

(2015) 07 P&H CK 0378
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 4011 of 1999 (OandM)

State of Punjab and Others	Vs	APPELLANT
Nasib Singh and Others		RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Evidence Act, 1872 — Section 35
Land Acquisition Act, 1894 — Section 4, 6
Transfer of Property Act, 1882 — Section 4, 58(d), 58(g), 58-d, 6

Citation : (2015) 07 P&H CK 0378

Hon'ble Judges : Gurmit Ram, J.

Bench : Single Bench

Advocate : Suveer Sehgal, Addl. A.G., for the Appellant; Avnish Mittal, Advocate, for the Respondent

Judgement

Gurmit Ram, J.—This Regular Second Appeal has been preferred by appellant-State of Punjab (defendant No. 1) against the judgment and decree dated 24.04.1999 passed by the Court of learned Additional District Judge, Patiala vide which the appeal preferred against the judgment and decree dated 14.06.1997 passed by the learned Additional Civil Judge (Senior Division) Patiala was dismissed with costs.

2. The case of respondents No. 1 to 9 herein who were plaintiffs before the learned trial Court in brief was that the land measuring 353 Bighas 13 Biswas and the land measuring 11 Bighas 18 Biswas as detailed and described in Para No. 1 of the plaint was mortgaged with possession by Smt. Chatri widow of Sohela and Smt. Sedo daughter Mula of village Mehon long long ago and even more than 30 years ago as per entry recorded in the copy of Jamabandi for the year 1956-57 with the ancestors of respondents No. 1 to 9 herein (plaintiffs) and that of defendants No. 2 to 11 (performa respondents No. 10 to 22 herein).

Both the abovesaid mortgagors died long ago without leaving behind any legal heir and consequently their estate i.e. land in dispute vested in the State of

Punjab, i.e. defendant No. 1 by way of escheat. Neither the original mortgagors nor the State of Punjab had ever sought redemption of land in dispute as above described. It was further plea of plaintiffs that they have become the owner of the suit land, since the right of redemption qua this land has been relinquished (extinguished) long long ago. Land measuring 40 Bighas 3 Biswas out of land in dispute is in possession of plaintiff No. 1-Nasib Singh, land measuring 27 Bighas 17 Biswas is in possession of plaintiffs No. 2 to 6, the land measuring 126 Bighas 15 Biswas is in possession of plaintiff No. 7 and whereas land measuring 35 Bighas 10 Biswas is in possession of plaintiffs No. 8 & 9 and, as such, the said plaintiffs had become the owner of the land which was in their respective possession by way of prescription. It was also their plea that land measuring 11 Bighas 18 Biswas abovesaid was in possession of plaintiffs No. 2 to 6 and 8 & 9 being its owner. This land was acquired by the State of Punjab in 1970 as entered in Mutation No. 419 by awarding an amount of Rs. 25,622.57/- as its compensation. This amount is lying in Trust with defendant No. 1 which is payable to the abovesaid persons along with interest at the rate of 12% per annum since 1970. The remaining land out of the abovesaid total land measuring 353 Bighas and 13 Biswas was stated to be in possession of defendants No. 2 to 11 along with others. Since they did not join in the filing of the suit so they were arrayed as performas defendants in this case. Entry in the revenue record showing said Smt. Chatri and Smt. Sedo as the owners of land in dispute was stated to be wrong. Request was made to village Patwari to enter the mutation of ownership qua the land in dispute in favour of the plaintiffs and abovesaid other performas defendants which he refused, which resulted into the filing of the instant suit.

3. Notice of this suit was given to defendants. Defendants No. 2 to 11 in their written statement filed jointly admitted the claim of the plaintiffs and prayer was made to grant the decree in favour of the plaintiffs as prayed for by them.

4. Defendants No. 10-A, 10-B and 10-C also admitted the claim of the plaintiffs in their separate written statement filed by them jointly.

