

## **R. RAMA REDDY v. B. NARAYANAPPA , (2022-2)206 PLRIJ 024 (Kar.) (SN), 2022 PLRonline 0191**

HIGH COURT OF KARNATAKA AT BENGALURU

*Before: Mr.Justice R.Nataraj*

R. RAMA REDDY – Appellant,

*Versus*

B. NARAYANAPPA S/O SAMPAIAH – Respondents.

R.S.A. NO.2096 OF 2008 (RES)

24.05.2022

**Limitation Act, Art. 61 – Usufructual mortgage – Right to redeem has been held to continue till the mortgage money is paid for which there is no time limit.**

Suit was filed for a Judgment and Decree directing the defendant to receive the mortgage money and to return the mortgage deed after duly endorsing its discharge and to deliver possession of the suit property to the plaintiffs – The plaintiff executed a usufructuary mortgage in favour of the defendant in 1962 mortgaging the suit property for a sum of Rs.400/- – It was understood that the defendant shall enjoy the usufructs and appropriate the same towards the interest and the period of mortgage was five years from the date of execution of the deed – The plaintiffs claimed that after the expiry of five years, the defendant requested the plaintiff to permit him to continue in possession of the suit property – In 1989, the defendant filed a suit for the relief of declaration that he had perfected his title to the suit property by adverse possession and sought perpetual injunction to protect his possession – The said suit was decreed in part and possession of the defendant was protected – After disposal of the suit, the plaintiffs caused a notice to receive the mortgage money of Rs.400/- and deliver back possession – Since the defendant failed to comply, the plaintiffs deposited a sum of Rs.400/- before the Court and hence, sought redemption of mortgage and delivery of possession – Defendant claimed that the suit for redemption is filed after 30 years and hence it is barred by law of limitation and that since the plaintiffs had failed to seek redemption of the mortgage and in view of the decree of perpetual injunction, he had perfected his title to the suit property by adverse possession – Since the execution of the mortgage deed and the delivery of the possession under the mortgage deed is not disputed by the defendant, the First Appellate Court was justified in directing the redemption of the mortgage and delivery of possession.

### **JUDGMENT**

**R.Nataraj** – (24.05.2022) – This Regular Second Appeal is filed by the defendant in O.S.No.161/1999 on the file of the Prl.Civil Judge (Jr.Dn.), Malur (henceforth referred to as

‘Trial Court’) challenging the divergent Judgment and Decree of the First Appellate Court in R.A.No.316/2006 by which it reversed the Judgment and Decree of the Trial Court dated 30.09.2006 and decreed the suit for redemption of the mortgage.

2.The parties shall henceforth be referred as they were arrayed before the Trial Court.

3.The suit in O.S.No.161/1999 was filed for a Judgment and Decree directing the defendant to receive the mortgage money and to return the mortgage deed after duly endorsing its discharge and to deliver possession of the suit property to the plaintiffs. The plaintiffs claimed that the land bearing Sy.No.49/3 of Seethanayakanahalli village, Lakkur Hobli, Malur Taluk measuring 2 acres belonged to Muniyamma, the wife of plaintiff No.1 and the mother of plaintiff Nos.2 and 3. The plaintiff No.1 executed a usufructuary mortgage in favour of the defendant on 24.09.1962 mortgaging the suit property for a sum of Rs.400/-. It was understood that the defendant shall enjoy the usufructs and appropriate the same towards the interest and the period of mortgage was five years from the date of execution of the deed. The plaintiffs claimed that after the expiry of five years, the defendant requested the plaintiff No.1 to permit him to continue in possession of the suit property. However, in the year 1989, the defendant filed a suit in O.S.No.163/1989 for the relief of declaration that he had perfected his title to the suit property by adverse possession and sought perpetual injunction to protect his possession. The said suit was decreed in part on 06.04.1999 and possession of the defendant was protected. After disposal of the suit, the plaintiffs caused a notice dated 22.4.1999 to receive the mortgage money of Rs.400/- and deliver back possession. Since the defendant failed to comply, the plaintiffs deposited a sum of Rs.400/- before the Court and hence, sought redemption of mortgage and delivery of possession.

