2026:AHC:129752

A.F.R.
Reserved on 27.02.2026
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HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 5549 of 2019

Shri Ram Prakash and 3 others

…..Petitioner(s)

Versus

Smt. Asha Johri and 3 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Kiran Kumar Arora
Counsel for Respondent(s)	:	Ajay Singh, Bhanu Bhushan Jauhari, Rishi Bhushan Jauhari

Court No. - 33

HON'BLE MANISH KUMAR NIGAM, J.

1. Heard Shri Kiran Kumar Arora, learned counsel for the petitioners, Shri Bhanu Bhushan Jauhari, learned counsel for the respondents and perused the record.

2. This petition has been filed challenging the order dated 13.10.2017 passed by Civil Judge (Junior Division), Bareilly in Original Suit No. 35 of 2016, (Asha Johri and others v. Ram Prakash and others) dismissing the application filed by the

defendants/revisionists against the judgment and order dated 13.10.2017 passed by the Civil Judge (Junior Division) Bareilly.

3. Brief facts of the case are that in the year 1978, one Jagdish Prasad husband of respondent no. 1/plaintiff, mortgaged house bearing No. 333, situate at Mohalla Kunwapur, Bareilly ad-measuring 168.81 sq. meters in favour of the petitioner nos. 1 to 4.

4. The mortgage deed in question was for securing a debt of Rs. 15,000/- given to Jagdish Prasad Johri executant of the mortgage deed and in lieu thereof the house in dispute was mortgaged and the petitioners were put in possession over the house in dispute. It was also settled that the rent of the house will be adjusted towards interest on the sum advanced and the period of mortgage was four years. It was also provided in the mortgage deed that till the entire debt amount is paid, the property will remain in possession of the petitioners and Jagdish Prasad Johri predecessor in interest of the respondents will be entitled for redemption of the mortgage after payment of the loan and in case, the same is not done, will be entitled to get the same by filing a suit. After the death of Jagdish Prasad Johri, a suit was instituted by the heirs of deceased Jagdish Prasad Johri in the court of Civil Judge (Junior Division) Bareilly being Original Suit No. 35 of 2016 for the relief that the defendants be directed to execute the documents for *rehan wapsi* i.e. for cancellation of mortgage deed and shall also hand over actual physical possession of the house mortgaged to the plaintiffs. The aforesaid suit was filed with the allegation that late Jagdish Prasad Johri requested several times to defendants in the suit to take back amount of Rs. 15,000/- which was given to Jagdish Prasad Johri and cancel the mortgage deed and hand over