5. Only defendant No. 1 contested the suit of the plaintiffs. In the written statement defendant No. 1 took preliminary objections that suit of the plaintiff is not maintainable; that it is barred by limitation and that it is also not properly valued for the purpose of Court fee and jurisdiction. On merits the allegation as mentioned in Para No. 1 of the plaint was stated to be a matter of record. In this connection it was also the plea that no specific details regarding acquisition of the land have been given in this para. Land in dispute was stated to be the ownership of the answering defendant. It has right to get the same redeemed at any stage. It was denied that plaintiffs had become the owners of the land in dispute or that the right of the redemption qua this land has been relinquished (extinguished) long long ago. Then it was also denied that an amount of Rs. 25,622.57/- as compensation is lying in Trust with defendant No. 1 or the same is payable with interest at the rate of 12% per annum. In this connection it was

plea of the defendant that funds lapse every year at the end of each financial year and as such, the question that the abovesaid amount is lying in a Trust with defendant No. 1 does not arise.

Rest of the averments were also denied by this defendant.

6. Issues were framed. Both the parties led their respective evidence. The learned trial Court after hearing learned counsel for both the parties and going through the record as well decreed the suit of the plaintiffs for declaration to the effect that plaintiffs and performa defendants No. 2 to 11 have become the owners of agricultural land located in village Mehon which is in their respective possession as abovesaid and also described in para No. 4 of plaint and whereas the suit for the relief of mandatory injunction regarding payment of compensation was dismissed vide judgment and decree dated 14.06.1997. Defendant No. 1-State of Punjab preferred an appeal against the judgment and decree of the learned trial Court which was dismissed with costs by the Court of learned Additional District Judge, Patiala vide the impugned judgment and decree dated 24.04.1999.

7. Being dissatisfied with the findings recorded by both the Courts below, the appellant/defendant No. 1 has come up before this Court with the instant Regular Second Appeal, notice of which was given to the respondents. Records of both the Courts below were also requisitioned and perused. This appeal was admitted vide order dated 15.11.2000.

8. I have heard the learned counsel for both the parties and have also perused the record with their eminent assistance.

9. The learned counsel for the appellant has contended that the impugned judgment and decree dated 24.04.1999 passed by the learned Appellate Court whereby dismissing the appeal filed by the State of Punjab/defendant against the judgment and decree dated 14.06.1997 passed by the learned trial Court is based on conjectures and surmises and as such, the same is not tenable in the eyes of law. It is further his contention that neither any mortgage deed has been produced on the record nor the date of creation of the mortgage is proved and as such, the appellant i.e. defendant No. 1 had no knowledge about the amount of mortgage as well as of the date of this mortgage. As a result thereof, appellant/defendant No. 1 has every right to get the suit land redeemed at any time since there being no limitation for redeeming the same. Then it is also his plea that as per the claim of the plaintiffs, the plaintiffs and defendants No. 2 to 11 have become the owners of the property in dispute in the year 1985-86 by efflux of time and as such, they were to seek a declaration of their title qua the land in dispute within 3 years from the date when the right of mortgagor to redeem this land had become barred by limitation of 30 years. The instant suit as abovesaid was filed on 24.08.1992 and as such it was barred by limitation when it was instituted. It is also contended by him that the instant mortgage in question is an usufructuary mortgage and for redeeming the mortgage, in such like a case,

there is no limitation meaning thereby the mortgagor can get the same redeemed at any time unless his right is extinguished by any decree of Court or by the act of parties.

