In the Court of Chunauti Sagroli, Civil Judge, Kullu, District Kullu, H.P.

CIS CNR number	**:**	**HPKU03-000624-2015.**
CIS CASE TYPE	**:**	**Civil Suit.**
CASE number	**:**	**192/15-380/2021.**
(Registration number)	**:**	**315/2015.**
CIS CASE YEAR	**:**	**2015.**
Date of Institution	**:**	**24.06.2015.**
Date of Decision	**:**	**17.07.2026.**

In the matter of:

Nirat Ram since deceased through his LRs.
A) Manohar Singh son of Sh. Nirat Ram
B) Tara Singh son of Sh. Nirat Ram;
C) Prem Singh son of Sh. Nirat Ram
D) Pati Devi widow of sh. Nirat Ram
All residents of Village Baragran, P.O. Bhalyani, Tehsil and District Kullu, H.P.
E) Sharda Devi D/o Sh. Nirat Ram at present wife of Sh. Beas Dev, R/o Village Baragran, P.O. Bhalyani, Tehsil and District Kullu, H.P.

.......Plaintiffs

Versus.

1. Birbal.
2. Hot Ram,
3. Dalip Singh,
4. Mehar Chand,
   All sons of Sh. Jog Raj son of Sh. Rala Ram, R/o Village Marghan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.
5. Room Singh, S/o Jog Raj, S/o Rala Ram, R/o Village Marghan, at present serving No.8280/0087 Su-Inspector GD 24th Bn ITBP Force AD M Cop. B.M. Branch C/o 56 APO Leh.

….Defendants.

6. Roop Chand son of Sh. Norbu R/o village Ghalyana, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.
7. Mulu Ram,
8. Mangal Chand,
   Both sons of Budha R/o Village Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.
9. Mohar Singh,

10. Bhim Sen,
Sons of Sh. Shyam Chand R/o Village Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.
11. Subhash Chand,
12. Narender Singh,
13. Surender Singh,
Sons of Sh. Alam Chand
14. Chander Kanta wife of Sh. Alam Chand All residents of Village Baragran, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.
15. Oma Devi D/o Sh. Alam Chand R/o Village Baragran, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.

.....**Proforma Defendants**.

SUIT FOR DECLARATION AND REDEMPTION OF MORTGAGE THE LAND.

For LRs of deceased plaintiffs : Sh. K.R Thakur, Ld. Advocate.
For defendants No.1 to 5 : Sh. Harish Verma, Ld. Advocate.
Remaining defendants already ex parte.

J U D G M E N T:

The present suit is a suit for declaration and redemption of mortgage of land comprised in Khasra No.1193, 237, 251, 250, 371, 373, Khata/Khatauni No.210/387, 385, 384, 386, situated at Muhal Shangan, Phati Bhalyani, Kothi, Tarapur, Tehsil and District Kullu, H.P, land comprised in Khasra No.271, 72, 273, 316, 317, 330, 355, 313, 315, Khata/Khatauni No.272/483, 482, 484, situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P., land comprised in Khasra No.723, 728, 727, 1082, 1084, Khata/Khatauni No.70/127, 123, 125, 122, 126 situtated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P. against the defendants No.1 to 5and the order dated 30.04.2015 passed by collector Sub-Divisional Kullu in case No.2/2009 is illegal and is liable to be set aside with consequential relief of injunction.

2. Further, it is stated that in the year 1941-42, land

was owned and possessed by Chuhri, sainu, Mohlu to the extent of 1/2 share. Such Chuhri, Sainu, Mohlu are said to have mortgaged above land with possession to the extent of their share in favour of Khayale Ram on 09.06.1944 for total sum of Rs.87,2 anna 6 pai and to this effect mutation No.1310 and 1311 was attested on 30.11.1944 and mortgage was **usufructury**. Further, Khyale Ram mortgagee further, sold the mortgage right of suit land in favour of Rala Ram, predecessor-in-interest of defendants No.1 to 5 on 22.09.1946 for total sum of Rs.144,4anna and to this effect mutation No.1400 of Phati Bhalyani was attested on 24.01.1947. The suit land was allegedly much far from the house of Rala Ram and he had given the suit land for cultivation to Rirki, sainu and Mohlu on 1/2 share of product of crop (*Ghar*) and thereafter, the above mortgagor had cultivated the suit land and given 1/2 share of total production of the crop to Rala Ram till his life as *Ghar*. Chuhri, Sainu and Mohlu died and they were inherited by Nurbu as son, Nurbu also died and was inherited by Roop Chand defendant No.1 being son and they had also cultivated the suit land and gave ghar to the mortgagee. The plaintiff had purchased land comprised in Khasra No.780, Khata/Khatauni No.377min/744mn and Khasra No.711, 1107, 712 Khata/Khatauni No.380/754, vide sale deed No.49, dated 16.01.1992 and land comprised in Khasra No.780, Khata/Khatauni No.777min/744min and Khasra No.780, 781, vide sale deed No. 1520 dated 25.08.1992, Khasra No.1109, Khata/Khatauni No.378min/746 vide sale deed No.1921 dated 17.12.1990, Khasra No.722, Khata/Khatauni No.378min/747min, Khasra No.612,Khata/Khatauni No.379min/747min, Khasra No.612, Khata/Khatauni No.379min/250 vide sale deed No.9 dated 7.01.1992 from the column of possession from Roop Chand performa defendant

