

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 16<sup>th</sup> JUNE, 2025**

**FIRST APPEAL NO. 645 OF 2016**

**SMT. LEELA KUSHWAHA AND OTHERS**

***Versus***

**PHOOLCHAND AND OTHERS**

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**Appearance :**

*Shri Anoop Nair – Senior Advocate with Ms. Shamila Iram Fatima - Advocate for the appellants.*

*Ms. Neelam Goel – Advocate for the respondent Nos.1 to 5.*

*Shri Vineet Singh – Government Advocate for the respondent Nos.6 and 7.*

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**FIRST APPEAL NO. 744 OF 2016**

**PHOOLCHAND AND OTHERS**

***Versus***

**SMT. LEELA KUSHWAHA AND OTHERS**

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**Appearance :**

*Ms. Neelam Goel – Advocate for the appellants.*

*Shri Anoop Nair – Senior Advocate with Ms. Shamila Iram Fatima - Advocate for the respondent Nos. 1 to 5.*

*Shri Vineet Singh – Government Advocate for the respondent Nos.6 and 7.*

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**Reserved on : 17/04/2025**

**Pronounced on : 16/06/2025**

### **JUDGMENT**

Both these appeals have been preferred under Section 96 of the Code of Civil Procedure assailing the judgment and decree dated 08.08.2016 passed in RCS-A No.05A/14 (*Phoolchand and others vs. Smt. Leela Kushwaha and others*) by the Seventh Additional District Judge, Satna (M.P.).

2. Since parties in both the appeals are same and both the appeals are arising out of the same judgment and decree and fate of both the appeals depends upon the fate of one appeal, therefore, both the appeals are being heard analogously and decided by this common judgment. For the sake of convenience, facts of F.A. No.645/2016 are being taken note of.

3. A suit was filed by the plaintiffs/respondent Nos.1 to 5 against the defendants/appellants for declaration of title over the suit property on the basis of plea of adverse possession. A declaration was also sought that the mutation order dated 19.01.2009 passed by the Tahsildar, Raghurajnagar in the Case No.48-A/74/06-07 be declared as null and void. Further, a declaration was also sought that the sale deed dated 05.02.2009 executed by the defendant Nos.1 to 10 in favour of defendant Nos.11 and 12 be declared *void ab initio* and the order dated 16.06.2009 passed by the Tahsildar in a Case No.85-A-6/08-09 in favour of defendant Nos.11 and 12 be declared null and void and a decree of permanent injunction restraining the defendants from interfering with the plaintiffs'

possession over the suit land be passed. The trial Court partly decreed the suit and granted decree of permanent injunction but with regard to other reliefs, the suit was dismissed therefore, both the parties have preferred the appeal. The First Appeal No.645/2016 has been preferred by the defendants saying that the suit ought to have been dismissed and even a decree of permanent injunction should not have been granted. In another appeal preferred by the plaintiffs i.e. F.A. No.744/2016, in which they have claimed that the suit ought to have been decreed *in toto*, therefore, they have challenged the said judgment and decree on the ground that in addition to the decree of permanent injunction, a decree with regard to other reliefs should also be passed in favour of the plaintiffs. To resolve the controversy involved in the suit and as has been argued by the learned counsel for the parties, it is apt to mention the facts of the case in nutshell, which are as under :-

**3.1** A suit has been filed by the plaintiffs for declaration and permanent injunction mainly on the ground that a land situate at Mauja Etaura, Tahsil Raghurajnagar, District Satna in Arajhi No.151 area 64 decimal, Arajhi No.153 area 2.17 acre, Arajhi No.154 area measuring 93 decimal, Arajhi No.161 area 22 decimal, total area 3.96 acres which is said to be a disputed property and the suit land came in possession of the father of the plaintiff Phoolchand by a document dated 10.12.1963 which was a conditional sale deed and possession of the suit land was also given to him by virtue of the said document dated 10.12.1963. There was a condition in the said document that the suit land was mortgaged to the purchaser @ Rs.5000/- without any interest and if the seller paid the said amount to the purchaser Raghuram then that document would become