10. In support of his above contention, the learned counsel for the appellant has referred to an authority as delivered by the Hon"ble Full Bench of this Court in case titled as Ram Kishan and Others Vs. Sheo Ram and Others, . The facts of this case law as recorded in Para No. 1 of this authority are detailed as under:-

"The appellant, a mortgagee, filed a suit for declaration to the effect that they have become owners of the agricultural land measuring 13 Kanals 6 Marlas by prescription. The case set up was that one Ami Chand son of Devi Singh mortgaged with possession agricultural land measuring 14 Bighass for a sum of Rs. 80/- with Hardhan Singh son of Jit Ram on 11.8.1903. During consolidation operations, the land measuring 13 Kanals 6 Marlas was allotted in lieu of the original mortgaged land. The plaintiff claims to be in continuous possession of the suit land as mortgagees, whereas Munshi Ram, predecessor-in-interest of defendants, was recorded as mortgagor. The mortgagees sought the declaration on the ground that the suit land has not been got redeemed during the period of more than 60 years and, therefore, the defendants have lost all right, title and interest in it. Though the defendant denied the factum of mortgage, but the trial Court returned a finding that it was a case of usufructuary mortgage and no period for payment of mortgage amount was fixed. It was observed that it is not the case of the plaintiff that they had made a demand for mortgage amount, which was refused by the defendant. Thus, no cause of action had accrued to the plaintiff which could only accrue on demand of the mortgage amount from the defendants and refusal of the same by the defendants. The trial Court, thus, dismissed the suit holding that the plaintiffs have not become owners of the suit land."

Appeal filed in this regard was also dismissed.

11. Then in para No. 6 of this authority, it was observed as under:-

"The facts remains that the provisions of Section 58(d) of the Act and other provisions in respect of usufructuary mortgage have not been made applicable to the areas falling within the jurisdiction of this Court, though such mortgages are required to be made by way of registered document in the State of Punjab w.e.f. 10.6.1968 and from 5.8.1967 in the State of Haryana. It is also equally well settled that if the provisions of the Act are not applicable to the area, the principles of justice, equity and good conscience are to be applied while determining the rights of the parties".

12. Then in para No. 11 of this authority, the authority as delivered by Hon"ble Apex Court in Seth Ganga Dhar Vs. Shankar Lal and Others, along with some other case laws is discussed wherein it was contended that usufructuary mortgagor has a right to redeem the property at any point of time in a case where no time limit is fixed for redemption. It was also contended that in case

where time limit is fixed the right of redemption will arise on the date fixed for redemption but where no time limit is fixed, the mortgagor has a right to seek redemption at any time on payment of mortgage debt. Then in para No. 13 of this authority, reference is made to an old authority as delivered in *Santley v. Wilde*, 1895-89 All India England Reports 1338, a judgment of Court of appeal, wherein it has been held as under:-

"The principle in this: a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of debt or the discharge of some other obligation for which it is given. This is the idea of a mortgage and the security is redeemable on the payment or discharge of such debt or obligation, any provision to the contrary notwithstanding. That, in my opinion, is the law. Any provision inserted to prevent redemption on payment or performance of the debt or obligation for which the security was given is what is meant by a clog or fetter on the equity of redemption and is therefore void. It follows from this, that "once a mortgage always a mortgage".

13. Then reference is also made to another old authority on this point in para No. 14 of this case law titled as *Harris v. Harris* (1681) 1 Vern 33, wherein Lord Nottingham firmly laid down the principle that "Once a Mortgage, always a mortgage". This is a doctrine to protect the mortgagor's rights of redemption. Then herein the reference is also made to a leading case of *Noakes v. Rice*, 1902 AC 24 (HL) : 1900-3 All England Reporter 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 words "and therefore always redeemable", added by Justice Sarkar of the Supreme Court in the case of *Seth Ganga Dhar Vs. Shankar Lal and Others*, .

14. Then in this authority, reference is made to a judgment as delivered by Full Bench of the then Lahore High Court in *Lachhman Singh vs. Natha Singh* through *Harnam Singh* and AIR 1940 401 (Lahore) , wherein the characteristics of an usufructuary mortgage have been delineated as under:-

"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."

15. Then further in this authority, reference is made in its para No. 24 to a case law as delivered in *Lachhman Singh vs. Natha Singh* through *Harnam Singh* and AIR 1940 401 (Lahore) , wherein in terms of Section 60 of the Transfer of

Property Act, 1882 and Article 61 of the Limitation Act, 1963 it has been laid down as under:-

"The right of redemption of a mortgagor being a statutory right, the same can be taken away only in terms of the proviso appended to Section 60 of the Act which is extinguished either by a decree or by act of parties. Admittedly, in the instant case, no decree has been passed extinguishing the right of the mortgagor nor has such right come to an end by act of the parties".

