This document is retrieved from https://caseguru.in CaseGuru

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9030 OF 2013
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 18323 OF 2008)

STATE OF HARYANA & OTHERS … APPELLANTS

VERSUS

NAVIR SINGH AND ANOTHER …RESPONDENTS

WITH

CIVIL APPEAL NO.9049 OF 2013
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 924 OF 2009)

STATE OF PUNJAB & OTHERS … APPELLANTS

VERSUS

PAGRO FOODS LTD. & OTHERS …RESPONDENTS

J U D G M E N T

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

CHANDRAMAULI KR. PRASAD, J.

C.A.NO.9030 OF 2013 (@SLP (CIVIL) NO.18323 OF 2008)

The petitioners, aggrieved by the order of the High Court directing entry of charge in the revenue records on the basis of mortgage created by deposit of title-deeds, have preferred this special leave petition.

Delay condoned.

Leave granted.

Shorn of unnecessary details, facts giving rise to the present appeal are that one M/s. Ultra Tech Private, a company incorporated under the Companies Act, was sanctioned a term loan of Rs. 425 lakhs and working capital facility of Rs.99 lakhs by the Punjab National Bank (hereinafter referred to as the Bank). As agreed by the Bank, original title-deeds in respect of 19 Marlas of land belonging to Narvir Singh and 31 Marlas of land owned by

This document is retrieved from https://caseguru.in CaseGuru

Rajinder Kaur were deposited with the Bank by the borrower. In this way mortgage by deposit of title-deeds took place. It is not in dispute that this transaction had taken place in a town notified under Section 58(f) of the Transfer of Property Act. The Bank wrote to the Tahsildar, Panchkula for mutation on the basis of mortgage effected by deposit of the title-deeds. When nothing was done, the land owner filed writ petition before the High Court inter alia praying for mutation on the basis of mortgage aforesaid.

The respondents resisted mutation inter alia on the ground that no entry can be made as the instrument of deposit of title-deeds is compulsorily registrable under Section 17(1)(c) of the Registration Act and for that, they relied on a letter dated 29th March, 2007 of the Finance Commissioner and Principal Secretary to Government, the relevant portion whereof reads as under:

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

"xxx xxx xxx

2. It is clarified that the instrument of deposit of title-deed/Equitable Mortgage is compulsorily registrable under Section 17(1)(c) of the Indian Registration Act, 1908. Registration fee is payable under Article 1(1)(b) in the table of Registration Fees Notification dated 06th November, 2006. Article 6 of the schedule I-A of the Indian Stamp Act, 1899 provides for rate of Stamp Duty (SD) chargeable on deposit of title-deeds/equitable mortgage.

xxx xxx xxx"

According to the respondents, in the absence of registration as aforesaid and payment of registration fee and stamp duty, the prayer for mutation cannot be allowed.

The High Court considered the objection and negatived the same in the following words:

"We are of the view that an equitable mortgage is created by deposit of title-deeds and not through any written instrument. Simple pledge of the title-deeds to the bank as

This document is retrieved from https://caseguru.in CaseGuru

> Security creates an equitable mortgage, therefore, there is never an instrument of deposit of title-deed/equitable mortgage. The petitioner simply went to the bank and handed over the title-deeds of their respective properties. This act was enough to create a mortgage as envisaged under Section 58(f) of the Transfer of Property Act. Quite often a memorandum is drawn up regarding the handing over of the title-deeds but this memorandum is simply a written record of the pledge. The memorandum itself is not an instrument of mortgage……..”

Mr. B.S. Mor, Additional Advocate General appearing for the State submits that mortgage by deposit of title-deeds requires registration under Section 17(1)(c) of the Registration Act, 1908. Further it mandates payment of fee as prescribed under article 1(1)(b) of the Registration Fees notification dated 6th November, 2006. In addition, payment of stamp duty as per Article 6 of the Indian Stamp Act is also required. According to Mr. Mor in the absence of all these the mortgage by deposit of title-deeds cannot form the basis of mutation.

SUPREME COURT OF INDIA
JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

Mr. Harikesh Singh, learned counsel appearing for the respondents, however, submits that mortgage by deposit of title-deeds does not need any registered instrument. Hence, there is no question of deposit of any fee thereon. According to him, it also does not require payment of duty under the Stamp Act.

An application for impleadment has been filed by the Bank for being impleaded as a party to the proceedings, which was allowed by this Court vide order dated 12th July, 2010. The Bank is represented by Mr.Rajesh Kumar, Advocate for M/s. Mitter & Mitter, Advocates.

JUDGMENT

Another application for impleadment (I.A. No. 3 of 2011) has been filed by Shankar Twine Products Pvt. Ltd. through its Director. We reject this petition giving liberty to it to take recourse to such other remedy as is available to it before the court of competent jurisdiction.

This document is retrieved from https://caseguru.in CaseGuru

In view of rival submissions, the question which falls for consideration is whether 'charge' of mortgage can be entered in the revenue record in respect of a mortgage effected by deposit of title-deeds without its registration and payment of registration fee and stamp duty.

Mortgage by deposit of title-deeds is sanctioned by law under Section 58(f) of the Transfer of Property Act in specified towns, same reads as follows:

> **"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.—**
>
> (a) xxx xxx xxx
>
> (e) xxx xxx xxx
>
> **(f) Mortgage by deposit of title-deeds.—**Where a person in any of the following towns, namely, the towns of Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

> intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds."