redundant and land would be redeemed to the seller Pyarelal but it was also mentioned in the document that if the amount is not paid by the given date to the purchaser then the purchaser would get their name mutated and would treat himself to be owner of the property. Although, Pyarelal had filed a suit in the District Court against the plaintiffs for redemption of land but that suit was dismissed and as such that document of conditional sale deed was never cancelled. It is claimed by the plaintiffs that after the death of the original purchaser Raghuram his successors, the plaintiffs, came into the possession of the land and even after the death of Raghuram in 1975, the plaintiffs Phoolchand, Ramavtar and Sundarlal got their name mutated in the revenue record on 17.11.1980 and till then they were in possession.

**3.2** The defendants filed their written statement stating therein that they have moved an application under Section 32 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred as 'Code, 1959') asking for the correction in the revenue entries and deleting the name of plaintiffs, their name be recorded in the revenue record and also submitted that since the suit filed by the plaintiffs by virtue of document dated 10.12.1963 against the defendants got dismissed and therefore, their name be recorded. The application was allowed, names of plaintiffs were removed from the revenue records and land was recorded in the name of defendants. An appeal against the said order of revenue authority was also filed and the same was also dismissed. The defendants have also taken a specific stand that though the suit for redemption of land was filed by Pyare but that got dismissed in default and after the death of Pyare, it could not be restored, however, in the year 1992, they approached the

plaintiffs and paid Rs.15,000/- to them and that suit property was redeemed in favour of the defendants giving assurance to them that no further dispute would arise out of the said document dated 10.12.1963 and names of the defendants since recorded in the revenue record, possession was also given to them to enjoy the property and therefore, according to the defendants, the document dated 10.12.1963 was not in existence and no relief could have been granted in favour of the plaintiffs and therefore, they claimed dismissal of suit. The defendants have also raised the ground that the suit is also barred by law as earlier suit with regard to the document dated 10.12.1963 had been filed by the plaintiffs but that got dismissed up to the High Court and therefore, subsequent suit on the basis of the said document claiming right over the suit property is barred by *res judicata* and therefore, the same ought to have been dismissed.

4. The trial Court framed as many as 08 issues and passed the impugned judgment and decree holding that the document dated 10.12.1963 (Ex.P/1) is a deed of mortgage executed in lieu of the loan taken by the defendant Pyare and therefore, declaratory decree with regard to title over the suit land was not passed as Court has found that plea of adverse possession and title of declaration in the facts and circumstances of the case could not have been passed in favour of the plaintiffs because possession over the suit land cannot be said to be adverse and hostile. However, the suit has been decreed in respect of grant of decree of permanent injunction as Court has found plaintiffs in continuous possession of the land by virtue of document (Ex.P/1).

5. Although, specific stand was taken by the defendants about redemption of land but no issue was framed by the Court in that regard.

However, the Court discussed the stand of the defendants and evidence produced thereon but according to the trial Court, the evidence produced by the defendants in regard to the said stand was unacceptable because it was not consistent. The Court, although, discarded the evidence adduced by the defendants in that regard relying upon a document i.e. Ex.D/42 produced by DW-2 which was an affidavit submitted by the plaintiffs in a revenue proceeding initiated in pursuance to an application filed under Section 32 of the Code, 1959.

6. This Court, sitting in appeal, is re-appreciating the facts and evidence adduced by the parties to decide the actual issue involved in the case and to consider whether the impugned judgment and decree passed by the trial Court is sustainable in the light of the issue involved in the case and on the basis of evidence adduced by the parties.

7. Thus, in the opinion of this Court, the basic issues, which emerge for consideration, are as under :-

- (i) Whether the suit for declaration of title on the basis of plea of adverse possession was maintainable or not ?
- (ii) Whether the Court below was justified in granting decree of permanent injunction in favour of the plaintiffs holding that they have been in possession of the suit land from the date of executing a document dated 10.12.1963 (Ex.P/1) and as such their possession was lawful and decree of injunction could have been granted ?
- (iii) Whether the suit property was redeemed pursuant to payment of Rs.15,000/- by the defendants to the plaintiffs and defendants successfully proved their stand or not ?