16. In the light of above facts of this authority and the case laws referred to in it, the Hon"ble Full Bench of this Court laid down as under:-

"The limitation of 30 years under Article 61(a) begins 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."

"The argument that after the expiry of period of limitation to sue for foreclosure, the mortgagees have a right to seek declaration in respect of their title over the suit property is not correct. From the aforesaid discussion, it is apparent that the mortgage cannot be extinguished by any unilateral act of the mortgagee. Since the mortgage cannot be unilaterally terminated, therefore, the declaration claimed is nothing but a suit for foreclosure. It is equally well settled that it is not title of the suit, which determines the nature of the suit. The nature of the suit is required to be determined by reading all the averments in the plaint. Such declaration cannot be claimed by an usufructuary mortgagee".

Principle laid down by the Hon"ble Full Bench of this Court in the case of Ram Kishan and others cited supra is upheld by Hon"ble Apex Court in Singh Ram (D) through LRs vs. Sheo Ram and others 2014 (3) Law Herald (SC) 2445.

17. But on the other hand, the learned counsel for the respondents has denied the above contention of learned counsel for the appellant and has contended that in the case in hand only one ingredient of the usufructuary mortgage is proved on the record and whereas its remaining essential ingredients are not proved. It is also his contention that in the case in hand the alleged mortgage in question is

the anomalous mortgage and not usufructuary mortgage as claimed by the appellant. Herein I deem it necessary to discuss the provisions relating to usufructuary mortgage and anomalous mortgage as defined in Section 58(d) and Section 58(g) of the Transfer of Property Act, 1881. Section 58(d) defines the usufructuary mortgage, which is as under:-

"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".

Anomalous mortgage as defined in Section 58(g) of this Act is as under:-

"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".

18. From the above discussed provisions of Section 58(g) , it is found that a mortgage which is not covered under any other kinds of the mortgage as defined in this Section is to be known as anomalous mortgage. Then it is also contended by the learned counsel for the respondents that in the light of the facts of case in hand, the present case does not fall under the category of usufructuary mortgage and rather it is the case of anomalous mortgage. Then relating thereto, he has also submitted that since it is not proved on the record that the case in hand is a case of usufructuary mortgage, so as such Ram Kishan and others" case law cited supra is not applicable to the case in hand. Then it is also his submission that in the case of anomalous mortgage period of limitation of 30 years as provided under Article 61 of the Limitation Act for the redemption of the mortgage is to apply.

19. So far as the evidence of plaintiffs is concerned, plaintiff-Har Narinder Singh appeared as PW-4 and supported the claim of the plaintiffs in its entirety as put forth by the plaintiffs in the plaint as well as by defendants No. 2 to 11 and defendants No. 10-A, 10-B and 10-C in their respective written statements. Defendant-Sarwan Singh appeared as PW-3 and corroborated the version of plaintiffs as well as of said defendants to all intents and purposes. PW-1 Gurnam Singh and PW-2 Ranjit Singh are the elderly persons of the village of plaintiffs wherein the land in dispute is situated. They had also supported the claim of the plaintiffs as well as of defendants No. 2 to 11 in a spick and span manner. The learned State Counsel put the case of defendant No. 1 to these PWs in the cross-examination by way of suggestion which was denied by them.

20. PW-5 Gopal Dass proved the carbon copy of one notice Ex. P3, its postal receipts Ex. P1 along with its AD Ex. P2. It is also in his statement that this

notice was sent to Collector.