Mortgage inter alia means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(c) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. Mortgage by deposit of title-deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title-deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor

SUPREME COURT OF INDIA
JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

deposits with the creditor title-deeds of the property for the purpose of security, it becomes mortgage in terms of Section 58(f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of mortgage by deposit of title-deeds is handing over by a borrower to the creditor title-deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent. After the deposit of the title-deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)c) of the Registration Act, but in a case in which such a document does not incorporate any term and condition, it is merely evidential and does not require registration.

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

This Court had the occasion to consider this question in the case of **Rachpal v. Bhagwandas, AIR 37 1950 SC 272,** and the statement of law made therein supports the view we have taken, which would be evident from the following passage of the judgment:

> "**4.** A mortgage by deposit of title-deeds is a form of mortgage recognized by S. 58(f), T.P. Act, which provides that it may be effected in certain towns (including Calcutta) by a person "delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon." That is to say, when the debtor deposits with the creditor the title-deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under S.59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes

This document is retrieved from https://caseguru.in CaseGuru

> the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under S.17, Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title-deeds and yet may not be registrable……"

This Court while relying on the aforesaid judgment in the case of **United Bank of India v. M/s. Lekharam Sonaram & Co.,AIR 1965 SC 1591** reiterated as follows:

> "**7.** ……It is essential to bear in mind that the essence of a mortgage by deposit of title-deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form

This document is retrieved from https://caseguru.in CaseGuru

> integral parts of the transaction and are essential ingredients in the creation of the mortgage. It follows that in such a case the document which constitutes the bargain regarding security requires registration under Section 17 of the Indian Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. If a document of this character is not registered it cannot be used in the evidence at all and the transaction itself cannot be proved by oral evidence either…….”

Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case. It is relevant here to state that letter dated 29th March, 2007 of the Finance Commissioner inter alia makes “instrument of deposit of title-deeds compulsorily registrable under Section 17(1)(c) of the Registration Act.” In such contingency, registration fee and stamp duty would be leviable. But the question is whether mortgage by deposit of title-deeds is required to be done by an instrument at all. In our opinion, it may be effected in specified town by the debtor delivering to his

SUPREME COURT OF INDIA
JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

creditor documents of title to immoveable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only showing deposit of the title-deeds. In such a case also registration is not required. But in a case in which the memorandum recorded in writing creates right, liability or extinguishes those, same requires registration. In our opinion, the letter of the Finance Commissioner would apply in cases where the instrument of deposit of title-deeds incorporates terms and conditions in addition to what flow from the mortgage by deposit of title-deeds. But in that case there has to be an instrument which is an integral part of the transaction regarding the mortgage by deposit of title-deeds. A document merely recording a transaction which is already concluded and which does not create any rights and liabilities does not require registration. Nothing has been brought on record to show existence of any

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

instrument which has created or extinguished any right or liability. In the case in hand, the original deeds have just been deposited with the bank. In the face of it, we are of opinion that the charge of mortgage can be entered into revenue record in respect of mortgage by deposit of title-deeds and for that, instrument of mortgage is not necessary. Mortgage by deposit of title-deeds further does not require registration. Hence, the question of payment of registration fee and stamp duty does not arise. By way of abundant caution and at the cost of repetition we may, however, observe that when the borrower and the creditor choose to reduce the contract in writing and if such a document is the sole evidence of terms between them, the document shall form integral part of the transaction and same shall require registration under Section 17 of the Registration Act. From conspectus of what we have observed above, we do not find any error in the judgment of the High Court.

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

In the result, we do not find any merit in the appeal and it is dismissed accordingly but without any order as to costs.

CIVIL APPEAL NO.9049 OF 2013 (@SLP (C) NO. 924/2009)

Delay condoned.

Leave granted.

By the impugned order, the High Court had directed the appellants herein to enter mutation in favour of Punjab National Bank in respect of the properties mortgaged by deposit of title-deeds. According to the appellants, the properties mortgaged by deposit of title-deeds are situated in the village Matab Garh in the District of Ludhiana and at village Dallomajra, Tahsil and District Fatehgarh Sahib and village Sadhugarh in the District Sirhind.

It is the stand of the appellants that deposit of the title-deeds are not in relation to the

SUPREME COURT OF INDIA JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

properties situated in the towns specified under Section 58(f) or in the towns notified by the State Government in terms of Section 58 of the Transfer of Property Act. In this connection, our attention has been drawn to the notification dated May 26, 2003 of the Government of Punjab in the Department of Revenue and Rehabilitation, same reads as follows:

> "In exercise of the power conferred by clause (f) of Section 58 of the Transfer of Property Act, 1882 (Central Act No. 4 of 1882) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to specify Gobindgarh in the district Fatehgarh Sahib and Mohali in District Roop Nagar in the State of Punjab as Towns for the purpose of the aforesaid section of the said Act."

SUPREME COURT OF INDIA JUDGMENT

This aspect of the matter has not been considered by the High Court in the impugned judgment. As the same goes to the root of the matter, we have no option than to set aside the impugned order and remit the matter back for its

This document is retrieved from https://caseguru.in CaseGuru

fresh consideration in accordance with law in the light of the observation made above.

In the result, we allow this appeal, set aside the impugned judgment of the High Court and remit the matter back to the High Court for fresh consideration in accordance with law.

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(KURIAN JOSEPH)

NEW DELHI,
OCTOBER 7, 2013.

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

This document is retrieved from https://caseguru.in CaseGuru

SUPREME COURT OF INDIA

JUDGMENT