8. With regard to issue no.(i) and fact with regard to the declaratory decree of title on the basis of plea of adverse possession, though trial Court has refused to grant such decree but plaintiffs has also challenged the said part of the impugned judgment and decree in an appeal preferred by them i.e. F.A. No. 744/2016, therefore, this Court is also dealing with the said issue.

9. There is an undisputed fact that a suit was filed by the plaintiffs for declaration that has been dismissed by the trial Court and appeal preferred against the said judgment and decree was also dismissed and thereafter a second appeal was filed before the High Court. Vide order dated 29.10.1979 passed in the Second Appeal No.173/1979 (Ex.D/12) the High Court dismissed the said appeal but clarified with regard to the document dated 10.12.1963 (Ex.P/1) as under :-

“In any case, the decision about the nature of the document dated 10.12.1963 in this suit would not affect the conclusion of the instant suit when the agreement dated 07.02.1967 has been found to be not genuine and the suit was for its specific performance.”

10. Thus, it is clear that the suit had been filed by the plaintiffs for specific performance of contract on the basis of document dated 07.02.1967 and that document was found forged and suit of the plaintiffs was dismissed but the status of the document dated 10.12.1963 was left open and no finding was given by the Court in that regard.

11. Thus, it is quite clear that it was also obligatory for the trial Court to see that when a claim of the plaintiffs over the suit property was on the basis of document dated 10.12.1963 saying that it was a

conditional sale and the condition was to pay the amount of Rs.5,000/- till 10.12.1973 then the suit property would be redeemed but it was not complied with and the sale became absolute and declaration over the said suit property could be made by filing a suit for declaration claiming title by virtue of document dated 10.12.1963. It was not done and suit for redemption of land filed by the Pyare got dismissed for want of prosecution and after his death, his legal heirs have not restored the said suit and it was clear that there was no finding on merit with regard to the said aspect of the matter and thereafter, defendants have tried to contact the plaintiffs to redeem the property and according to them, they paid Rs.15,000/- and property was redeemed giving assurance by the plaintiffs that land since recorded in the name of defendants, the possession was also given to them asking them to enjoy the said property. It can be presumed that the plaintiffs since lost their case up to the High Court and therefore, they were under the impression that they would get nothing out of the document dated 10.12.1963 and accepted the amount of Rs.15,000/- and redeemed the property but this aspect and its impact over the dispute was not taken into account by the Court below and therefore, did not care to frame an issue in this regard. A suit for declaration on the basis of plea of adverse possession claiming title over the suit property was filed in the year 2014 but that was not maintainable on the basis of fact that possession over the suit land cannot be said to be adverse and hostile because it was otherwise a permissive possession.

**12.** The Supreme Court in the case of **Singh Ram (Dead) through Legal Representatives vs. Sheo Ram and others (2014) 9 SCC 185** has clearly laid down as under :-



“15. Apart from the judgments mentioned in reference order, reference may be made to some other judgments dealing with the issue. In Harbans v. Om Prakash [Harbans v. Om Prakash, (2006) 1 SCC 129] , this Court upheld the view that limitation for redemption does not start from date of mortgage in a usufructuary mortgage and held that the view in State of Punjab v. Ram Rakha [State of Punjab v. Ram Rakha, (1997) 10 SCC 172] was contrary to the earlier view in Ganga Dhar v. Shankar Lal [Ganga Dhar v. Shankar Lal, AIR 1958 SC 770 : 1959 SCR 509]. It was observed: (Harbans case [Harbans v. Om Prakash, (2006) 1 SCC 129] , SCC pp. 132-36, paras 7-9)

“7. Reference may be made to certain paragraphs in Ganga Dhar v. Shankar Lal [Ganga Dhar v. Shankar Lal, AIR 1958 SC 770 : 1959 SCR 509], which read as follows: (AIR pp. 772-75, paras 4, 6-7, 14-18)

