

Sampuran Singh

Vs

Niranjana Kaur

Civil Appeal No. 4544 of 1984

(A.P. Misra, N. Santosh Hegde JJ)

JUDGMENT

A.P. Misra, J.

1. The only question raised by the learned counsel for the mortgagor-appellants is and, that is, what is also decided by the courts below is whether his suits for redemption is barred by time ? This is a case of oral mortgage executed in the year 1893 for a sum of Rs. 53/- and further, a question is raised, whether fresh period of limitation would revive from 11st January, 1960, on which date the original mortgagee sold his mortgagee right by a registered deed to the respondents, who acknowledge the existence of the mortgage in question ?

2. To appreciate the controversy, it is necessary to refer to the following short facts of this case. The suit land comprising of 37 kanals 15 marlas in Khewat No. 260, Khatauni No. 448, Rect. No. 45, Killa No. 14 (8-0), 19 (8-0), 21 (5-15), 22 (8-0) situated in village Sambhli, Tehsil and District Karnal (Haryana) was originally mortgaged by Rekha and others for a sum of Rs. 53/- in favour of Bakhatwara, Raju and Matu S/o Sahu on 21st March 1893. Mutation was sanctioned. Subsequently, on 11th January, 1960, the mortgagee-Matu s/o Raju and Smt. Dasondha Wd/o Parsa D/o Sahu sold their mortgagee rights vide registered sale deed in the even date to the respondents.

3. On the other hand, the appellants had purchased the suit land in the year 1959 from the original mortgagor-Rakha and others vide three separate registered sale deeds. According to the appellants till 1960-61 it were the mortgagors who remained in possession of the suit land and were getting the same cultivated through their tenants. The appellants state that since in the year 1960 the original mortgagees had acknowledge the original mortgage, therefore, a fresh period of limitation for redemption of the mortgage in question begun to run from 11th January, 1960 and prayed for possession by way of redemption on payment of Rs. 53/-.

4. On these facts, the appellants filed the present suit in the year 1980 for possession by way of redemption of the suit land as against the respondents. The respondents contested the suit and raised preliminary objections that the present suit is hopelessly time barred and also raised other objections which are not necessary to refer, as both the parties pressed only issued of limitation not only before us but even when the matter was before the courts below. Respondents' case is that they are in possession of the suit property as owners as their predecessors-in-interest mortgages with possession transferred their entire right by means of registered sale deed dated 11th January, 1960 to the respondents, as aforesaid. At that time there was no agreement in subsistence as originally mortgagees become owners. As stated earlier, the original oral mortgage was for a sum of Rs. 53/-.

5. The Trial Court decreed the suit for redemption on payment of Rs. 53/- and held that the suit is within time and hence they have right to redeem the mortgage. The Trial Court held that the suit is

within time by holding that the acknowledgment by the respondents on behalf of the original mortgagees vide sale deed dated 11th January, 1960, a fresh period of limitation starts from the date of this deed. It further placed reliance in the case of *Inder Singh and others v. Mst. Kishno and others*, 1966 Punjab Law Reports 408, to hold that the period of limitation would only run after expiry of 12 years from the date of mortgage, in cases of unregistered mortgage. Since the present case is also a case of unregistered mortgage it held that such mortgage and possession would only become valid after a period of 12 years from the date of such mortgage. The present oral mortgage in question was of the year 1893 thus the limitation would only start after 12 years of this date which would be in the year 1905 and adding 60 years from this, the limitation for filing suit would only expire in the year 1965 and since there is acknowledgment by the mortgagees on 11th January, 1960, as aforesaid, a fresh limitation starts from this date hence the suit is within limitation. However, the first Appellate Court set aside this judgment. It held that the aforesaid decision in *Inder Singh* (supra) is of no help to the plaintiffs (mortgagors) as it is not disputed by the parties and rather conceded that earlier, specially during the year in question, oral agreement was permissible in the State of Punjab and was treated to be a valid agreement. This coupled with the fact that the principal money secured under the said agreement was less than Rs. 100/-, so the mortgage could have been effected either by a registered instrument or by delivery of possession of the land in question. In this view of the matter, admittedly, the land in the suit was mortgaged with possession for Rs. 53/- in March 1893. Hence, a valid mortgage came into existence on the very day of its execution. In view of this, it held that the period of limitation of redemption of the land in suit started on that very date of the execution and thus period of 60 years is to be counted from March 1893, hence the suit is barred by time. When the matter was taken in second appeal the High Court relied on its Full Bench decision in *Civil Revision No. 345 of 1981, titled, Siri Chand and others v. Nathi*, dated 21st January, 1983, in which it over-ruled its earlier decision in *Inder Singh* (supra) and hence dismissed the appeal of the present appellants.

