

Asa Ram

Vs

Union of India

Civil Appeal No. 394(N) of 1972

(R.S. Pathak, O. Chinnappa Reddy JJ)

21.07.1981

JUDGMENT

PATHAK, J. –

1. This is a plaintiff's appeal by special leave against a judgment and decree of the High Court of Punjab & Haryana affirming in second appeal the dismissal of his suit for possession.
2. The appellant filed a suit for possession alleging that the land in suit had been mortgaged by the original owners with his predecessors-in-interest in the year 1949 Bk., and that as the mortgage had not been redeemed within time, he had become absolute owner of the land. The suit was contested by the Union of India on the ground that the successors-in-interest of the mortgagors had become evacuees and as the mortgage was subsisting on October 30, 1951, when the Evacuee Interest (Separation) Act came into force, the mortgagees' rights had been extinguished by virtue of Section 9(2) of that Act.
3. The trial court and the first appellate court concurred in dismissing the suit and the High Court, in second appeal, has maintained the decree of dismissal.
4. In this appeal the appellant contends that the period of 60 years from the date of the mortgage had expired before the Evacuee Interest (Separation) Act came into force and therefore Section 9(2) could have no effect on rights which had already accrued to the appellant. In our judgment, the contention is without substance. It is the case of the appellant that the original mortgagees entered into possession in the beginning of Rabi 1949 Bk. That corresponds to 1892 A.D. Clearly, the period of 60 years expired sometime in the year 1952. Meanwhile, the Evacuee Interest (Separation) Act had already come into force on October 30, 1951. The mortgage was subsisting on that date and was therefore effected by the enactment.
5. Our attention was drawn to Ex. P-3, an extract from the register of mutation, which reads "Mortgage with possession dated December 2, 1891 for Rs. 575". It is apparent that reference is to the document and not to the date on which possession was taken. As the case of the appellant is that the mortgagees entered into possession in 1949 Bk., that is to say 1892 A.D., this entry cannot be construed in favour of the appellant.
6. In the result, the appeal fails and is dismissed with costs.

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