No.6 subject to *Ghar*.

3. After the purchase of the above land, the plaintiff is said to have stepped into the shoes of the mortgagor Roop Chand by the sales and as such the plaintiff is said to have become entitled to redeem the suit land. The plaintiff also gave ghar i.e. half of the crop produced to defendants No.1 to 5. He had filed an application under Section 4 of HP Redemption Act bearing No.2/2009 before the Sub-Divisional Collector Kullu for redemption of mortgage of the suit land but was dismissed by the Collector vide order dated 30.04.2015. Such order is said to be illegal as SDC had failed to appreciate the latest provision of Redemption of Mortgage Land Act and as such the said order is liable is set aside. Suit land was mortgaged by Smt. Rirki, Sainu and Mohlu with possession and Khyale Ram and Rala Ram and defendant No.1 to 5 are enjoin the usufructs of the same by taking *ghar* from the plaintiff and predecessor of the plaintiff and they are usufructuary mortgagee and no time limit is fixed for redemption of the same and as such, the plaintiff is said to have stepped into the shoes of original mortgagor and thus, plaintiff has right to get suit land redeemed on payment of mortgaged debt. Furthermore, after dismissal of application by SDC, defendants No.1 to 5 are threatening to dispossess the plaintiff from land on Khasra No.371 and 373 and are also collecting construction material in order to construct building over these khasra numbers for which they have no right, title or interest. Defendants No.1 to 5 were time and again asked to receive the payment of mortgage debt and to redeem the suit land but they did not receive the same and refused to admit the claim of the plaintiff. The cause of action in favour of the plaintiff and against the defendant arose on 30.04.2015 when application of redemption qua suit land was dismissed by SDC and thereafter, in the first week of June, when

defendants had completely refused to admit the claim of the plaintiff. This Court is said to have the jurisdiction to entertain and decide the matter. Suit is valued for the purpose of court fees and jurisdiction at Rs.200/- and Court fees is accordingly affixed. It is thus, prayed that decree of declaration and redemption be granted in favour of the plaintiff and against defendant No.1 to 5 to the following effect:

i) Decree for declaration and redemption of the following land:

a) Land comprised in Khasra No.1193, 237, 251, 250, 371, 373, Khata/Khatauni No.210/387, 385, 384, 386, situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.

b) Land comprised in Khasra No.271, 272, 273, 316, 317, 330, 355, 313, 315, Khata/Khatauni No.272/483, 482, 484, situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P.

c) Land comprised in Khasra No.723, 728, 727, 1082, 1084, Khata/Khatauni No.70/127, 123, 125, 122, 126 situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P. and the same may kindly be redeemed.

ii) a decree for declaration to the effect that the order dated 30.04.2015 in case No.2/2009 passed by the Ld. Sub-Divisional Collector Kullu is null and void.

iii) a decree for Consequential relief of injunction restraining the defendants No.1 to 5 from interfering over the suit land.

iv) Any other relief which this Court deems fit may also be granted in favour of the plaintiffs and the suit of the plaintiffs may kindly be decreed with costs in the interests of justice.

v) Costs of the suit may also be awarded in favour of the plaintiff.

4. In the written statement filed on behalf of defendants No.1 to 4, preliminary objections as to maintainability, locus-standi, suit being barred by limitation, non-joinder and mis-joinder of necessary parties, improper valuation have been raised. On merits, it is contended that the entire suit land was not owned and possessed by Chuhri, Sainu and Mohlu and they were only owners of 2 bigha 13 biswa of land. Vide mutation No.1310, land measuring 2 bigha 13 biswa was mortgaged, mortgage was oral which was permissible in old State of Punjab and allegation that mortgage was usufructuary is wrong and denied. <u>It is stated that mortgage was not written, nor registered and no condition of any kind was also incorporated at the time of mortgage. It is further submitted that no area of land mortgaged was given to the mortgagee. Further, it is stated that mortgagee rights were sold in favour of Rala Ram but area of land concerning which mortgagee rights were sold in favour of Rala Ram have not been mentioned.</u> Mortgagee rights as per mutation No.1400 concerning the land measuring 3 bigha 9 biswas were sold. The allegation that Rala Ram had given the suit land for cultivation to Rirki, sainu, Mohlu on payment of revenue of 1/2 is said to be wrong and is denied. Vide mutation No.1310, land measuring 2 bigha 13 biswa was mortgaged. The mortgage was oral mortgage as the same was permissible in the old State of Punjab and the allegation that mortgage was usufructuary mortgage is wrong, false and hence denied. Neither any mortgage was written nor registered and no condition of any kinds was incorporated at the time of mortgage. It is further submitted that no area of the land mortgaged is given in the para under hence completed reply this para is not possible in absence of complete particulars. It is submitted that