‘4. It is admitted that the case is governed by the Transfer of Property Act. Under Section 60 of that Act, at any time after the principal money has become due, the mortgagor has a right on payment or tender of the mortgage money to require the mortgagee to reconvey the mortgaged property to him. The right conferred by this section has been called the right to redeem and the appellant sought to enforce this right by his suit. Under this section, however, that right can be exercised only after the mortgage money has become due. In Bakhtawar Begam v. Husaini Khanam [(1913-14) 41 IA 84 : (1914) 1 LW 813 : ILR (1914) 36 All 195] , (IA at p. 89) also the same view was expressed in these words:

“Ordinarily, and in the absence of a special condition entitling the mortgagor to redeem during

the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period.”

Now, in the present case the term of the mortgage is eighty-five years and there is no stipulation entitling the mortgagor to redeem during that term. That term has not yet expired. The respondents, therefore, contend that the suit is premature and liable to be dismissed.

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6. The rule against clogs on the equity of redemption is that, a mortgage shall always be redeemable and a mortgagor's right to redeem shall neither be taken away nor be limited by any contract between the parties. The principle behind the rule was expressed by Lindley, M.R. in *Santley v. Wilde* [(1899) 2 Ch 474 : (1895-99) All ER Rep Ext 1338 (CA)], in these words: (Ch pp. 474-75)

“The principle is this: a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a 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’.”

7. The right of redemption, therefore, cannot be taken away. The courts will ignore any contract the

effect of which is to deprive the mortgagor of his right to redeem the mortgage. One thing, therefore, is clear, namely, that the term in the mortgage contract, that on the failure of the mortgagor to redeem the mortgage within the specified period of six months the mortgagor will have no claim over the mortgaged property, and the mortgage deed will be deemed to be a deed of sale in favour of the mortgagee, cannot be sustained. It plainly takes away altogether, the mortgagor's right to redeem the mortgage after the specified period. This is not permissible, for "once a mortgage always a mortgage" and therefore always redeemable. The same result also follows from Section 60 of the Transfer of Property Act. So it was said in *Mohd. Sher Khan v. Swami Dayal* [(1921-22) 49 IA 60 : AIR 1922 PC 17] : (IA p. 65)

"An anomalous mortgage enabling a mortgagee after a lapse of time and in the absence of redemption to enter and take the rents in satisfaction of the interest would be perfectly valid if it did not also hinder an existing right to redeem. But it is this that the present mortgage undoubtedly purports to effect. It is expressly stated to be for five years, and after that period the principal money became payable. This, under Section 60 of the Transfer of Property Act, is the event on which the mortgagor had a right on payment of the mortgage money to redeem.

The section is unqualified in its terms, and contains no saving provision as other sections do in favour of contracts to the contrary. Their Lordships therefore see no sufficient reason for withholding from the

words of the section their full force and effect.”  
(SCR pp. 512-14)

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14. In comparatively recent times Viscount Haldane, L.C. repeated the same view when he said in *G. and C. Kreglinger v. New Patagonia Meat and Cold Storage Co. Ltd.* [1914 AC 25 : (1911-13) All ER Rep 970 (HL)] : (AC at pp. 35-36)

“...This jurisdiction was merely a special application of a more general power to relieve against penalties and to mould them into mere securities. The case of the common law mortgage of land was indeed a gross one. The land was conveyed to the creditor upon the condition that if the money he had advanced to the feoffor was repaid on a date and at a place named, the fee simple would revert in the latter, but that if the condition was not strictly and literally fulfilled he should lose the land forever. What made the hardship on the debtor a glaring one was that the debt still remained unpaid and could be recovered from the feoffor notwithstanding that he had actually forfeited the land to his mortgagee. Equity, therefore, at an early date began to relieve against what was virtually a penalty by compelling the creditor to use his legal title as a mere security.