4.The defendant contested the suit and denied the averments of the plaint. He claimed that the suit for redemption is filed after 30 years and hence it is barred by law of limitation. He further claimed that since the plaintiffs had failed to seek redemption of the mortgage and in view of the decree of perpetual injunction granted in O.S.No.163/1989, he had perfected his title to the suit property by adverse possession.

5.Based on these rival contentions, the Trial Court framed the following issues:

1)Whether plaintiffs prove that the wife of plaintiff No.1 and mother of plaintiffs No.2 and 3 by name Muniyamma has executed a registered possession mortgage in favour of defendant on 24.9.1962 for consideration of Rs.400/- for a period of 5 years?

2) Whether plaintiffs further prove that the Muniyamma and defendant had agreed in the mortgage deed that the defendant has to enjoy the schedule property in favour of mortgage amount of Rs.400/- for 5 years and then redeem it?

3) Whether plaintiffs further prove that they approached defendant to receive the mortgage amount and to execute the redeem of mortgage deed in their favour?

4) Whether plaintiffs are entitled to get redeem the suit schedule property?

- 5) Whether plaintiffs prove that they are entitled for delivery of possession of suit schedule property in their favour?
- 6) Whether the plaintiffs further prove that they are entitled for mesne profit from the date of suit till delivery of possession? If so at what rate?
- 7) Whether defendant prove that the suit of the plaintiff is barred by limitation?
- 8) Whether defendant further prove that he has become the absolute owner and he is in absolute possession of suit schedule property since the limitation period for redemption of mortgage has expired?
- 9) What reliefs the parties are entitled to?
- 10) What order or decree?

6.The Trial Court treated issue No.7 as a preliminary issue and by its Judgment and Decree dated 30.09.2006, held that the suit is filed beyond the period of limitation prescribed under Article 61 of the Limitation Act, 1963. It held that the right to seek redemption of the mortgage accrued on 24.06.1967 but the suit was filed on 27.05.1999 which was beyond the period of 30 years prescribed under Article 61 of the Limitation Act, 1963 and hence dismissed the suit.

7.Being aggrieved by the aforesaid Judgment and Decree of the Trial Court, the plaintiffs filed R.A.No.316/2006.

8.The First Appellate Court secured the records of the Trial Court, heard the counsel for the parties and framed the following points for consideration:

1)Whether the appellant has established that Judgment and Decree passed by the lower court in O.S.161/1999 is illegal and capricious and not based on the pleadings and evidence, requiring interference at the hands of this court?

2)What order?

9.The First Appellate Court held that the defendant had lost his claim for title in O.S.No.163/1989 which became final. It held that the decree in O.S.No.163/1989 was itself explicit in as much as it gave liberty to plaintiffs to recover the possession of the suit property through the process known to law. It also held though the plaintiffs were required to file the suit within 30 years from 24.06.1967, yet since the parties were litigating over the same property in O.S.No.163/1989 from 28.08.1989 to 06.04.1999, the period of time consumed in pursuing O.S.No.163/89 had to be excluded. Hence, it held that the suit filed for redemption was within time. It also held that since the defendant had been in possession of the suit property and utilizing the usufructs, the defendant was liable to account for the mense profits. Hence it allowed the appeal and set aside the Judgment and Decree of the Trial Court and decreed the suit directing the defendant to receive the mortgage money deposited in the Court and to deliver up possession of the suit property to

the plaintiffs.

10. Being aggrieved by the aforesaid Judgment and Decree of the First Appellate Court, the defendant has filed this Regular Second Appeal.

11. This appeal was admitted to consider the following substantial question of law:

“Whether the lower appellate court was justified in holding that the suit of the plaintiffs is within time and thereby committed error in applying the provisions of Sec.14 of the Limitation Act in the instant case?”