mortgagee rights were sold in favour of Rala Ram. Area of land concerning which mortgagee rights were sold is not given in the plaint. It is submitted that vide mutation No.1400 mortgagee rights concerning the land measuring 3-9-0 bigha were sold. The allegation that Rala Ram had given the suit land for cultivation to Rirki, Sainu and Mohlu on payment of rent of ½ share is wrong, false and hence denied. It is admitted that Chuhri, Sainu and Mohlu are dead, but rest of the para is wrong, not admitted to be correct and the same is hence denied. It is denied that Sainu and Mohlu were inherited by Nurbu. It is also denied that Nurbu was inherited by Roop Chand. The allegation that Roop Chand cultivated the suit land and paid Ghar is also wrong, false and hence denied. It is submitted that all rights, title and interest of the mortgagor stood extinguished on their failure to redeem the suit land within the time permitted under law and he same vested in the mortgagee much prior to the sale deeds dated 16.01.1992, 17.12.1990 and 07.01.1992 etc. i.e. all the sale deeds referred to in this para under reply are all wrong, illegal, void and inoperative and of no effect and consequences and the same confer no right, title and interest of any kind on the plaintiff and interest of any kind on the plaintiff and in the circumstances. The allegation that predecessor in interest of defendants were taking ‘Ghar’ is wrong and neither the mortgage was usufructuary mortgage nor the mortgagee were usufructuary mortgagees. The remaining contents of the plaint are accordingly denied and suit is prayed to be dismissed.

5. In the written statement filed by defendant No.5, similar averments are made.

6. In replication filed, the contents of the written statement are denied and that of the plaint are reiterated and reasserted.

7. From the pleading of the parties following issues were framed on dated **:**

1. Whether the plaintiff is entitled for the decree of redemption of mortgage qua the suit land, as alleged? OPP.
2. Whether the plaintiff is entitled to the decree for declaration to the effect that the order dated 30.04.2015 passed by Sub-Divisional Collector, Kullu in case No.212009 is null and void, all alleged? OPP.
3. If the issues No.1 and 2 are decided in affirmative, whether the plaintiff is entitled for the consequential relief of injunction restraining the defendants No.1 to 5 from interfering in the suit land, as alleged? OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form, as alleged? OPD.
5. Whether the plaintiff has no locus-standi to file the present suit, as alleged? OPD.
6. Whether the suit of plaintiff is barred by period of limitation, as alleged? OPD.
7. Whether the suit is bad for non-joinder & mis-joinder of necessary parties, as alleged? OPD.
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction, as alleged? OPD.
9. Relief.

8. I have heard the Ld. Counsels for the parties and carefully gone through the case file. For the reasons to be recorded hereinafter, while discussing the issues, my findings on the issues are as under:

Issue No.1 : Yes.
Issue No.2 : Yes.
Issue No.3 : Yes.
Issue No.4 : No.
Issue No.5 : No.
Issue No.6 : No.
Issue No.7 : No.
Issue No.8 : No.

Relief **:** The Suit of the plaintiff is **decreed** as per operative part of the judgment.

9. In order to prove their respective contentions the plaintiff as well as defendant had led oral as well as documentary evidence. Discussed in brief the evidence of the parties are as under:

EVIDENCE ON RECORD

10. **PW-1 Nirat Ram son of Shyam Chand, R/o Village Baragran, Phati Bhalyani, Tehsil and District Kullu, H.P. aged 72 years.**

He has tendered in evidence his affidavit Ext.PW1/A in which he has reasserted the contents of the plaint. Further, he has tendered on record *jamabandies* Ext.PW1/B to Ext.PW1/W, nakal intkal Ext.PW1/X, jamabandi Mark-A, nakal intkal Ext.PW1/X, nakal intkal (hindi version) Mark-B, mutation Ext.PW1/Y, mutation (hindi version) Mark-C, mutation PW1/Z, mutation (hindi version) Mark-D, jamabandi Ext.PW1/A1, jamabandi (hindi version) Mark-E, missal haquiyat Ext.PW1/A2, missal haquiyat (hindi version) Mark-F, nakal intkal Ext.PW1/A3, nakal intkal (hindi version) Mark-G, sale deeds Ext.PW1/A4 to Ext.PW1/A7, nakal jamabandi Ext.PW1/A8 to Ext.PW1/A10, Sub-Divisional Collector order Ext.PW1/A11, photocopy of challan Mark-G.

