYANI VA SHORE VA KALAR VA ABADI VA GAIR ABADI VA DARAKHTAN SAMRAN VA GAIR SAMRAN VA JHIL VA TALAB

VA NADI VA NALA VA QULA VA WALA VA BUR BRAMAD VA DARYA VA BAR VA RET VA KHET etc." The plaintiffs claimed that they had been owners of the mortgaged land by prescription and along therewith had become owners of the *shamlat* share of the mortgagor, on the strength of the aforesaid recital in the mortgage deed. The defendants contested the suit and pleaded that neither had the mortgagees become owners of the land by prescription, nor did the aforesaid recital make them owners of *shamlat rights.* It was also pleaded on their behalf that rights in the *shamlat* were never mortgaged by their predecessors-in-interest. Reliance was also placed by them on the entries of the revenue records where the land stood mortgaged, but without *shamlat* rights. On the pleadings of the parties following issues were framed:—

1. Whether the land in dispute was mortgaged with share of *shamlat* deh ?

2. Whether the mortgage in dispute has become more than 60 years old and therefore the plaintiffs and defendant No. 2 have become the absolute owner of the mortgaged property ?

3. Whether the plaintiffs and defendant No. 2 or their ancestors ever acknowledged the mortgage in question within limitation and to what effect ?

4. Is the suit not maintainable in the present form ?

5. Relief.

Under issue No. 1, the learned trial Court held that the land in dispute was mortgaged with the plaintiffs but without any share of *shamlat deh.* It also held that the mortgage in dispute was more than 60 years old and, therefore, the plaintiffs and the proforma defendants had become absolute owners of the property. It also held issue No. 3 in favour of the defendants, inasmuch as no acknowledgement was ever proved so as to scuttle the claim of land by prescription. On appeal, by the plaintiffs, the learned lower appellate Court, however, took the view that the mortgage of the land included share of the *shamlat deh* as there was no specific mention of those rights having been kept back while executing the mortgage deed Exhibit P-1. It

is this view of the learned lower appellate Court which is being seriously challenged by the learned counsel for the appellant.

3. It was contended that a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payments of money advanced. That has been urged on the strength of the language used in Section 58 of the Transfer of Property Act (hereinafter referred to as the Act). It is the admitted case of the parties that the mortgage was unsufructuary and possession had passed. Now on the bare reading of Exhibit P-1, the mortgage deed, it is patent that specific field numbers have been subjected to mortgage. It only remains to be seen as to whether the view of the learned lower appellate Court that the above said recital reflective of conveying some rights was natured as appendage to the main mortgaged property or were rights conveyed by mortgage in the *shamlat deh*. It has been noticed that the transfer by way of mortgage is of an interest and that too in specific immovable property. Negatively put, there can be no mortgage of implied immovable property. Cases have been cited at the bar, *Sheoji Singh & another* v. *Sheoji Singh and others* (1) by the learned counsel for the respondents, and *Baga and others* v. *Shadi and others*, (2) and *Chaman Lal* v. *Amlok Singh*, (3) by the learned counsel for the appellant, to contend that there can be cases in which impliedly while effecting a sale, *shamlat deh* rights get transferred by the employment of recitals suggesting that implication. The stress and stretch of the language of the aforesaid three decisions help us not because those are cases of sales and from a given set of facts a Court can come to the conclusion that certain rights were impliedly part and parcel of the sale. Sale, as its definition goes, in Section 54 of the Act, is a mere transfer of ownership, in exchange for a price paid or promised to be paid or part paid or part promised. Advisedly, the legislature in insisting specifications to immoveable property in the case of mortgage had a twin object in view, (i) that the transfer was merely as a security and likely to revert back to the owner, and, (ii) the security was likely to be retained by the mortgagee in the event of prescription. It appears to me, as at present advised, that there is no such thing as an implied transfer of immoveable property by way

(1) 1907 P.L.R. 84.
(2) A.I.R. 1970, Pb. & Haryana, 298.
(3) 1980 P.L.J. 26.

of mortgage. The view of the learned lower appellate Court that the mortgage deed did not make specific mention of having kept back the *shamlat* rights, is faulty on the premises that the deed had specifically to mention that the *shamlat* rights had been transferred, failing which it has to be assumed that they were not transferred. In permitting implied transfers by way of mortgage, one has to do violation to the language of Section 58 of the Act. Though strictly speaking, the said Act was not applicable to the territories from which this cause has arisen at the time when the mortgage was executed, but its general principles on the basis of justice, equity and good conscience have always been held to be applied to such like transfers.

4. Additionally, another important piece of evidence, which was dealt with by the learned lower appellate Court, was *jamabandi* Exhibit P-3 and mutation Exhibit P-4 of the year 1908. The mortgagees, while getting the mutation effected in their favour on the basis of the registered deed, did not pray for transfer of *shamlat deh* rights in their favour. It was taken by all concerned that the mortgage deed did not embody the transfer of any interest in *shamlat deh.* For that reason, as it appears, the revenue entries in *jamabandi* Exhibit P-3 came to be written as mortgagees without share in the *shamlat* land. The learned lower appellate Court discarded this entry in the *jamabandi*, unclothing it of the presumption of truth raisable under Section 44 of the Punjab Land Revenue Act solely on the premises that the same was in conflict with the recitals in the mortgage deed. As said before, the deed *per se* cannot be said to have created the mortgage of the *shamlat* rights and necessarily the presumption raised in favour of revenue entries has remained unrebutted from any source.

5. Lastly, it was contended that the learned lower appellate Court had misread the recital in reading the expression "HAKIAT BISWADARI" as "MANSAB BISWADARI". Therefrom, the learned lower appellate Court spelled that the rights mentioned in the above-quoted recital were given to the mortgagees over and above the land that was given to them by the mortgagors. There appears to be a complete misreading of the recital. After the land has been described it as "HAKUK DAKHLI VA KHARJI VA HAKIAT BISWADARI." In other words, the right of ingress and egress and the right to be its co-sharer are mentioned as an appendage to the share in the

joint property transferred in main, whereas the words from "YANI" onwards signify only the descriptive nature of anciliary rights accruing from such land. The rights conveyed in that recital cannot be said to have conveyed any distinct property, other than the property transferred in main. The learned lower appellate Court obviously fell into an error in treating those words to indicate that they pertain to *shamlat deh* contradistinct from the land transferred by way of mortgage. Its view that the words have been used as substitute for "BAMAI HISSA SHAMLAT" are bereft of legal foundation.

6. No other point was urged.

7. For the aforesaid reasons, this appeal is allowed, the judgment and decree of the learned lower appellate Court is set aside, whereas that of the trial Court is restored. In the circumstances of the case, however, there would be no order as to costs.

H.S.B.

Before J. V. Gupta, J.

NASIB CHAND,—*Petitioner.*

versus

MOHAN SINGH and others,—*Respondents.*

Civil Revision No. 873 of 1978.

March 21, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(3) (a) (ii) and 15—Personal necessity pleaded by the landlord—Burden of proof—Mere assertion by the landlord that he requires the premises for his own use—Whether sufficient to discharge the burden.

Held, that it is not sufficient for the landlord to show that he needs the premises for his own use and occupation as he is out of job or he has retired from service. He has to take the courts into confidence and prove to the satisfaction of the Rent Controller that his need is a *bona fide* one. Unless from the evidence on the record it is proved that the requirement or the need of the landlord is a