

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 8994 of 2018
(Arising out of SLP(C)No.37997 of 2013)

BIR SINGH

Appellant(s)

VERSUS

RAM KANWAR SINGH(D) TH. LRS & ORS.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

1. Leave granted.
2. The appellant claims through the original mortgagee under the usufructuary mortgage. The appellant-mortgagee filed a suit claiming ownership of the property in-question by prescription and also sought for permanent injunction in favour of the appellant. The trial court decreed the suit and granted permanent injunction. On appeal, the first appellate court partly allowed the appeal holding that the appellant, claiming through the mortgagee, cannot claim right to ownership over the property in-question. However, the first appellate court affirmed the permanent injunction in favour of the appellant in the capacity of the appellant as a mortgagee. The same view was affirmed by the High Court. However, the High Court granted liberty to the respondents to work out their remedy for right to redemption in separate proceedings. While doing so the High Court affirmed the grant of injunction in favour of the appellant.

3. The short question involved in this appeal is whether the appellant, being the mortgagee, can claim grant of ownership by contending that the right of morgagor has been foreclosed.

4. This issue is squarely covered by a judgment of this Court in Singh Ram (Dead) Thr. Legal Representatives v. Sheo Ram and Others, (2014) 9 SCC 185 where this Court held that "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".

5. In view of above, this appeal is dismissed.

.....J.
(R. BANUMATHI)

.....J.
(VINEET SARAN)

NEW DELHI,
AUGUST 28, 2018.