11. In his cross-examination, he has pleaded ignorance about the total *raqba* of land in his possession. He is said to have purchased 3 khasra numbers with total *raqba* of 25 biswa. He has pleaded ignorance about total land in the ownership of Chuhri, Sainu and Mohlu. He also did not know about the total raqba mortgaged by them. Land is said to be mortgaged for sum of Rs.114/- but no document was prepared. Self stated that revenue entries were made. He pleaded ignorance about the about for which khayale Ram sold his right. He has pleaded loss of memory on the sale amount for which he purchased the property. It is denied that

mortgage was not usufructuary. He had purchased land from Roop Chand. He has denied that Khayale Ram and Rala Ram never gave him land for cultivation. Application for redemption was also filed before the SDC

12. **PW-2 Bhag Chand son of Gorkhu Ram, R/o Village Bhalyana, Kothi Tarpur, Tehsil and District Kullu, H.P.**

He has tendered in evidence his affidavit Ext.PW2/A stating that he has seen the suit land which is self cultivated by Nirat Ram, the *ghar* of which is paid by plaintiff to the defendants. Further, suit land is said to be far off from the house of the defendants. In his cross-examination, he pleaded ignorance about the total *raqba* of the suit land and also pleaded ignorance about the year when land was given to Nirat Ram on payment of *ghar*. Nirat Ram is said to be in occupation of 3 fields named Shanghan. It is denied that plaintiff did not pay any *ghar* to the defendants No.1 to 5.

13. Further, Ld. Counsel Sh. Khub Ram on behalf of plaintiff has tendered on record in evidence documents Mark-I to Mark-III.

14. **DW-1 Birbal son of Jog Ram, R/o Village Marghan, P.O. Bhalyani, Kothi Tarapur, Tehsil and District Kullu aged 67 years.**

He has tendered in evidence his affidavit Ext.DW1/A in which he has reiterated the contents of the written statement. In his cross-examination, he has pleaded his no acquaintance to Chuhri, Sainu and Mohlu, though, they are said to be earlier owners of the suit property. Suit land is said to be situated in Shangan which was sold by Khayale Ram to Rala Ram. It is denied that Nirat Ram is in occupation on the spot. Self stated that they are occupying land on the spot. On one field, wheat is said to be grown and another is vacant. His grandfather named Rala Ram is said to have been residing in Marghan village and he had 56 bigha of land apart from the suit land. It is denied that Rala Ram had given land for cultivation to Chuhri, Sainu and Mohlu and payment of *ghar* is also denied.

REASONS FOR FINDINGS

ISSUES No.1, 2 & 6

15. Before proceeding ahead to discuss the reasons, it is apt to observe that the case primarily rests on documentary evidence and even in the event of contradiction between oral and documentary evidence, the latter prevails over the former.

16. The matter in controversy between the parties pertains to the suit land which is stated by plaintiff to be owned and possessed by Chuhri, sainu and Mohlu to the extent of 1/2 share which was mortgaged in favour of Khayale Ram for total sum of Rs.87, 2anna 6 pai on 09.06.1944 and mutation No.1310 and 1311 attested on 30.11.1944 was attested in this regard. Thereafter, Khayale Ram sold mortgaged right in favour of Rala Ram for sum of Rs.114, 4 anna vide mutation No.1400 which was attested on 24.01.1947. However, Rala Ram had given land for cultivation in favour of Rirki, sainu and Mohlu on 1/2 share of product of crop (*ghar*) and thereafter, mortgagor had cultivated the land and is said to be paying *ghar* regularly to Rala Ram. Rala Ram was succeeded to defendants No.1 to 5. Furthermore, Chuhri, sainu and Mohlu were succeeded by Nurbu and after his death by Roop Chand/defendant No.6 who continued to pay *ghar* in the capacity of mortgagor. The plaintiff is said to have purchased land partly as per sale deed No.1520 dated 25.08.1992, sale deed No.1921 dated 17.12.1990, sale deed No.9 dated 07.01.1992. Now, plaintiff is said to have stepped into the shoes of the mortgagor Roop Chand and **entitled to redeem the suit land.**

17. Per contra, defendants have stated that suit for redemption is time barred and since, the possession remained with the mortgagors, so there is no usufructuary mortgage. Furthermore, the entry of *Ghar* or rent receipt is also not there on record so the averment of the plaintiff of mortgage being in the nature of usufructuary mortgage is also totally denied.