6. Learned senior counsel for the appellants, Mr. A.B. Rohtagi, fairly stated that the aforesaid Full Bench decision is no doubt against the appellants but made submissions for holding contrary to what has been held therein. In the said case of *Siri Chand and others* (supra) on of the core question raised was, whether on oral mortgage was valid in the eyes of law, which is executed on 14th June 1948 in the State of Punjab, prior to the extension of the provisions of Section 59 of the Transfer of Property Act, 1882 which requires registration of a mortgage. It is also not in dispute that the Transfer of Property Act by virtue of Section 1 is only extended in the State of Haryana on the 5th August, 1967, to which the Full Bench was concerned and to the State of Punjab after 1st November 1956, to which we are concerned. It held that there was no bar to give effect to an oral mortgage in a case where mortgagor gave possession of the land to a mortgagee. The Full Bench held :

"Now once that is so on the admitted stand that an oral mortgage was made on June 14, 1948 it seems to inflexibly follow that no legal infirmity attached thereto and the transaction was in essence, legally valid and enforceable. All that, therefore, remains for adjudication is as to what would be the period of limitation for the redemption of such a valid oral mortgage."

7. The Full Bench decision rightly over-ruled the decision of *Inder Singh* (supra) as that decision wrongly based its conclusion on an earlier decision in the case of *Purushottam Dass and Anr. v. S.M. Dedouze and another*, (37) 1950 Orissa 213. The facts in that case were that the mortgage was for an amount for more than Rs. 100/- and was unregistered which was executed after the Transfer of Property Act was made applicable to the State of Orissa hence the mortgage was invalid. It is for this reason it held that the period of limitation would only start after the expiry of 12 years of such

invalid mortgage as such possession would perfect into a valid mortgage after the expiry of this period. Hence Full Bench rightly held that the principle of Purushottam Dass and Anr. (supra) was wrongly applied in the Inder Singh (supra). The Full Bench finally concluded :

"In the present case, admittedly the oral mortgage had been made on June 14, 1948. At that time the relevant provisions of the Transfer of Property Act had not been made applicable to the area. The said transaction at that time was therefore, valid and legally enforceable one and the fact whether the mortgage was registered or not was wholly irrelevant with regard to the issue of its validity. Consequently, the terminus for the limitation for redemption has to run from the aforesaid date of June 14, 1948..."

8. We find no error committed in coming to the said decision by the Full Bench. No sustainable submission has been advanced to hold a contrary law.

9. In his endeavor, learned counsel for the appellants, referred to Section 18 of the Limitation Act to hold that the acknowledgment by the original mortgagees to the respondents, through the said registered document dated 11th January 1960, the period of limitation is revive which would only start from that date of acknowledgment hence the suit filed in the year 1980 would be within limitation. The said submission is without any force. Section 18, sub-section (1), itself starts with the words "Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made....". Thus, the acknowledgement, if any, has to be prior to the expiration of the prescribed period for filing the suit, in other words, if the limitation has already expired, it would not revive under this Section. It is only during subsistence of a period of limitation, if any, such documents is executed, the limitation would be revived afresh from the said date of acknowledgment. In the present case, admittedly, the oral mortgage deed is in March 1893. If the period of limitation for filling suit for redemption is 60 years then limitation for filing a suit would expire in the year 1953. Thus, by the execution of this document dated 11th January 1960 it cannot be held by virtue of Section 18 that the period of limitation is revived afresh from this date.

10. Learned counsel for the appellants has also made reference in the case reported in *C. Beepathumma and others, v. V.S. Kadambolithaya and others, 1964(5) SCR 836*. In view of this decision it was submitted that since mortgagee-respondents continued to enjoy the property with possession under the mortgage they cannot shirk from accepting their obligation under it. This Court held :

"..That doctrine is that a person who accepts a benefit under a deed or will or other instrument must adopt the whole contents of the instrument, must conform to all its provisions and renounce all rights that are inconsistent with it, in other words a person cannot approbate and reprobate the same transaction."

This has no relevance to the present case. Present case it not a case where mortgagee has received any benefit under any instrument and renouncing to perform any obligation under it. In the present case, there is neither any deed or document of mortgage. Even under oral mortgage the only obligation for a mortgagee was to hand over possession of the property mortgaged at the moment mortgagor pays the mortgage money. It is nobody's case that the mortgagor has paid back the money. This part of the judgment only refers to the doctrine of election. There is no obligation under the oral mortgage which could be said not performed by the mortgagee. We are only

concerned here, whether the suit filed by the appellants is within time or not. It is significant that this very decision also makes reference about the limitation in filing such suits. Here a suit was filed for redemption of mortgage deed, Ex.P-2 by the 1st and 2nd respondents. The first respondent purchased Schedule 'A' property and undertook to redeem the mortgage property described in Schedules 'A' and 'B' and hand over possession of Schedule 'B' property to the legal representatives in the family of one Madana. Before this on 14th April 1842 Madana, who was then Ejaman of the family, usufructually mortgaged the 'A', 'B' and 'C' Schedule properties under Ex.P-1. This deed did not contain any provision for repayment of the amount or for the usufructuary mortgage to be worked off. So no period was stated for redemption. Then it was later converted into a mortgage specifying time through Ex. P2, as aforesaid, in 1862. The Court held :