hand over the possession of the house in dispute. The plaintiff also claimed damages from the date of notice. The notice was replied by the defendants vide notice dated 12.01.2016 wherein the defendants have admitted the mortgage deed and has also admitted that the said mortgage deed was never redeemed and the banker cheque along with notice was returned. It was also stated that the plaintiffs has no right to redeem the mortgage. After being noticed, the defendant nos. 2 to 4 moved an application under Order 7 Rule 11 C.P.C. for rejection of plaint on the ground that the mortgage deed was executed on 28.03.1978 and in the said deed it was specifically mentioned that the mortgage is for the period of four years. The period of four years expired on 28.03.1982. The mortgage was not redeemed by the mortgagor. The limitation for redemption for mortgage is 30 years which has expired on 28.03.2012 and the present suit was filed on 03.03.2016 after the expiry of limitation period and therefore the plaint of the plaintiffs is liable to be rejected. Objections were filed by the plaintiffs/respondents to the application filed by the defendants/petitioners under Order VII Rule 11 C.P.C. The trial court i.e. Civil Judge (Junior Division), Bareilly, on 13.10.2017 rejected the application filed by the defendants/petitioners under Order VII Rule 11 C.P.C. holding that the suit is not barred by limitation as the right to redeem the mortgage arose on 30.12.2015 when the plaintiff give notice for payment of mortgage debt. Against the order dated 13.10.2017, the defendants/petitioners filed revision No. 117 of 2017 before the Civil Judge (Senior Division) Bareilly. The said revision was also dismissed by the revisional court i.e. Additional District Judge, Court No. 9, itself unless a different time is agreed between the parties. It has also been contended by learned counsel for the petitioner that in the mortgage deed it was provided that the period of mortgage is four years and the said period expired on 28.03.1982. It has been further contended by learned counsel for the petitioner that since the mortgagor has right to redeem the mortgage on payment of mortgage money and there can be no restriction to exercise his right on the date of mortgage itself in case no time is prescribed for exercise of such right, the period of limitation starts from the date of execution of mortgage deed and on expiry thereof, the right to recover the possession comes to an end. It has been further contended by learned counsel for the petitioner that in the present case, the said right accrued to the mortgagor on 28.03.1982 after expiry of four years from the date of mortgage i.e. 28.03.1978. The limitation for filing a suit for redemption is 30 years and the said limitation expired on 28.03.2012 and therefore, the suit itself was barred by time. It has been further contended by learned counsel for the petitioner that the expiry of limitation not only bars the remedy but also right to seek possession as provided under Section 27 of the Limitation Act. Learned counsel for the petitioner relied upon judgment of the Supreme Court in case of ***Prabhakaran and others v. M. Azhagiripillai (dead) by LRs. and others; 2006 (3) SCC 484*** and ***Sampuran Singh v. Niranjan Kaur; (1999) 2 SCC 679***. Relying upon the aforesaid judgments of the Supreme Court, learned counsel for the petitioner contended that in case of usufructuary mortgage where no time is fixed for redemption, the right to redeem will accrue immediately on execution of mortgage deed and the mortgagee has to file suit for

6. Per contra, learned counsel for the plaintiffs/respondents submitted that the document in question was a usufructuary mortgage. In view of Section 62 of the Transfer of Property Act, the limitation for filing a suit for redemption of usufructuary mortgage or for recovery of possession will commence whenever the mortgagor gives a notice to the mortgagee to receive back his money and to hand over the possession. In the present case, the plaintiffs send a demand draft of mortgage amount and asked the defendants to hand over the property mortgaged on 30.12.2015, hence, the limitation for filing the suit will start from 30.12.2015 and not earlier as contended by learned counsel for the petitioner. Suit filed by the plaintiff/respondents is within time. It has been contended by learned counsel for the respondents that in an usufructuary mortgage right to recover possession continues till the money is paid either from the rents and profits or where it is partly paid from the rents and profits when the balance is paid by the mortgagor or deposited in court as provided under Section 62 of the Transfer of Property Act. Learned counsel for the respondents further submitted that in the present case, the rent of the property mortgaged was to be adjusted for payment of interest on the sum advanced i.e. Rs. 15,000/- and therefore, the limitation will start only after payment of principal sum i.e. Rs. 15,000/- or on tender being made by mortgagor of the principal amount to the mortgagee which in the present case was done on 30.12.2015 and therefore, the limitation will start from 30.12.2015 and not before.

7. Learned counsel for the respondent submitted that the judgments relied upon by learned counsel for the petitioner in case of ***Prabhakaran and others*** (Supra) and ***Sampuran Singh v.***

does not lay down the correct view in law and has been impliedly over ruled by the Larger Bench. Learned counsel for the respondent relied upon the judgment of the Apex Court in case of ***Singh Ram (D) Thr. L.Rs. v. Sheo Ram*** (Supra) judgment of the Full Bench of Punjab & Haryana High Court in case of ***Ram Kishan and others v. Sheo Ram; AIR 2008 P&H 77***, and judgment of Supreme Court in case of ***Harminder Singh (D) through L.Rs. v. Surjit Kaur (D) through L.Rs. & others; 2022 Legal Eagle SC 1365***.

8. Before considering the rival submissions of the parties, it will be appropriate to refer to the statutory provisions of the Transfer of Property Act as well as Limitation Act:

Sections 58, 60 & 62 of the Transfer of Property Act is as follows:

"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.—(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage -deed.