18. Mutation No.1310 and 1311 attested on 30.01.1944 vide which land was mortgaged in favour of Khayale Ram is only 2 bigha and 13 biswa of land and similarly the subsequent sale of mortgaged right in favour of Rala Ram vide mutation No.1400 as attested on 24.01.1947 is also pertaining to 2 bigha 13 biswa and the suit land as per para No.2 of the plaint is said to be owned by Chuhri, sainu and Mohlu to the extent of 1/2 share. Thus, from the entire area of suit land 1/2 share belongs to Chuhri, sainu and Mohlu which comes out to be 2 bigha 13 biswa which is the bone of contentions between the parties.

19. It is admitted by the defendants that mortgaged was created, although, it is oral mortgage as was prevalent in those days in the old State of Punjab but the *factum* of present mortgage being usufructuary mortgage is totally denied. The most essential question for the Court to answer as to whether mortgage was a usufructuary mortgage or not.

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.

> ***'Section 58 (d) of Transfer of Property Act, 1882:***
>
> *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.'*

Chuhri, sainu, Molu (Mortgagors)

↓

Khayale Ram (Mortgagee) 87 09.06.1944

↓

Rala Ram (1947)

↓

Rirki, Sainu, Mohlu

20. Perusal of the mutation No.1311 dated 30.01.1944 placed on record dictates that Chuhri, sainu,

Mohlu had mortgaged their right on the suit property in favour of Khayale Ram and possession was delivered in favour of the mortgagee as reflected in column No.10 denoting '*khud kasht va makbuja murtheen'* meaning possession was delivered in favour of the mortgagee denoting usufructuary mortgage. Furthermore, mutation No.1400 dated 24.01.1947 is also placed on record whereby, again entry in column No.5 of possession is reflected in favour of the mortgagee Khayale Ram who had sold the rights of the mortgagee in favour of Rala Ram son of Moti Ram and similar possession status was maintained as discernible on perusal of column No.10 of such mutation.

21. Now, it is specifically pleaded by the plaintiff that Rala Ram was not able to cultivate the suit land and realize the debt himself and therefore, he had given suit land for cultivation in favour of the mortgagors itself being Rirki, Sainu, Mohlu who were directed to pay *ghar* equivalent to half share of crop to the mortgagee for discharge of mortgage debt. Consequently, *misal haquiyat* for the year 1948-49 Mark-E mentions Rala Ram to be recorded in column No.5 as mortgagee and in column No.6/possessary column entry of '***musammat Chuhri Rahina tave marji minjanib muratheen'*** meaning Chuhri in the capacity of mortgagor is in occupation of land with consent of the mortgagee. Even, entry of '***galla batai baa hissa nisafi basharah khata No.18'*** has been made which denotes that mortgagors were also paying specific crop share, referred to as '*ghar'* as per the plaint. Just below this similar entry with respect to **Sainu** has also been made. Similarly, on the very first page of such document '***Nurbu son of Mohlu Kaum Luhar tave marji***' is recorded reflecting similar meaning. Even, PW-2 has stated about occupation of plaintiff as cultivator who pays '*ghar'* to the defendants as house of the defendants was far from the

suit land. Similarly, *jamabandi* for the year 2003-04 Ext.P1/A9 mentions the name of owner as Nirat Ram/plaintiff as mortgagor and in column No.6 he alongwith Roop Chand is mentioned to be in possession/cultivation of the land with consent of the mortgagee denoted by '***khud kasht va makbuja Roop Chand rahin tave marji minjanib muratheen'***. Also, DW-1 has stated that his grandfather named Rala Ram was residing in Marghan village and he had 56 bigha of land apart from the suit land. It is clear that suit land is situated in Village Shangan and further, Rala Ram already had been in ownership and occupation of 56 bigha more land already existing with him, so it is understandable that he had given land for occupation and possession to the plaintiff/sellers of plaintiff. DW-1 has stated that he is growing wheat on the spot and has also admitted that Patwari comes on the spot for updation of *girdawari* record but no such record is placed in the case file to refute the aforesaid revenue entries in favour of the usufructuary mortgage whereby, possession is still with the mortgagor. Merely, oral evidence will not suffice. It is denied that after the death of Nurbu, Roop Chand had inherited the property and it is also denied that Roop Chand had sold Khasra No.780, 711, 1107, 712 in favour of plaintiff Nirat Ram. It is denied that even plaintiff used to pay rent in the form of half crop to the defendants. It is admitted that application before Ld. SDM had been dismissed for redemption filed by applicant/mortgagor.