21. PW-6 Dalip Kumar, Kanugo proved the Notification issued under Sections 4 and 6 of the Land Acquisition Act, Ex. PW 6/1 and Ex. PW 6/2 respectively and copy of the Award which was passed in this case as Ex. PW 6/3. Further he also proved Fard Namberwar showing ownership of Smt. Chatri widow of Sahela and Smt. Sedo widow of Mulla as Ex. PW 6/4 as the mortgagors qua the land measuring 11 Bighas 18 Biswas which was acquired vide the aforesaid Notification and to whom a sum of Rs. 25,622.57/- was awarded as compensation qua this acquired land Ex. PW 6/6 is the photocopy of the challan vide which an amount of Rs. 58,006.80/- was deposited in the Treasury Office, Patiala. Then copies of the Revenue record pertaining to matter in issue was tendered as Ex. P4 to Ex. P22 in the evidence of the plaintiffs.

22. On the other hand, Vinod Kumar, Junior Assistant/Nazul Clerk appeared as DW-1. It is in his statement that defendant No. 1 is the owner of the land in dispute, but not in its possession. This land was acquired by the Government and after its acquisition, the right of the plaintiff to get it redeemed was extinguished. A sum of Rs. 25,622.57/- is lying deposited with Treasury as the amount of compensation. Since the State Government is the owner, so the plaintiffs as well as defendants have no right to claim this amount.

23. In this case, it is admitted fact that suit land was mortgaged by Smt. Chatri and Smt. Sedo with the predecessors-in-interest of the plaintiffs and defendants No. 2 to 11 (herein respondents-plaintiffs No. 1 to 9 and perform respondents/defendants No. 10 to 22). Then it is also admitted that possession of this land was delivered to the said mortgagees at the time of creation of the alleged mortgage and that now the successors-in-interest of the original mortgagees, i.e. plaintiffs No. 1 to 9 and defendants No. 2 to 11 are still in its possession in the same capacity. Then it is also admitted fact that suit land was not got redeemed either by the original mortgagors during their life time or by any other person claiming to be their successor till date. As per the entry made in the revenue record available on the file, status of the parties, i.e. mortgagors as well as mortgagees qua the suit land is still the same as it was at the time of the creation of the alleged mortgage.

24. In this case no documentary evidence in respect of mortgage in question has been brought on the file by any of the parties. Even there is nothing in the pleadings of both the parties with regard to nature of the alleged mortgage. As per the revenue record brought on the file by both of the parties, this mortgage relates back to the year 1955-56, may be even prior to that. Then it is also an established fact that provision of the Transfer of Property Act, 1882 was not applicable to the area of then Punjab State during that time. Oral mortgage were permissible at that time. Even till date provisions of Section 58-d which deals with the concept of usufructuary mortgage are not made applicable to the area falling within the jurisdiction of Punjab and Haryana High Court. So in this situation the kind of the mortgage in question is to be ascertained from the facts

and circumstances established as well as evidence available on the record.

25. For the abovesaid purpose, the revenue record which is found to be relevant is discussed as under:-

"In Khatoni Istmaal, Ex. P5, abovesaid Smt. Chatri and Smt. Sedo are recorded to be mortgagors and the predecessors-in-interest of the present plaintiffs No. 1 to 9 and defendants No. 2 to 11 are recorded as mortgagees of the land in dispute in its column pertaining to the ownership and the said mortgagees are shown to be in its cultivating possession in the capacity of mortgagee. Then in this Khatoni Istmaal, there is also an entry in its column of ownership, where the suit land is shown to be mortgaged by said mortgagors in the sum of Rs. 3,000/-. Then there is also entry in it that mortgagee Sampuran Singh had further sub-mortgaged a part of the suit land in favour of Alahi Baksh in the sum of Rs. 360/- and the said sub-mortgagee is shown to be in its cultivating possession. Then these entries are found to be further mentioned in Naksha Haqdarvar Ex. P6. Then these entries are further carried in copy of Jamabandi Ex. P8 for the year 1955-56; Ex. P9 for the year 1969-70; Ex. P10 for the year 1963-64; Ex. P11 for the year 1974-75; Ex. P-12, Ex. P17 and Ex. P18 for the year 1979-80; and Ex. P13, Ex. P-19 & Ex. P-21 for the year 1984-85 with the variation that on the death of original mortgagees their successors-in-interest came to be recorded in this revenue record in the capacity of mortgagees in cultivating possession of the land in dispute. Then in the copy of the Jamabandi Ex. P11 in its remarks column words "Beh 334" are recorded. Then in the remarks column of copy of jamabandi Ex. P12 reference is made to mutation No. 419 with regard to transfer of ownership qua the part of suit land which was allegedly acquired by defendant No. 1 in the year 1970 as recorded in the plaint".