(b) **Simple mortgage**.—Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(c) **Mortgage by conditional sale**.—Where the mortgagor ostensibly sells the mortgaged property—

[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]

(d) **Usufructuary mortgage**.—Where the mortgagor delivers possession [or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property [or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest [or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(e) **English mortgage.**—Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

[(f) **Mortgage by deposit of title-deeds.**—Where a person in any of the following towns, namely, the towns of Calcutta, Madras, [and Bombay], 3*** and in any other town which the [State Government concerned] may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(g) **Anomalous mortgage**.—A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.]

60. Right of mortgagor to redeem.—At any time after the principal money has become [due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage - money, to require the mortgagee (a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgager.

62. Right of usufructuary mortgagor to recover possession.—In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property [together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],— (a) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid: (b) where the mortgagee is authorised to pay himself from such rents and profits [or any part thereof a part only of the mortgage - money],—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee [the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided."

Article 61 (a) of the Limitation Act is as follows:

"61. By a mortgagor—

a)to redeem or recover possession of immovable property mortgaged;	Thirty years.	When the right to redeem or to recover possession accrues.

9. Before considering case law relied upon by respective parties, it would be useful to consider the nature of mortgage, specially the usufructuary mortgage.

10. Justice Mehmood in case of ***Gopal v. Parsotam (1883) ILR 5 ALL 121, P. 137)*** says of the definition of the mortgage in Section 58 of the Transfer of Property Act, 1881 as under:

"mortgage as understood in this country cannot be defined better

the definition is borne out by the decision by Indian Courts of Justice.”

A mortgage is a transfer of an interest in specific immovable property as security for the repayment of debt. But such interest itself is immovable property. The nature of the right transferred depends upon the form of mortgage. It is sufficient that the transfer should be originally intended as security for the debt. The court will ascertain the intention by looking at the substance and essence of the transaction and not the mere form of the deeds. Even if, deed calls itself a mortgage, its nature will be determined not by the name parties give it but by the jural relationship constituted by it. The question has to be decided with reference to the pre-dominent intention of the parties as gathered from the recitals and the terms of the documents and the surrounding, circumstances, including conduct of the parties. The transfer must be to a living person or persons (Section 5 of the Transfer of Property Act).

In a mortgage, some rights are transferred to the mortgagee and some remain vested in the mortgagor. In order to create a mortgage it is necessary to specify the immovable property. The description must at least be sufficient to identify the property. The purpose or object of mortgage is to secure a debt. The transfer made for the purpose discharging a debt is not a mortgage. The mortgage may be for a present debt or a future debt to secure the payment of the debt. Person executing the mortgage is called mortgagor. A mortgagor must be a person competent to contract and capable to transfer the property. A mortgagee is the person to whom the interest in a immovable property is transferred by the

the tenant to pay rents to the mortgagee but unless there is a clause providing for mortgagee going in possession, there cannot of course be a usufructuary mortgage, as possession of the mortgagee is distinguishing feature for such a mortgage. It follows that there cannot be two different usufructuary mortgage on the same property at the same time. Under a usufructuary mortgage, the mortgagor cannot be sued personally for the debt. The mortgagee remains in possession until the mortgage money is paid.

11. In Mulla's The Transfer of Property Act, Ninth Edition, certain statements are relevant. They read as follows:

> *"Right of redemption: The mortgagor in Indian Law is the owner who had parted with some rights of ownership and the right of redemption is a right which he exercises by virtue of his residuary ownership to resume what he has parted with. The Section affirms a right of redemption in all mortgagees and thus carries out the recommendation of the Privy Council in Thumbuswamy's case (1875 1 Mad 1, 2 IA, 241) that the Legislature should intervene to recognize a right of redemption in mortgagees by conditional sale. In India this right of redemption is, however, a statutory one, and, therefore a legal right as stated by the judicial committee. Right of redemption cannot be extinguished by any agreement made at the time of the mortgage as part of the mortgage transaction.*
>
> *The right of redemption is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists. It can be extinguished as provided in the section and when it is alleged to be extinguished by a decree, the decree should run strictly in accordance with the forum prescribed for the purpose. Dismissal of an earlier suit for redemption whether as abated or as withdrawn or in default would not be barred the mortgagor from filing a second suit for redemption so long as the mortgage subsists and the right of redemption is not extinguished by the efflux of time or by a decree of the court in the prescribed form.*
>
> *A redemption pre-supposes the existence of a `mortgage'. As defined in the Act, a mortgage is a transfer of an interest in*