22. Therefore, it is clear that mortgagors are in possession of suit land in consequence to the oral understanding/arrangement made by them/their predecessor-in-interest with Rala Ram since, the residence of Rala Ram was situated far from the suit land/mortgaged land.

23. Now, the question arises as to whether it shall

change the nature of transaction between the parties and will it not be considered usufructuary mortgage?

> '***In the case of Baijnath Prasad vs Jang Bahadur Singh, AIR 1955 Pat 357*** *the mortgagors had executed a usufructuary mortgage bond on the 5th July 1945 in respect of a house, a godown and an orchard, etc., and on the 7th July 1943 they had taken back the mortgaged property on lease on the basis of a Keraiyanama wherein they had agreed to pay a certain amount of rent per month to the mortgagee. It was held that the so-called rent represented, in fact the amount of interest payable by the mortgagors on the total mortgage money and the arrangement was thus really a device for regular payment of interest and not a lease of the property in question on payment of rent for their use and occupation. In this view of the matter, it was further held that the mortgagors could not be treated as tenants within the meaning of the* ***Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947****, and, therefore, an application for eviction under that Act was not at all maintainable.'*
>
> ***In the case of Ramarayanimgar vs Govinda Krishna, AIR 1927 PC 32*** *where the usufructuary mortgage bond and the lease back were executed on the same date, their Lordships of the Judicial Committee observed that the two deeds should be read together as they formed part of one transaction, "the lease being in the nature of a machinery for the purpose of realising the interest due on the*

mortgage."

24. Thus, it can be said that there has been a simultaneous execution of mortgage alongwith such lease in favour of the mortgagors/lease back (Keraiyanama) which is a common method where rent paid by mortgagor substitutes for profits or interest due to the mortgagee. Also, staying of mortgagors in physical possession under such tenancy agreement (oral in this case, though, reflected in the revenue record as examined above) does not legally strip the transaction of its character under Section 58 (d) of the TPA, 1882. Here also, such lease is not separate or independent transaction but it is an arrangement that has been conducted for the sake of convenience and to feed the mortgage obligation.

25. Order of Sub-Divisional Collector, Kullu, District Kullu dated 30.04.2015 has also been placed on record and perusal of para No.6 of such order dictates that much stress has been laid on the admission made regarding 'delivery of possession by mortgagee to mortgagor' rather than examination of and ascertaining of the true character of the transaction. Substance should always be given precedence over form so that the true intention of the parties can be understood, interpreted and given effect to. Relevant extract of the order is as follows:

> *Before deciding the point No.1 in the wake of above finding of the Apex Court it is necessary to discuss the point No.2 first. As such the mortgagor/present applicant has categorically admitted in the application as well as documentary evidence tendered in the form of affidavit that the mortgagee delivered the possession in favour of predecessor-in-*

interest of the applicant/mortgagor and said land has been in the possesson of the mortgagor since, 1945. As per assertion made by the applicant/mortgagor in his application that the possession remained with him then how it can be presumed that the usufruct of the suit property was being appropriated by the mortgagees/respondents and some cannot be termed as usufructuary mortgage. The chief requirement of pure usufructuary mortgage is that the mortgagor must delivered or bind himself to deliver the possession to the mortgagee. The facts mentioned in the application that the possession remained with the mortgagor and hence it was not a case of usufructuary mortgage.

26. It is pleaded and argued vehemently by Ld. Counsel on behalf of the defendants that:

1) Since the possession is already with the plaintiff, so it cannot be considered as usufructuary mortgage and nothing remains to be returned actually.

2) Suit is barred by limitation.

27. Court is of the view that the first argument advanced has been annihilated by the Court in view of the reasons discussed above. With respect to the second argument, it is clarified that article **61 of the Indian Limitation Act, 1963** mentions the period of limitation for the mortgagor to redeem or recover possession of immovable property mortgaged which is 30 years from the time ' ***when***

<u>the right to redeem or to recover possession accrues</u>.' However, the Hon'ble Supreme Court of India has discussed in a catena of judgments that the limitation for redemption of usufructuary mortgage does not begin from the date of creation of mortgage.

*In the case of **Dalip Singh (dead) through legal representatives and ors. vs Sawan Singh (dead) through legal representatives and ors. (SC) live law decided on 06.02.2026 by Division Bench of Hon'ble Justice B.V. Nagarathna & R Mahadevan** have held that period of limitation for usufructuary mortgage does not commence from the date of creation of mortgage. <u>Instead, limitation begins only from the date on which the mortgage money is paid, tendered or deposited by the mortgagor, in accordance with Section 62 of Transfer of Property Act, 1882</u>. Unless, such payment or tender takes place the period of limitation under Section 61 (a) of the schedule to the limitation Act does not start running. As a result, mere expiry of time prescribed under Limitation Act cannot extinguish the mortgagor's right of redemption in a usufructuary mortgage. Also, as long as the right of redemption subsists, the mortgagee cannot claim extinguishment of that right or seek declaration of absolute title or ownership over the mortgaged property. Reliance placed on the case of **Singh Ram (D)***

through LRs vs Sheo Ram &ors. 2014 (9) SCC 185

28. ***Section 62 of Transfer of Property Act, 1882: 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 authorized 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 mortgagee money or the balance thereof or ***deposits it in Court*** *as hereinafter provided*.

