



BANKING AND FINANCE

Redemption and Limitation in Usufructuary Mortgages: The Supreme Court's Clarification in Dalip Singh v. Sawan Singh

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Introduction

In a judgment dated 12 November 2025, the Supreme Court of India clarified the law governing redemption of usufructuary mortgages and the applicability of limitation in Dalip Singh (D) through LRs. & Ors. v. Sawan Singh (D) through LRs. & Ors., Civil Appeal No. 3358 of 2010. The decision addresses when the right to redeem accrues for the purposes of limitation in a usufructuary mortgage particularly where the mortgagee remains in possession appropriating rents and profits and whether redemption can be defeated merely by lapse of time in the absence of tender, payment, or deposit of mortgage money.

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Factual Background

The dispute concerns agricultural land measuring 114 Kanals 4 Marlas situated in Village Tamkot, District Bathinda. The land had been placed under a usufructuary mortgage by the ancestors of the respondents. Under this arrangement, the mortgagee took and was entitled to appropriate the rents and profits toward the mortgage.

On 17 September 1975, the Collector passed an order permitting redemption at the instance of the mortgagors. The mortgagees challenged that order by instituting Civil Suit No. 291 of 1975, asserting, inter alia, that the redemption claim was barred by limitation. The trial court decreed the suit, holding the Collector's redemption order to be time-barred.

Procedural History

An appeal by the mortgagors (respondents herein) before the Additional District Judge in Civil Appeal No. 107/R.T.-99 of 76/77 was dismissed in December 1980, maintaining the trial court's view that the redemption was barred by limitation. The mortgagors thereafter preferred Regular Second Appeal No. 1053 of 1981 before the Punjab and Haryana High Court. By judgment dated 18 September 2001, the High Court allowed the appeal, restored the Collector's order, and held that the right to redeem in a usufructuary mortgage is not defeated by limitation in circumstances where the mortgage is to be worked out through appropriation of income from the property. The mortgagees then approached the Supreme Court.

Issues

The Supreme Court considered whether the right of redemption in a usufructuary mortgage is controlled by the law of limitation in the same manner as ordinary mortgages; when the right to redeem is deemed to accrue for limitation purposes at the inception of the mortgage, or upon payment, tender, or deposit of the mortgage money; and whether the High Court rightly restored the Collector's order of redemption.

Parties Submissions

The appellants argued that the redemption claim was time-barred and that limitation must run from the date of mortgage. On this footing, they sought reinstatement of the trial court's decree setting aside the Collector's order. They submitted that allowing redemption after the prescribed period would unsettle vested rights of mortgagees in long-standing possession.

The respondents countered that, by the very nature of a usufructuary mortgage where the mortgagee is to recoup the mortgage money from rents and profits the normal rule as to limitation does not operate from the date of mortgage. They emphasized that

the mortgagor's right to redeem is extinguished only on satisfaction of the mortgage and that accrual of the redemption claim is tied to payment, tender, or deposit of the mortgage money after accounting for income appropriated by the mortgagee.

Statutory Framework and Precedents

The Court examined Sections 58(d) and 60 of the Transfer of Property Act, 1882. Section 58(d) defines a usufructuary mortgage and contemplates the mortgagee's right to possession and appropriation of income, while Section 60 preserves the mortgagor's right to redeem. The Court analysed Article 61(a) of the Limitation Act, 1963, which prescribes the limitation for a suit by a mortgagor to redeem and recover possession, and addressed when the cause of action arises in the context of a usufructuary mortgage.

In line with established jurisprudence, including the Full Bench decision in *Ram Kishan v. Sheo Ram* (2008), the Court reiterated that in usufructuary mortgages the right to redeem does not accrue merely upon creation of the mortgage. Rather, accrual is linked to the mortgagor paying, tendering, or depositing the mortgage money, after giving credit for rents and profits appropriated by the mortgagee.

Supreme Court's Analysis

The Supreme Court affirmed that, in the case of a usufructuary mortgage, limitation does not commence from the mortgage date because the contract structure envisages liquidation of the mortgage through usufruct. As long as the mortgagee remains in possession appropriating rents and profits toward the mortgage account, the mortgagor's cause of action to sue for redemption is not complete until the mortgage money is paid, tendered, or deposited in court.

The Court agreed with the High Court's view that mere passage of time cannot extinguish the mortgagor's right to where the mortgage is being worked out by appropriation of income, unless the mortgagor fails to pay or tender when due. The reasoning of the trial court and first appellate court was found to be erroneous in treating the date of mortgage as the starting point of limitation without reference to the distinctive incidents of a usufructuary mortgage and the ongoing adjustments from rents and profits.

Holding and Disposition

The Supreme Court dismissed the appeal and affirmed the High Court's judgment restoring the Collector's order dated 17 September 1975 allowing redemption. It concluded that the respondent-mortgagors' claim was not barred by limitation in the facts of a usufructuary mortgage whereas of the right to redeem is conditioned upon payment, tender, or deposit, duly accounting for usufruct already appropriated by the mortgagee.

Significance

This ruling consolidates the doctrine that the mortgagor's right to redeem in a usufructuary mortgage matures upon payment or tender, and not on the date of the mortgage itself. It highlights that limitation cannot be invoked to defeat redemption where the mortgage is to be satisfied from the property's income and the mortgagee continues in possession on that basis. The decision provides clarity for agricultural and similar transactions where usufructuary mortgages are common, and it reinforces the primacy of the equity of redemption unless extinguished in accordance with law.

Conclusion

By upholding the High Court and restoring the Collector's redemption order, the Supreme Court has reaffirmed the special character of usufructuary mortgages under the Transfer of Property Act and the nuanced application of Article 61(a) of the Limitation Act. The judgment ensures that the equity of redemption is preserved in such mortgages until the mortgagor pays, tenders, or deposits the mortgage money, appropriately adjusted for rents and profits, and that it is not defeated by the mere lapse of time.

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