become due, the mortgagor has a right to pay the mortgage money and on such payment, he has the right to require the mortgagee to deliver possession. This right cannot be extinguished except by the act of parties or by a decree of a Court. This right is called the right to redeem and a suit to enforce it is called a suit for redemption. Thus the scope of a suit for redemption is preliminary to enforce the right to make a payment of the mortgage money. A claim to redeem a mortgage actually does not attach to the land, although the decree passed in the suit may ultimately affect possession which is also an interest in land.

The section is not prefaced by any such words as in the absence of a contract to the contrary'. The right of redemption is therefore a statutory right which cannot be fettered by any condition which impedes or prevents redemption. Any such condition is void as a clog on redemption."

12. The authoritative work of Dr. Rashbehary Ghose's "Law of Mortgage", which has received the approval of various High Courts and the Supreme Court, the maxim 'once mortgage, always a mortgage has been explained as under (Eighth Edition - Page Nos. 280-281) under the heading "Once a Mortgage, always a mortgage: is quoted as under:

"In 1681 Lord Nottingham in the leading case of Harris v. Harris (1681) 1 Vern 33 firmly laid down the principal: 'Once a mortgage,' always a mortgage.' This is a doctrine to protect the mortgagor's right of redemption: It renders all agreements in a mortgage for forfeiture of the right to redeem and also encumbrances of or dealings with the property by the mortgagee as against a mortgagor coming to redeem. In 1902 the well-known maxim, 'once a mortgage, always a mortgage' was supplemented by the words and nothing but a mortgage' added by Lord Davey in the leading case of Noakes v. Rice 1902 A.C. 24 (H.L.) : (1900-3) A11 E.R Rep 34, in which the maxim was explained to mean 'that a mortgage cannot be made irredeemable and a provision to that effect is void'. The maxim has been supplemented in the Indian context by the

> invalid. And this is an exception to the aphorism, modus et conventio vincunt legem (custom and agreement overrule law). Secondly, the mortgagee cannot reserve to himself any collateral advantage outside the mortgage agreement. Thirdly, as a corollary from the first another principal may be deduced, namely, 'once a mortgage, always a mortgage, and nothing but a mortgage'. In other words, any stipulation which prevents a mortgagor from getting back the property mortgaged is void. That is, a mortgage is always redeemable.
>
> The maxim 'once a mortgage, always a mortgage' may be said to be a logical corollary from the doctrine, which is the very foundation of the law of mortgages, that time is not of the essence of the contract in such transactions; for the protection which the law throws round the mortgagor might be rendered wholly illusory, if the right to redeem could be limited by contract between the parties (For a very curious case mentioned in the books in which the mortgagor was permitted to redeem, although he had solemnly sworn on the Bible never to exercise the right, see Stistefl's case cited in East India Co. v. Atkyns 1 Compyn 348). Right to redeem is an incident of a subsisting mortgage and is inseparable from it so that the right is co-extensive with the mortgage itself. The right subsists until it is appropriately and effectively extinguished either by the acts of the parties concerned or by a proper decree of the competent court.”

13. In case of ***Lachhman Singh v. Natha Singh through Harnam Singh and others; 1940 AIR Lahore 401 (FB)***, Full Bench of Lahore High Court held in paragraph nos. 5 to 11 as under:

> “5. Before examining the provisions of the Act, it seems necessary to determine the exact nature of the transactions in question and the rights and obligations of the parties under them. From the conditions of the mortgages already given, it will appear that they are "usufructuary mortgages" as defined in cl. "(d), Section 58, Transfer of Property Act. That Act, of course, is not in force in the Punjab, but the definitions of the various kinds of mortgages given in it have always been accepted as correctly describing their essential ingredients and incidents. This definition is as follows:
>
> (d) Where the mortgagor delivers possession or expressly or

> mortgage money, the transaction is called a "usufructuary mortgage," and the mortgagee a "usufructuary mortgagee."