29. Order 34 Rule 7 of CPC, 1908 prescribes the passing of preliminary decree in suit for redemption specifying the principal, interest, costs of the suit and declaring the amount so due by that date. Further, Rule 8 mentions the passing of final decree in redemption suit.

30. Thus, in view the law discussed above, it is clear that limitation period for redemption of usufructuary mortgage shall commence from the date on which mortgage money is paid/deposited in the Court as provided under Section 62 of TPA discussed *supra*. It is also so because no clear date of making repayment of mortgage money/discharging of mortgage debt has been specified in the transaction and thus, above provision has to be resorted to. Also, it is clarified that the defendants are not permitted to argue that absence of

time limit shall amount to foreclosure, because that also would be considered to be a ***clog on redemption*** and the same cannot be permitted since, right of redemption is the most important right of a mortgagor.

31. Even otherwise, if for the sake of arguments it is believed that it is not a usufructuary mortgage, still, the Court is constrained to opine that even if a mortgage does not fit into the watertight definition/ingredients as provided under Section 58 (a) to (f) of TPA, still it would fall within the definition under Section 58 (g), qualifying such mortgage to be called as '***anomalous mortgage***'. Meaning thereby the right of mortgagor to redeem cannot be allowed to be defeated as that would be inequitable. It is so because the true object of mortgage is always to give the lender security of repayment of his loan and he ought not to be able in any case to claim to retain the security if his money was forthcoming from the borrower within a reasonable time of his demanding it. Thus, there grew up the doctrine that although the time fixed at law for the redemption was passed, the borrower still had in equity a right to redeem. Earlier also, the right to redeem a mortgaged property was realized by filing an application to the Chancery which was also made known as 'equity of redemption'.

32. The basis of the maxim was explicated by lindley MR in the case of ***Stanley v. Wilde(6) as*** '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'.

33. The maxim '**once a mortgage always a mortgage**,' is the connotation of the fact that the mortgagee will always remain as mortgagee and can never become an

owner. All acts he commits in order to exalt himself as an owner are perceived to be a clog on redemption.

34. Question arises as to whether one of the mortgagors can be permitted to redeem the entire mortgage. In this regard, relevant part of Section 60 is being reproduced:

> ***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 mortgagor.*

35. The above principle denotes law against '***partial redemption***' which enunciates that partial redemption is not permitted because this results into splitting of mortgagee's security.

Right of non-redeeming co-mortgagor-

> ***Vallikat Thekkedath Valappil Laxmikutty Amma and others v. Vallikat Thekeddah Velappil Demodara Menon and others, AIR 1997 SC 1909***
>
> *It is now settled legal position that one of the co-owners or one of the co-mortgagors is entitled to redeem the*

mortgage and on redemption, he subrogates into the shoes of the mortgagee. To the extent of his liability for the mortgage, he gets discharge and to the extent of the shares of other co-mortgagors, he stands in the position of mortgagee vis-a-vis other co-mortgagors. Therefore, it would be open to the other mortgagors to sue for possession of the property, after paying their share within the period of limitation. It is not in dispute that 12 years is a period of limitation for possession of the property since the appellant came into possession to the extent of the share of other co-owners, as a mortgagee. They are entitled to pay to the extent of the respective shares of the mortgage amount and seek possession from the co-mortgagor, namely, appellant within 12 years from the date of the redemption of the mortgage.

36. Thus, here the plaintiff is redeeming the mortgage even on behalf of defendant No.6 in the capacity of himself being a mortgagor since he has purchased right of mortgagor. Thus, the plaintiff has right of ***subrogation under Section 92 of TPA*** and also has right to claim expenses in accordance with Section 95 of TPA. Such law is being reproduced as hereinafter:

92. Subrogation.—Any of the persons referred to in Section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as *regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee. The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems. A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated. Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.*

95. Right of redeeming co-mortgagor to expenses.—
Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

37. Thus, the right of the plaintiff to redeem the entire mortgaged property is fully explained above.

38. Another question arises as to whether the present mortgage could be made orally. Mortgage here is of sum of Rs.87, 2 Ana, 6 Pai and transaction is below Rs.100/- which is permissible orally. Thus, the mortgage is valid. As a sequel to the above discussion, it can be said that mortgagors have transferred the limited interest that they had in favour of the plaintiff and now he has the right to redeem the usufructuary mortgage. Thus, issue No.1 is answered in an affirmative in favour of the plaintiff and against the defendant and he is entitled to decree of redemption of mortgage qua the suit

land.