My Lords, this was the origin of the jurisdiction which we are now considering, and it is important to bear that origin in mind. For the end to accomplish which the jurisdiction has been evolved ought to govern and limit its exercise by equity Judges. That end has always been to ascertain, by parol evidence if need be, the real nature and substance of the transaction, and if it turned out to be in truth one of mortgage simply, to place it on that footing. It was,

in ordinary cases, only where there was conduct which the Court of Chancery regarded as unconscientious that it interfered with freedom of contract. The lending of money, on mortgage or otherwise, was looked on with suspicion, and the court was on the alert to discover want of conscience in the terms imposed by lenders.”

15. The reason then justifying the Court's power to relieve a mortgagor from the effects of his bargain is its want of conscience. Putting it in more familiar language the Court's jurisdiction to relieve a mortgagor from his bargain depends on whether it was obtained by taking advantage of any difficulty or embarrassment that he might have been in when he borrowed the moneys on the mortgage. Was the mortgagor oppressed? Was he imposed upon? If he was, then he may be entitled to relief.

16. We then have to see if there was anything unconscionable in the agreement that the mortgage would not be redeemed for eighty-five years. Is it oppressive? Was he forced to agree to it because of his difficulties? Now this question is essentially one of fact and has to be decided on the circumstances of each case. It would be wholly unprofitable in enquiring into this question to examine the large number of reported cases on the subject, for each turns on its own facts.

17. First then, does the length of the term — and in this case it is long enough being eighty-five years itself lead to the conclusion that it was an oppressive term? In our view, it does not do so. It is not necessary for us to go so far as to say that the length of the term of the mortgage can never by itself show that the bargain was oppressive. We do not desire to say anything on that question in this case. We think it enough to say that we

have nothing here to show that the length of the term was in any way disadvantageous to the mortgagor. It is quite conceivable that it was to his advantage. The suit for redemption was brought over forty-seven years after the date of the mortgage. It seems to us impossible that if the term was oppressive, that was not realised much earlier and the suit brought within a short time of the mortgage. The learned Judicial Commissioner felt that the respondents' contention that the suit had been brought as the price of landed property had gone up after the war, was justified. We are not prepared to say that he was wrong in this view. We cannot also ignore, as appears from a large number of reported decisions, that it is not uncommon in various parts of India to have long-term mortgages. Then we find that the property was subject to a prior mortgage. We are not aware what the term of that mortgage was. But we find that that mortgage included another property which became free from it as a result of the mortgage in suit. This would show that the mortgagee under this mortgage was not putting any pressure on the mortgagor. That conclusion also receives support from the fact that the mortgage money under the present mortgage was more than that under the earlier mortgage but the mortgagee in the present case was satisfied with a smaller security. Again, no complaint is made that the interest charged, which was to be measured by the rent of the property, was in any manner high. All these, to our mind, indicate that the mortgagee had not taken any unfair advantage of his position as the lender, nor that the mortgagor was under any financial embarrassment.

**18.** It is said that the mortgage instrument itself indicates that the bargain is hard, for, while the

mortgagor cannot redeem for eighty-five years, the mortgagee is free to demand payment of his dues at any time he likes. This contention is plainly fallacious. There is nothing in the mortgage instrument permitting the mortgagee to demand any money, and it is well settled that the mortgagee's right to enforce the mortgage and the mortgagor's right to redeem are coextensive.'

8. On the contrary, the learned counsel for the respondent submitted that in *Panchanan Sharma v. Basudeo Prasad Jaganani* [*Panchanan Sharma v. Basudeo Prasad Jaganani*, 1995 Supp (2) SCC 574], it was clearly held that when there is no stipulation regarding period of limitation it can be redeemed at any time. It was, inter alia, held as follows: (SCC p. 576, para 3)

‘(4) The sale certificate, Ext. C-II does not bind the appellant and, therefore, the mortgage does not stand extinguished by reason of the sale. It is inoperative as against the appellant.’