12. The learned counsel for the defendant submitted that the period prescribed under Article 61 of the Limitation Act cannot be enlarged under any circumstance. He contended that the expiry of the period of limitation not only bars the remedy, but also the right to recover possession as provided under Section 27 of the Limitation Act, 1963. In this regard, he relied upon the judgment of the Hon’ble Supreme Court in *Sampuran Singh and others vs. Niranjana Kaur (Smt.) and others* [1999(2) SCC 679].

13. Per contra, the learned counsel for the plaintiff submitted that the Full Bench of the Punjab and Haryana High Court in *Ram Kishan v. Sheo Ram and others* [ILR (2008)1 P & H 719] held that there is no limitation in case of usufructuary mortgage as “once a mortgage always a mortgage.” He submitted that the judgment of the Punjab and Haryana High Court was upheld by the Hon’ble Supreme Court in *Singh Ram (dead) through Legal Representatives v. Sheo Ram and others* [(2014)9 SCC 185]. This position of law was reiterated by the Hon’ble Supreme Court in Civil Appeal No.1541 of 2011 in *Ram Rattan (dead) by LRs. vs. Devi Ram and others* decided on 07.10.2021.

14. Article 61 of the Limitation Act, 1963 reads as follows:

15. The Hon’ble Supreme Court in *Singh Ram* (Supra) held as follows:

“12. A perusal of the above provisions shows that Article 61 refers to the right to redeem or recover possession. While right of mortgagor to redeem is dealt with under Section 60 of the TP Act, the right of usufructuary mortgagor to recover possession is specially dealt with under Section 62. Section 62 is applicable only to usufructuary mortgages and not to any other mortgage. The said right of usufructuary mortgagor though styled as “right to recover possession” is for all purposes, right to redeem and to recover possession. Thus, while in case of any other mortgage, right to redeem is covered under Section 60, in case of usufructuary mortgage, right to recover possession is dealt with under Section 62 and commences on payment of mortgage money out of the usufructs or partly out of the usufructs and partly on payment or deposit by the mortgagor. This distinction in a usufructuary mortgage and any other mortgage is clearly borne out from the provisions of Sections 58, 60 and 62 of the TP Act read with Article 61 of the Schedule to the Limitation Act. Usufructuary mortgage cannot be treated on a par with any other mortgage, as doing so will defeat the scheme of Section 62 of the TP Act and the equity. This right of the usufructuary mortgagor is not only an equitable right, it has statutory recognition under Section 62 of the TP Act. There is no principle of law on which this right can be defeated.

*Any contrary view, which does not take into account the special right of usufructuary mortgagor under Section 62 of the TP Act, has to be held to be erroneous on this ground or has to be limited to a mortgage other than a usufructuary mortgage. Accordingly, we uphold the view taken by the Full Bench that in case of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor under Section 62 of the TP Act.”*

16. In the present case, the defendant had filed a suit for a declaration that he had perfected his title to the suit property by adverse possession and the Trial Court had granted an order of interim injunction. The fact of execution of the mortgage deed and the delivery of possession of the suit property under the mortgage deed to the defendant is not in dispute. In so far as usufructual mortgage is concerned, the right to redeem has been held to continue till the mortgage money is paid for which there is no time limit. In view of the authoritative pronouncement of the Hon'ble Supreme Court in *Singh Ram vs. Sheo Ram* (Supra), the issue is no longer res integra in view of the following finding:

*“22. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the TP 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 the 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.”*

17. Consequently, the substantial question of law framed by this Court is answered accordingly. Since the execution of the mortgage deed and the delivery of the possession under the mortgage deed is not disputed by the defendant, the First Appellate Court was justified in answering the other issues framed by the Trial Court and directing the redemption of the mortgage and delivery of possession. Consequently, the Judgment and Decree of the First Appellate Court does not call for interference and hence, this appeal fails and is dismissed.