

2025:PHHC:139982



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2686 of 1997

Reserved on: October 08, 2025

Pronounced on: October 09, 2025

Vishwanath (Deceased) through his LRs

. . . . Appellant

Vs.

Ram Kishan

. . . . Respondent

*** * * ***

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Dharamvir Sharma, Sr. Advocate with
Mr. Manbir Singh, Advocate for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate with
Ms. Muskan Sharma, Advocate for the respondent.

DEEPAK GUPTA, J.

Plaintiff of the case is before this Court in the present regular second appeal against the reversal, inasmuch as suit for declaration filed by him was decreed by the trial Court on 24.02.1995, but allowing the appeal of the defendant – Ram Kishan (*respondent herein*), the First Appellate Court dismissed the suit on 14.05.1997.

2. As per admitted case of the parties, one Pohlo was owner of the land comprised khasra No.1097 (pre-consolidation), out of which suit land was carved out during consolidation. Pohlo had mortgaged the land with possession 70-80 years back in favour of Munshi. The rights of Pohlo were inherited by defendant Ram Kishan, whereas rights of Munshi were inherited by his son Babu Ram. Plaintiff purchased the mortgagee rights through registered sale deed dated 12.12.1984. Claiming that defendant had failed to

get the suit land redeemed despite lapse of more than 30 years, plaintiff sought declaration to have become owner of the suit property.

3. Defendant resisted the claim. After framing issues and taking evidence on record, the trial Court decreed the suit, but the First Appellate Court reversed the findings.

4. The sole question to be determined by this Court is as to whether by mere expiry of the period of 30 years, the right of mortgagor to get the suit property redeemed, is extinguished.

5. The said issue has been dealt with by the Full Bench of Hon'ble Supreme Court in "***Singh Ram (D) through LRs v Sheo Ram and others***", **2014 AIR Supreme Court 3447**, as has been fairly conceded by learned senior counsel for the appellant, wherein it has been held that right to recovery of possession in a case of usufructuary mortgage, commences when the mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by the mortgagor as provided under Section 62 of the Transfer and Property Act, 1882 and until then, limitation does not start for the purpose of Article 61 of the schedule to the Limitation Act, 1963. The Hon'ble Supreme Court further held that in case of usufructuary mortgage, mere expiry of period of 30 years from the date of creation of the mortgage does not extinguish the right of mortgagor under Section 62 of the Transfer and Property Act, 1882.

6. In the present case, as per the findings recorded by the First Appellate Court, there was no cogent evidence as to when the mortgage was created, for how long the same was created and as to what were the terms and conditions of the mortgage. Thus, mortgage was subsisting and there was no evidence to determine the date when the mortgage was created. The revenue record did not provide the basis for determining the limitation of 30 years regarding the redemption of mortgage.

7. In view of the aforesaid factual position based upon evidence on record, it is clear that plaintiff-appellant failed to prove that the period of 30 years for redemption of mortgage had expired.

8. Consequently, by relying upon ***Singh Ram's case (supra)***, it is held that the First Appellate Court did not commit any error in dismissing the suit and by allowing the appeal of the defendant (*respondent herein*). As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

October 09, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No