6. It will be seen that the characteristics of a usufructuary mortgage, as defined above, are: (1) that the possession of the mortgaged property is delivered, or agreed to be delivered, to the mortgagee; (2) that he is to appropriate the rents and profits either (a) in lieu of interest, or (b) towards the principal, or (c) partly in lieu of interest and partly in payment of the principal; (3) that in none of these cases the mortgagor incurs any personal liability to repay; and (4) as the mortgagor has not bound himself to repay (but may repay if and when he chooses) there can be no "forfeiture" and therefore the remedies by way of foreclosure or sale are not open to the mortgagee.

7. These propositions are too well established to require an elaborate discussion. In Ram Narain Singh v. Adindra Nath AIR 1916 Privy Council 119, their Lordships of the Privy Council after examining the particular deed before them held that, having regard to the nature of the deed which was a usufructuary mortgage only and to its terms, any personal liability on the part of the "mortgagor was excluded." Again, there is a large number of cases in which it has been held that a usufructuary mortgagee is not entitled to sue for sale of the property (Chathu v. Kunjan, Sadashiv v. Vyankatrao, Umrao v. Umrao Begam, and Luchmeshar Singh v. Dookh Mochan Jha and where there is a stipulation to the contrary the transaction ceases to be one of "usufructuary mortgage" but is what is described as an "anomalous mortgage." As stated in (2) above, usufructuary mortgages are of three kinds. Of these, the two described in (b) and (c) are self redeeming; the mortgagee has to look to the rents and profits only to re-pay himself and when his entire charge is so liquidated he must re-deliver possession of the mortgaged property to the mortgagor free from all encumbrances. A common instance of this kind of mortgage found in the Punjab, especially in the western districts, is the lekha mukhi mortgage where the mortgagee takes over the land and binds himself to keep the lekha (account) of the produce, and as soon as the principal and interest have been paid off therefrom, he must surrender the property to the mortgagor. In this mortgage the mortgagor undertakes no personal liability and while he is competent at any time to claim redemption on payment of the amount found to be due under the mortgage the mortgagee is not entitled to sue for his debt (per Plowden J. in Gahimal v. Shera). Another familiar instance of this kind of mortgage is the one permitted under Section 6 or Section 14, Punjab Alienation of Land Act, in which the entire principal and interest is automatically wiped off within a specified period, not exceeding 20 years, irrespective of whether the rent and profits actually realized by the mortgagee are more or less than the principal sum secured and interest due thereon. In this case also there is no personal liability of the

known to the Hindu lawyers under the expressive name of bhog bandakam which literally means "mortgage (bandaka) by enjoyment (bhog)." It was a mortgage for an indefinite period, during which the mortgagee enjoyed the usufruct and the mortgagor was entitled to redeem at any time on payment of the principal. It retained its popularity during the Mughal period, especially among the Mahomedan creditors who by obtaining possession of property (as a zer-i-peshgi lessee and under other similar names) and appropriating the rents and profits till redemption, could find a safe investment for their money without charging interest. This form of mortgage is not peculiar to India alone. It has been described by Dr. Ghose and other standard writers as analogous to what was known as a 'Welsh mortgage' in England, where it has now become obsolete. But it has been the subject of judicial consideration in Ireland in recent times, and there are reported cases to which reference may usefully be made. In Balfe v. Lord (1842) 2 Dr & War 480, Lord St. Leonards described a Welsh mortgage as one under which the lender goes into possession of the rents and continues to receive them until the party who borrowed the money, chooses to redeem and this he is always permitted to do, so that the peculiarity is that while there can be no foreclosure on the part of the mortgagee, still the right of redemption subsists in the mortgagor.

9. More recently in Ireland, in Cassidy v. Cassidy (1890) 24 LR Ir 577 Johnson J. described a Welsh mortgage as a kind of security by which on the one side the land is assured to the lender as his security--his possession of the land and enjoyment of the profits being in lieu of interest--while on the other side, the borrower is under no personal obligation to pay the principal money but is entitled to redeem at any time upon its payment.