26. So from the above discussed entire revenue record one thing is established beyond any doubt that the land in question was mortgaged with possession for the consideration of Rs. 3,000/- meaning thereby the abovesaid mortgagors delivered the possession of the land in dispute to the original mortgagees on receipt of a sum of Rs. 3,000/- as the mortgage amount. Then it is also established that initially the original mortgagees remained in cultivating possession qua this land and on their death, their alleged successors-in-interest have entered into possession of this land in the same capacity. As such, earlier original mortgagees were enjoying the fruits of this land and subsequent to them, their successors-in-interest have been enjoying the same to appropriate the same in lieu of interest accrued on the said mortgage money. So in these circumstances, the irresistible conclusion is that the mortgage in question was a usufructuary mortgage and none-else.

27. Then the claim of appellant/defendant No. 1 is that it has become the owner of the land in dispute, but in this regard they did not bring on the record any documentary evidence to establish their claim of title qua land in dispute. But it is a fact that land measuring 11 Bighas 18 biswas out of the suit land was acquired by defendant No. 1 in the year 1970-71 regarding which compensation

amount is stated to be lying undisbursed, but deposited with the concerned office. So at the most appellant/defendant No. 1 could claim the ownership qua this land measuring 11 Bighas 18 biswas out of the land in dispute and not of the remaining land. The oral statement of DW 1 that appellant/defendant No. 1 has become the owner of the land in dispute is neither sufficient nor reliable to establish the above plea of appellant/defendant No. 1 since it is not corroborated by any documentary evidence in the shape of revenue record.

28. Then DW-1 in his cross-examination has stated that suit land became Nazul land in the year 1955-56, but in this respect also, the appellant/defendant No. 1 did not bring on the file any of the revenue record to show that any entry has been made in it to the effect that this land has been declared/become Nazul land. Then PW-6 in his cross-examination had admitted that against the acquisition proceedings, some objections were filed by Smt. Chatri, which were rejected. In this connection, copy of the Notification issued under Section 4 dated 01.06.1970 and under Section 6 dated 10.06.1970 are brought on the file as Ex. PW 6/1 and Ex. PW 6/2. So from this statement of PW-6, one thing is also established that Smt. Chatri one of the original mortgagors qua land in dispute was alive in or around the year 1970-71. So if she was alive during this period, then the claim of the appellant/defendant No. 1 that the suit land was declared as Nazul land in the year 1955-56 is held to be utterly false as well as non-believable.

29. Then the learned counsel for the respondents has contended that if at all appellant/defendant No. 1 is to claim the ownership of land in dispute by way of escheat, then they have to approach the proper forum by way of proper proceedings in order to get the said relief. It is further his contention that the plea of the appellant/defendant No. 1 that it has become the owner of land in dispute by way of escheat since its owners/mortgagors had died issueless is not enough to substantiate their said claim. In support of his contention he has referred to a case law as delivered by Hon"ble Apex Court in case titled as Lachhman Singh vs. Natha Singh through Harnam Singh and AIR 1940 401 (Lahore) . The said matter in controversy has been discussed in para No. 270 of this judgment which is as under:-

"It is well settled that when a claim of escheat is put forward by the Government, the onus lies heavily on the appellant to prove the absence of any heir of the respondent anywhere in the world. Normally, the court frowns on the estate being taken by escheat unless the essential conditions for escheat are fully and completely satisfied. Further, before the plea of escheat can be entertained, there must be a public notice given by the Government so that if there is any claimant anywhere in the country or for that matter in the world, he may come forward to contest the claim of the State. In the instant case, the States of Bihar and Uttar Pradesh merely satisfied themselves by appearing to oppose the claims of the plaintiffs-respondents. Even if they succeed in showing that the plaintiffs were not the nearest reversioners of the late Maharaja, it does not follow as a

logical corollary that failure of the plaintiffs' claim would lead to the irresistible inference that there is no other heir who could at any time come forward to claim the properties".