39. Issue No.6 is answered in a negative, against the defendants and in favour of the plaintiff and suit cannot be said to be barred by the law of limitation.

40. Further, issue No.2 is answered in an affirmative and plaintiff is entitled to decree of declaration to the effect that order dated 30.04.2015 passed by Sub-Divisional Collector, Kullu in case No.2/2009 is wrong, illegal, null and void.

ISSUE NO 3

41. The present issue is answered in an affirmative, in favour of the plaintiff and against the defendants and thus, the plaintiff is entitled to a consequential decree of injunction and defendants No.1 to 5 are restrained from causing any interference on the suit land.

ISSUES NO 4 & 5

42. Both these issues are answered in a negative, against the defendants and in favour of the plaintiff and suit can be held to be maintainable and also not barred by principle of locus-standi in view of the reasons discussed above.

ISSUE NO 7 & 8

43. The present issues are answered in a negative, against the defendants and in favour of the plaintiff since, only bald objections are raised but no evidence is led in proof thereof. Issues are thus, answered accordingly.

RELIEF:

44. Therefore, in the light of the aforesaid reasons, the suit of the plaintiff is **decreed** and they are entitled to a preliminary decree of redemption of the mortgaged land Land comprised in Khasra No.1193, 237, 251, 250, 371, 373, Khata/Khatauni No.210/387, 385, 384, 386, situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P, land comprised in Khasra No.271, 272, 273, 316, 317, 330, 355, 313, 315, Khata/Khatauni No.272/483, 482, 484, situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P., land comprised in Khasra No.723, 728, 727, 1082, 1084, Khata/Khatauni No.70/127, 123, 125, 122, 126 situated at Muhal Shangan, Phati Bhalyani, Kothi Tarapur, Tehsil and District Kullu, H.P. and the same is allowed to be redeemed subject to depositing of Rs.115/- (amount of Rs.114, 4 Ana is rounded off) as mortgage amount in the Court on or before one month from the date of order. Preliminary decree of redemption is granted.

ii) a decree for declaration to the effect that the order dated 30.04.2015 in case No.2/2009 passed by the Ld. Sub-Divisional Collector Kullu is null and void.

iii) plaintiff is entitled to a decree of permanent prohibitory injunction of defendants are restrained from causing any interference in the lawful ownership and possession over the suit land. No order as to costs is made. Preliminary decree is passed. Decree sheet be prepared accordingly. Plaintiff is directed to file application in accordance with law for passing of final decree in his favour. File, after due completion, be consigned to the record room.

Announced in the open Court on this **17th Day of July, 2026** in the presence of Ld. Counsels for the parties.

(Chunauti Sagroli)
(SS) **Civil Judge, Kullu, H.P.**

Digitally signed by SEJAL SHARMA
Date: 2026.07.20 15:17:21 BST

FORM-A
LIST OF WITNESSES:

Sr. No	No.of PWs/DWs	Name of witnesses	Whether witnesses of Plaintiff or defendants.
1.	PW-1	Sh. Nirat Ram	Plaintiff.
2.	PW-2	Sh. Bhag Chand	Plaintiff's witnesses.
3.	DW-1	Sh. Birbal	Defendant.

FORM-B
LIST OF EXHIBITS

Sr. No.	**Exhibit**	**Description**
1.	Ext.PW1/A	Affidavit of Sh. Nirat Ram.
2.	Ext.PW1/B to Ext.PW1/H and Ext.PW1/J to Ext.PW1/V	Jamabandies.
3.	Ext.PW1/W	Jamabandi in urdu.
4.	Ext.PW1/X to Ext.PW1/Z	Mutations in urdu.
5.	Ext.PW1/A1	Jamabandi in urdu.
6.	Ext.PW1/A2	Missal Haquiyat in urdu.
7.	Ext.PW1/A3	Nakal mutation No.283 in urdu.
8.	Ext.PW1/A4 to Ext.PW1/A7	Sale deeds.
10.	Ext.PW1/A8 to Ext.PW1/A10	Nakal jamabandies.
11.	Ext.PW1/A11	Order dated 30.04.2015.
12.	Ext.PW2/A	Affidavit of Sh. Bhag Chand.
13.	Ext.DW1/A	Affidavit of Sh. Birbal.

(Chunauti Sagroli)
Civil Judge, Kullu, H.P.