9. Though the decision in *State of Punjab* case [*State of Punjab v. Ram Rakha*, (1997) 10 SCC 172] prima facie supports the stand of the appellant, the decision rendered by a three-Judge Bench of this Court in *Ganga Dhar* case [*Ganga Dhar v. Shankar Lal*, AIR 1958 SC 770 : 1959 SCR 509] according to us had dealt with the legal position deliberately and stated the same succinctly.”

**21.** We need not multiply reference to the other judgments. Reference to the above judgments clearly spell out the reasons for conflicting views. In cases where distinction in usufructuary mortgagor's right under Section 62 of the TP Act has been noted, right to

redeem has been held to continue till the mortgage money is paid for which there is no time-limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of the right of redemption after 30 years.

**13.** Further, the Supreme Court in the case of **Kesar Bai v. Genda Lal and another, (2022) 10 SCC 217** has observed as under :-

“5. The learned counsel appearing on behalf of the appellant-original Defendant 1 has vehemently submitted that as such the plaintiffs filed the suit for declaration claiming ownership/title on the basis of the registered sale deed dated 31-8-1967 (Ext. P-1) and also claimed the ownership by adverse possession. It is submitted that all the courts below had negated the claim of the original plaintiffs on the basis of the registered sale deed. It is submitted that thereafter the only question on behalf of the plaintiffs was the claim on the basis of the adverse possession. It is submitted that in the impugned judgment and order, the High Court has though held the substantial question of law on adverse possession in favour of the appellant by observing that the plea of ownership based on sale deed and plea of adverse possession, both, are contrary to each other and the plaintiffs cannot be permitted to take the same plea at the same time, thereafter the High Court has dismissed the appeal and confirmed the judgment and order passed by the first appellate court decreeing the suit for title and also passed the decree for permanent injunction.

**5.1.** It is vehemently submitted by the counsel on behalf of the appellant that once the original plaintiffs failed to get the decree for title/declaration on the basis of the sale deed executed on 31-8-1967 (Ext. P-1) and



the substantial question of law with respect to the adverse possession was held in favour of the appellant by the High Court, thereafter the original plaintiffs shall not be entitled to the decree of permanent injunction.

**5.2.** It is further submitted that the High Court has failed to appreciate that once the plaintiffs are not found to be the owner, they cannot claim their title by way of adverse possession. Their possession over the land in question can only be in the nature of an encroacher. It is submitted that therefore both, the first appellate court as well as the High Court have seriously erred in granting the permanent injunction in favour of the plaintiffs and against the defendants.”

**14.** Thus, it is clear that on the basis of document dated 10.12.1963 (Ex.P/1), no declaration could have been claimed on the basis of plea of adverse possession and as such the suit for adverse possession was not maintainable and it was rightly dismissed by the Court refusing to grant any declaratory decree in this regard in favour of the plaintiffs.

**15.** As per the facts, in the year 2009, the defendants executed the sale deed in favour of some of the defendants and on the basis of that sale deed, the purchaser got their name mutated in the revenue records even though, plaintiffs did not challenge the said sale deed in time and sought declaratory decree by filing a suit in the year 2014. Although, the trial Court refused to grant any such decree in favour of the plaintiffs but this fact of filing the suit in the year 2014 challenging the sale deed executed in the year 2009 is material so as to consider the conduct of the parties especially the plaintiffs and their plea of possession over the suit land

because according to the facts and as per the stand of the plaintiffs, the document dated 10.12.1963 (Ex.P/1) has become absolute because till 10.12.1973, the condition to repay the loan amount of Rs.5,000/- was not fulfilled but even then they did not claim any declaration of title by virtue of document dated 10.12.1963 (Ex.P/1). At the same time, defendants have taken a stand that by paying an amount of Rs.15,000/- in the year 1992, the mortgage was redeemed and land was again received back by the defendants and therefore, in 2009, they have executed the sale deed. It is also clear that the High Court in the year 1979 has given a specific observation that the status of document dated 10.12.1963 was not affected by dismissal of suit filed by the plaintiffs. Further, it is noticeable that a suit for redemption which was filed by Pyarelal got dismissed and plaintiffs had the knowledge of the same but still they did not care to file a suit for foreclosure with regard to the disputed property for which a limitation period of 30 years has been provided in Article 63(a) of the Schedule of Limitation Act, 1963. The conduct of the plaintiffs sitting silent upto 2014 not claiming any declaration of title upto 2014 and also not filing any suit for foreclosure is something suspicious. According to them, when document dated 10.12.1963 was a sale deed then there was no reason for them to seek declaration of title by virtue of adverse possession. It could have been claimed on the basis of document (Ex.P/1) saying that the same is an absolute sale deed executed by defendant Pyare in favour of their father Raghuram. It is also surprising that the trial Court rejected the plea of redemption taken by the defendants only on the basis of Ex.D/42, produced by DW-2, which is an affidavit submitted by the plaintiffs in a revenue proceeding in which Phoolchand in his cross examination has stated as under :-