10. Again, In Re Cronin (1914) 1 Ir R 23 it was pointed out that a power of sale was wholly inconsistent with the 'continuing' right of redemption which the Welsh mortgage carries and that the express inclusion in the security of such a stipulation showed that security was not a Welsh mortgage.

11. It will be clear from the foregoing discussion that the principal characteristics of a usufructuary mortgage are that there is no personal liability of the mortgagor to pay, nor has the mortgagee a right to have the mortgaged property brought to sale…….”

14. In case of ***Prabhakaran and others*** (Supra) relied upon by learned counsel for the petitioner, it has been held by the Apex Court in case of usufructuary mortgage which does not fix any date for redemption of mortgage money, but merely specifies that mortgagee is entitled to be in possession till redemption right to

> *"11. Article 148 of the Limitation Act, 1908 (referred to as 'old Act') provided a limitation of 60 years for a suit against a mortgagee, to redeem or to recover possession of immovable property mortgaged. The corresponding provision in the Limitation Act, 1963 ('new Act' or 'Limitation Act' for short), is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property mortgaged is 30 years. The period of limitation begins to run when the right to redeem or to recover possession accrues. In the case of a usufructuary mortgage which does not fix any date for repayment of the mortgage money, but merely stipulates that the mortgagee is entitled to be in possession till redemption, the right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to file a suit for redemption within 30 years from the date of the mortgage. Section 27 of the Limitation Act provides that "at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished". This would mean that on the expiry of the period of limitation prescribed under the Act, the mortgagor would lose his right to redeem and the mortgagee would become entitled to continue in possession as the full owner."*

15. In case of ***Sampuran Singh v. Niranjan Kaur*** (Supra), relied upon by learned counsel for the petitioner, the Supreme Court has held in paragraph no. 14 as under:

> *"14. Submission was, as aforesaid, right to redeem only accrue when either mortgagors tender the amount of mortgage or the mortgagees communicate satisfaction of the mortgage amount through the usufruct from the land. This submission is misconceived, as aforesaid, if this interpretation is accepted, then till this happens the period of limitation never start running and it could go on for an infinite period. We have no hesitation to reject this submission. The language recorded above makes it clear that right of redemption accrues from the very first day unless restricted under the mortgage deed. When there is no restriction mortgagors have a right to redeem the mortgage from that very date when the mortgage was executed. Right accruing means, right either existing or coming into play thereafter. Where no period in the mortgage*

hence the period of limitation of 60 years would start from the very date of oral mortgage that would be from March, 1893. In view of this, we do not find any error in the decision of the first Appellate Court or the High Court holding that the suit of the present appellants is time barred."

16. In case of ***Singh Ram v. Sheo Ram*** (supra) relied upon by learned counsel for the respondents in paragraph no. 2 of the judgment, the Supreme Court has quoted the question which was referred to the Larger Bench of the Supreme Court, same is quoted as under:

"2. These matters have been put up before this Bench in pursuance of the order passed by a Bench of two Judges on 18.08.2008, as under:

"As it appears that observations made by this Court in Prabhakaran & Ors. v. M. Azhagiri Pilolai & Ors., reported in 2006 (4) SCC 484: (AIR 2006 SC 1567), in regard to the interpretation and/or application of Article 61 of the Schedule appended to the Limitation Act, 1963 are contrary to the principals laid down by this Court in a large number of decisions, including Jayasingh Dhyanu Mhoprekar & Anr. v. Krishna Babaji Patil & Anr. [1985(4) SCC 162] (AIR 1985 SC 1646) as also various decisions referred to by the Full Bench of the High Court, we are of the opinion that the matter should be heard by a larger Bench.

Before adverting to the question of reconciling conflicting opinions in various decisions, including the two decisions referred to above, we consider it appropriate to mention that by the impugned judgment, the Full Bench of the High Court of Punjab and Haryana at Chandigarh, considered the question "whether there is any time limit for usufructuary mortgagor to seek redemption?" and decided the said question in the negative, in favour of the respondent-mortgagor as follows:-

"Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on 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 the balance thereof.