30. Then it is further contended by learned counsel for the respondents that mere entry in the revenue record is also not suffice to claim the ownership of any property. It is further his contention that though presumption of truth is attached to entries made in copy of Jamabandi, but it is also fact that same are rebuttable. The appellant/defendant No. 1 cannot claim to be owner of the land in dispute except the land acquired under the law on the basis of the mere entries made in the revenue record. In order to strengthen his contention, the learned counsel for the respondents has cited an authority as delivered by Hon'ble Apex court in *Narain Prasad Aggarwal (D) by LRs vs. State of M.P.* 2007 (3) RCR (Civil) 390. In this case law it was held as under:-

"that State cannot claim ownership over the Nazul land on the basis of entries in the record of right. Record of right is no proof of title moreover it is not a document of title, entries made therein, no doubt in terms of Section 35 of the Indian Evidence Act are admissible being relevant piece of evidence and although the same may also carry a presumption of correctness but it is beyond any doubt or dispute that such a presumption is always rebuttable."

31. Then it is also to be noted that in the case in hand appellant/defendant No. 1 has failed to bring on the record any revenue record containing entries to the effect that the defendant No. 1 has become owner of the land in dispute. Even DW-1 in his cross-examination has admitted that the suit land has not been got redeemed so far by any party having interest in the property in dispute.

32. Then the claim of plaintiffs and defendants No. 2 to 11 (now respondent/plaintiff Nos. 1 to 9 and performa respondents/defendants No. 10 to 22) that they have become the owners of the land in dispute by way of efflux of time is also not correct because for redeeming any property mortgaged by way of usufructuary mortgage there is no time limit in such like cases for seeking redemption of property mortgaged. The limitation period to get the property redeemed starts when the mortgagor offers mortgaged money to the mortgagee or deposits the same in the relevant office. In the case in hand, neither original mortgagor nor anybody else on their behalf has ever offered the mortgage money to the mortgagees for redemption of land in dispute. Then it is also established that right of foreclosure and right of redemption are co-existing. So the findings of both the Courts below that plaintiffs and defendants No. 2 to 11 have become the owner of the land in dispute by way of afflux of time are held to be not correct.

33. In the light of above discussion, this appeal is partly accepted and partly dismissed as held below:

(i) if the appellant/defendant No. 1 is to claim the ownership of the suit land by way of escheat then it is to file the proper proceedings before the proper forum

to get the desired relief as held by the Hon"ble Apex Court in case law titled as Lachhman Singh vs. Natha Singh through Harnam Singh and AIR 1940 401 (Lahore) cited supra;

(ii) the findings of both the Courts below that plaintiffs and defendants No. 2 to 11 have become the owners of land in dispute by way of efflux of time being the same not got redeemed within the period of limitation are set-aside.

(iii) Then the plaintiffs and defendant No. 2 to 11 are found to be in established possession of the land in dispute as the mortgagees, so their possession over the same is not to be disturbed except in due course of law. The amount of compensation which is deposited for the acquiring a part of suit land measuring 11 Bighas 18 Biswas is to be disbursed to the rightful claimant whosoever is held to be entitled to receive the same on the finalization of the entire proceedings qua the ownership of this land.

34. So in the light of the above discussion, the suit filed by the plaintiffs is partly decreed and partly dismissed. The judgments and decrees passed by both the Courts below now under appeal are ordered to be modified accordingly. Both the parties are left to bear their own costs.

Copy of this judgment be sent to quarter concerned for necessary compliance.