"...In 1842 when Ex. P-1 was executed, there was no law prescribing a period of limitation for the redemption of a usufructuary mortgage. Such limit came in 1859 for the first time and a period of 60 years from the date of the mortgage was prescribed. It is this statute which seems to have been the cause for the execution of Exs. P-2 and P-2(a); the mortgagees were perhaps afraid that the mortgage *could be redeemed at any time within 60 years from the date of the mortgage of 1842*. The last date for redemption thus was 1902. By getting the term certain for 40 years, the date for redemption was shifted by them to 1902 and redemption could not take place till that year. The mortgagors also benefited, because they obtained a release of some properties and received Rs. 100 in cash. The period of 60 years was repeated in the Act of 1871; but it contained a rider that if during the period of 60 years, there was an acknowledgement then the period would run from the date of that acknowledgment. Art. 148 of the Limitation Act as it stands today was introduced by the Act of 1877. It makes the 60 years' period run from the time when redemption is due..."

(Emphasis supplied).

The aforesaid passage clearly shows that the mortgage could be redeemed at any time within 60 years from the date of mortgage.

11. Hence we find that this case, instead of supporting, is against the submissions of learned counsel for the appellants. Lastly, learned counsel for the appellants faintly made reference to the Redemption of Mortgages (Punjab) Act, 1913 to submit that in an oral mortgage, till this Act came into force, there was no period of limitation and the right for redemption accrued only after this Act came into force, hence limitation cannot start before the date when this Act came into force and thus as in the present case neither mortgagors offered to pay the mortgage amount nor mortgagees communicated that the mortgage amount has been paid, hence right to redeem mortgage could not be said to have accrued, so question of running any period of limitation never arose till this 1913 Act came into force. This submission is misconceived without any merit and has no force. We have already recorded that the period of limitation starts the very first date of a valid mortgage. Court has only to see, whether a mortgage is valid or not. If it is valid, right to redeem to the mortgagors accrues from that very date, unless any restraint in the mortgage deed is provided specifying restriction under it as in the case of C. Beepathumma and others (supra) specific restriction was contained under Ex. P-2. So far, this 1913 Act, the statement of objects and reasons clearly reveal that this Act was only brought in, as under Section 7(5) of the Punjab Alienation of Land Act, as subsequently amended in 1907, the Deputy Commissioner has, in the case of mortgages made under Section 6 of that Act, certain powers to restore mortgagors to possession of their property was

provided, therefore, 1913 Act was passed to confer similar powers in respect of other mortgages not covered under Section 6. This also provided for a summary procedure in the matter of redemption mortgages. This has no co-relation with the period of limitation in case of redemption of mortgages. In any case, even from the date of this Act, viz., 1913, the period of limitation expires on 1973 hence the suit still is barred by time.

12. Learned counsel also referred to the language of Section 61(a) of part V of the Schedule to the Limitation Act, which it quoted hereunder : "61. By a mortgagor ◆

Description of suit	Period of limitation	Time from which period begins to run
(a) to redeem or recover possession of immovable property mortgaged;"	Thirty Years	When the right to redeem or to recover possession accrues.

13. It is not in dispute at the relevant time period of limitation under this was 60 year and not 30 years.

14. Submission was, as aforesaid, right to redeem only accrue when either mortgagors tender the amount of mortgage or the mortgagees communicate satisfaction of the mortgage amount through the usufruct from the land. This submission is misconceived, as aforesaid, if this interpretation is accepted, then till this happens the period of limitation never start running and it could go on for an infinite period. We have no hesitation to reject this submission. The language recorded above makes it clear that right of redemption accrues from the very first day unless restricted under the mortgage deed. When there is no restriction mortgagors have a right to redeem the mortgage from that very date when the mortgage was executed. Right accruing means, right either existing or coming into pay thereafter. Where no period in the mortgage is specified, there exist a right to a mortgagor to redeem the mortgage by paying the amount that very day in case he receives the desired money for which he has mortgaged his land or any day thereafter. This right could only be restricted through law or in terms of a valid mortgage deed. There is no such restriction shown or pointed out. Hence, in our considered opinion the period of limitation would start from the very date the valid mortgage is said to have been executed hence the period of limitation of 60 years would start from the very date of oral mortgage that would be from March, 1893. In view of this, we do not find any error in the decision of the first Appellate Court or the High Court holding that the suit of the present appellants is time barred.

15. Hence, for the reasons recorded above, we do not find any merit or force in the submissions made by the learned counsel for the appellants. Accordingly, the present appeal is dismissed. Costs on the parties.