“यह कहना गलत है कि आवेदकगण यदि आवंटित आराजी का गहन मुक्ताव दे दें तो भूमि वापस ले लेंगे।”

**16.** I am surprised as to how this suggestion and clarification of plaintiffs can be a foundation to hold that they are in possession of the property and there was no redemption whereas defendants have very categorically stated in their evidence that they have paid Rs.15,000/- in front of other witnesses and statements of those witnesses were also recorded and they have also stated so. The conduct of the plaintiffs for not challenging the sale deed of the year 2009 upto the year 2014 and also not filing any suit for declaration of title claiming that the document dated 10.12.1963 (Ex.P/1) has become absolute sale deed due to non-compliance of the condition for repayment of amount and as such, in the opinion of this Court, the finding given by the trial Court holding that the plaintiffs though they are not the true owners of the suit property by virtue of document dated 10.12.1963 (Ex.P/1) but still they are in lawful possession of the land is not sustainable. The suit for declaration as has already been observed was not maintainable and overall circumstances indicate that plaintiffs were not vigilant about their rights over the suit property and only by virtue of adverse possession, they were claiming title and claiming possession over the property. The trial Court ignoring the order of revenue authority and mutation entries made in favour of the purchaser, only on the basis of statement made by the plaintiffs in revenue proceeding has come to the conclusion about the possession of the plaintiffs. The said finding, in my opinion, is erroneous and rather perverse and therefore, decree granted by the Court below with regard to

permanent injunction holding possession of the plaintiffs over the suit property is also not sustainable.

17. It is also clear that the injunction in the present case on a suit for declaration by virtue of adverse possession is a consequential relief. When suit itself was not maintainable and decree of declaration was refused by the Court then granting decree of permanent injunction in favour of the plaintiffs was otherwise contrary to law.

18. The Supreme Court in the case of **Kesar Bai (supra)** which has already been quoted hereinabove has laid down that when a declaratory decree of title by virtue of adverse possession is denied, the permanent injunction also cannot be granted in favour of the plaintiff.

19. Further, the Supreme Court in the case of **Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai, (2022) 12 SCC 128** has observed as under :-

“18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title.

However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant — the true owner still be restrained from disturbing his/her possession and his/her possession be protected.”

(emphasis supplied)

20. In view of the facts and circumstances of the case, this Court has no hesitation to say that the impugned judgment and decree passed by the trial Court in favour of the plaintiffs is not sustainable for the reason that the plaintiffs have never claimed declaration of title saying that the document dated 10.12.1963 though considered to be a mortgage but it was a mortgage by condition and since the condition was not fulfilled, it has become absolute and should be treated to be a sale deed and therefore, it is clear that plea of redemption taken by the defendants on the basis of evidence adduced had to be considered by the Court and therefore, the suit is to be dismissed *in toto*.

21. Accordingly, F.A. No.645/2016 filed by the defendants is **allowed** and the RCS-A No.05A/14 filed by the plaintiffs is dismissed. Resultantly, the connected appeal i.e. F.A. No.744/2016 filed by the plaintiffs fails and is accordingly **dismissed**.

22. No order as to costs.

(SANJAY DWIVEDI)

PK

**JUDGE**