"8. The main contention urged on behalf of the appellants is that the right of mortgagor to redeem is governed by Article 61 of the Schedule to the Limitation Act and the right to redeem or recover possession accrues on the date of the mortgage itself, unless a different time is agreed between the parties. Since the mortgagor has right to redeem on payment of the mortgage money and there can be no restriction on the mortgagor to exercise his right on the date of mortgage itself, period of limitation starts on the date of mortgage and on expiry thereof, right to recover possession comes to an end. The expiry of limitation not only bars the remedy but also the right to seek possession as provided under Section 27 of the Limitation Act. It is submitted that this Court has dealt with the issue in Sampuran Singh & Ors. vs. Niranjan Kaur (smt.) & Ors., (1999) 2 SCC 679. There is no occasion to reconsider the said view. Reliance is also placed on a Full Bench decision of the High Court of Himachal Pradesh in Bhandaru Ram (D) Thr. L.R. Ratan Lal vs. Sukh Ram, AIR 2012 (H.P.) 1 (FB) wherein the impugned judgment of the Full Bench of the Punjab and Haryana High Court has been expressly dissented from and it has been concluded that the period of limitation for filing a suit for recovery of possession of immovable property or redemption of usufructuary mortgage, which have not fixed any time for repayment of mortgage money, is 30 years from the date of mortgage, as prescribed under Article 61 of the Schedule to the Limitation Act, 1963 (60 years under Article 148 as per Indian Limitation Act, 1908).

9. Learned counsel for the respondents support the view taken by the High Court and submit that the usufructuary mortgage was different from any other mortgage and the person, who parts with possession of his property from rents and profits of which the mortgagee was entitled to recover the mortgage money, could not be placed at par with a mortgagor who had not given possession of the property to mortgagee and allowed the usufruct of the property to be used for payment of mortgage money. In such cases, limitation could not run from the date of mortgage but from the date mortgage money is paid out of rents and profits of the property to the knowledge of the mortgagor or from the date of payment or deposit by the mortgagor. Mere expiry of time from the date of mortgage could not extinguish the right of redemption and to recover *profits or where it is partly paid out of rents and profits when the balance is paid by the mortgagor or deposited in Court as provided under Section 62 of the T.P. Act.*

13. We may now refer to decisions of this Court.

(i) In Prabhakaran & Ors. vs. M. Azhagiri Pillai & Ors., (2006) 4 SCC 484, suit of mortgagor for redemption was held to be within limitation. However, in para 13, it was observed:-

> *"13. Article 148 of the Limitation Act, 1908 (referred to as "the old Act") provided a limitation of 60 years for a suit against a mortgagee to redeem or to recover possession of immovable property mortgaged. The corresponding provision in the Limitation Act, 1963 ("the new Act" or "the Limitation Act" for short), is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property mortgaged is 30 years. The period of limitation begins to run when the right to redeem or to recover possession accrues. In the case of a usufructuary mortgage which does not fix any date for repayment of the mortgage money, but merely stipulates that the mortgagee is entitled to be in possession till redemption, the right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to file a suit for redemption within 30 years from the date of the mortgage. Section 27 of the Limitation Act provides that "at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished". This would mean that on the expiry of the period of limitation prescribed under the Act, the mortgagor would lose his right to redeem and the mortgagee would become entitled to continue in possession as the full owner."*

> *The above observations do not take into account the special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession*

> *conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the T.P. Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of right of redemption after 30 years.*
>
> *15. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession commences in the manner specified therein, i.e., 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.*
>
> *16. On this conclusion, the view taken by the Punjab and Haryana High Court will stand affirmed and contrary view taken by the Himachal Pradesh High Court in Bhandaru Ram (D) Thr. L.R. Ratan Lal vs. Sukh Ram (supra) will stand over-ruled."*

18. The Full Bench judgment of the Punjab & Haryana High Court in case of ***Ram Kishan and others v. Sheo Ram*** (Supra), which has been upheld by the Supreme Court in case of ***Singh Ram v. Sheo Ram*** (Supra) in paragraph nos. 44, 45, 47 & 48, the Full Bench has held has under:

> *"44. Section 60 of the Act is general in nature applicable to all kinds of mortgages including usufructuary mortgage which is evident from Clause (b) of Section 60 of the Act, where the mortgagee in possession of the mortgaged property is required to deliver possession to the mortgagor. But Section 62 of the Act is a special provision dealing only with the rights of usufructuary mortgagor. In terms of Clause (a) of Section 62 of the Act, the suit is for possession after the mortgage comes to an end by self redeeming process as the mortgagee is*

out of the usufruct of the mortgaged property are adjusted towards the interest or the principal and on mortgagor paying the balance in the manner prescribed. In such mortgages, rents and profits are to be set off against interest and the mortgagee is entitled to retain possession until such time as the mortgagor chooses to redeem on payment of.the principal sum secured. Such right for possession will accrue after the mortgage money is paid off.

45. The limitation of 30 years under Article 61(a) beings to run "when the right to redeem or the possession accrues". The right to redemption or recover possession accrues to the mortgagor on payment of sum secured in case of usufructuary mortgage, where rents and profits are to be set off against interest on the mortgage debt, on payment or tender to the mortgagee, the mortgage money or balance thereof or deposit in the court. The right to seek foreclosure is co-extensive with the right to seek redemption. Since right to seek redemption accrues only on payment of the mortgage money or the balance thereof after adjustment of rents and profits from the interest thereof, therefore, right of foreclosure will not accrue to the mortgagee till such time the mortgagee remains in possession of the mortgaged security and is appropriating usufruct of the mortgaged land towards the interest on the mortgaged debt. Thus, the period of redemption or possession would not start till such time usufruct of the land and the profits are being adjusted towards interest on the mortgage amount. In view of the said interpretation, the principle that once a mortgage, always a mortgage and, therefore always redeemable would be applicable.

47. Thus, we prefer to follow the dictum of law Lald down by the larger Bench in Seth Ganga Dhar's case (supra) as well as judgments of Hon'ble Supreme Court in Jayasingh Dnyanu Mhoprekar's case (supra), Pomal Kanji Govindji's case (supra), Panchanan Sharma's case (supra) and Harbans 's case (supra) in preference to the judgments relied upon by the mortgagees in Prabhakaran's case (supra) and Sampuran Singh's case (supra).

48. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise

19. Thus, right of redemption of a mortgagor being a statutory right, the same can be taken away only in terms of the proviso to Section 60 of the Transfer of Property Act which is extinguished either by a decree or by act of the parties.

20. In a very recent judgment in case of ***Harminder Singh (D) through L.Rs.*** (Supra) the view taken by the Supreme Court in case of Singh Ram v. Sheo Ram (Supra) has been reaffirmed.

21. So far as the contention of learned counsel for the petitioners is concerned that the time prescribed in the mortgage deed was four years and therefore, the cause of action for filing the suit for redemption of mortgage will start after expiry of four years is also misconceived, for the reason that at the best the time of four years as prescribed in the mortgage deed can be said that during this period of four years mortgagor could not have filed a suit for redemption of mortgage. Whether the said restriction would amount to the clog on the rights of the mortgagor, I am not inclined to consider the same but it cannot be said that the limitation will start running after expiry of the aforesaid four years period.

22. From the law as discussed above, I am of the considered opinion that the limitation will start only after payment or tender of payment by the mortgagor to the mortgagee of the amount due in case of usufructuary mortgage and not otherwise.

23. In the facts of the present case, it is admitted that it was only for the first time on 30.12.2015, the notice was given to the petitioners along with pay orders for payment of the principal sum to the defendants which was refused by them. The limitation will

24. In view of the above, no error has been committed by the courts below in dismissing the application filed by the petitioners under Order VII Rule 11 C.P.C. for rejecting the plaint on the ground that the suit was barred by limitation.

25. Consequently, the writ petition fails and is **dismissed**.

26. No order as to cost.

27. Interim order, if any, stands discharged.

(Manish Kumar Nigam,J.)

July 1, 2026
Ved Prakash