

Shri Panch Nagar Parakh Mandsaur

Vs

Purushottam Das

Civil Appeals No. 235 of 1995

(M. Jagannadha Rao, M. B. Shah JJ)

18.08.1999

JUDGMENT

SHAH, J. –

1. These two appeals between the same parties, arise out of mortgage of two pieces of agricultural land in Mandsaur - one mortgage deed was executed on 18-6-1932 and another on 26-7-1934. At present, we would refer to the facts of Civil Appeal No. 235 of 1995. Relying upon registered mortgage deed executed on 26-7-1934 by one Hardeodas who was the power-of-attorney holder of Dwarkadas, respondent heirs of the deceased Dwarkadas filed Civil Suit No. 112-A of 1968 on 10-8-1968 before the Civil Judge, Mandsaur for redemption of 1/3rd share in agricultural land bearing Survey No. 1639 situated at Mandsaur. The deed prescribed eleven years as the mortgage period with a specific condition that the mortgage money was not to carry interest and the mortgage was made in favour of the appellant which is a community, namely, Shri Panch Nagar Parakh Jankoopura, Mandsaur. The trial court decreed the suit for redemption of possessory mortgage on payment of mortgage money and cost which is confirmed in appeal and second appeal.

2. It has been contended by learned counsel for the appellant that the courts below committed patent error in arriving at the conclusion that suit for redemption filed by the plaintiff would be governed by the Indian Limitation Act, 1963 without appreciating the fact that there was a specific provision under the Act known as "Qanoon Ryotwari" for redemption of mortgage of pukhta maurusi (class of tenants). It is submitted that Dwarkadas, original mortgagor was "pukhta maurusi" tenant and for redemption of such mortgage, the rights of the parties were governed under the special provisions of the Qanoon Ryotwari Gwalior State, 1974 Smvt. (1917 AD) (hereinafter referred to as "the Ryotwari Act"). It is contended that three years' period of limitation for redemption of such mortgage is provided under Section 275 of the Ryotwari Act. Hence, the suit filed in 1968 was on the face of it barred by period of limitation. According to the learned counsel, right to sue accrued after eleven years from the date of execution of the mortgage deed i.e. on 26-7-1945 and three years' period would be over in the month of July 1948. It is his further contention that the mortgagee in possession of the tenancy rights of pukhta maurusi gets his rights transferred in his favour under the provisions of the Ryotwari Act. Secondly, the learned counsel submitted that under the Madhya Pradesh Land Revenue Code, 1959 the appellant became bhumiswami.

3. At the time of hearing of the appeal as well as in the written submissions made by the respondents, it is not disputed that the Ryotwari Act was applicable to the lands in dispute. On 17-8-1933, eight sections of the Qanoon Mal Gwalior State, Samvat 1983 (1926 AD), namely, Sections 268, 269, 271, 272, 274, 275, 278 and 280 were engrafted into the Ryotwari Act. On 15-8-1950, the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950) became applicable to

land tenures in Mandsaur and it repealed the Qanoon Ryotwari and certain provisions of the Qanoon Mal. The 1950 Act was repealed on 2-10-1959 by the Madhya Pradesh Land Revenue Code, 1959 (Act 20 of 1959).

4. For considering the first contention whether the suit filed in 1968 is barred by the period of limitation as prescribed under Section 275 of the Ryotwari Act, we would first refer to the relevant provisions of the said Act :

"1. (1) It is expedient that this Act shall be called 'Qanoon Ryotwari Gwalior State, 1974 Smvt.'

(2)-(3) * * *

(4) This Act shall come into force on 1-10-1917."

DEFINITIONS

"2. In villages, where there is no intermediary like Zamindar, Mustajar, Supurdidar, between the State and the tenant, and rent is recovered by the Government directly from the tenant, such administration is called 'ryotwari' and such villages are called 'ryotwari villages'.

* * *

5. 'Pukhta maurusi' means a maurusi tenant who got maurusi patta at the time of settlement or who has become maurusi during the current settlement. He shall have also the right to transfer his pukhta holding."

TENANTS

CLASSES OF TENANTS

"65. In a ryotwari village there shall be the following classes of tenants :

(1) Those tenants who got patta maurusi at the time of last settlement or who acquired maurusi rights shall be called 'pukhta maurusi' and such tenants shall also have the right of transfer.

(2) Saqitul milkayat.

(3) 'Haqiat mutafarriq' and 'sharah muayyan' tenants shall retain their rights and shall also have the right of transfer provided that on transfer of holding by such tenants, the class of the transferee shall be 'pukhta maurusi', and shall be assessed to full rent without concession to him'.

(4) Ghair dakhilkar.

* * *

71. A tenant who acquires title to tenancy by succession or sale or mortgage or in any other mode, must report to the Patwari of the village about the acquisition of such

title. If the person acquiring title is a minor or is otherwise disabled, his guardian or such other person who is manager of his property shall report to the Patwari in writing and obtain acknowledgment.

(a) In case of transfer by sale, mortgage with possession or gift, it shall be the duty of the transferee to make such report to the Patwari before taking possession....

* * *

275. If a suit for redemption or for recovery of mortgage money on the basis of a registered deed of mortgage is to be instituted, it shall lie in the Court of the Tehsildar within three years on a stamp paper of 8 annas. The appeal from the order of the Tehsildar shall lie to the Court of Suba (Collector) and the decision of the Collector shall be final.

* * *

278. The status regarding rights and liabilities of the purchaser or the mortgagee of dakhilkar land shall be the same as of the transferor."

5. On the basis of the aforesaid provisions, learned counsel for the appellant submitted that the suit filed in 1968 was, on the face of it, time-barred and the courts below manifestly erred in holding that Article 61 of the Indian Limitation Act, 1963 which prescribes the period of limitation of thirty years would be applicable to the suit filed by the respondents.

6. Prima facie, it appears that there is total non-application of mind by the courts below with regard to Section 275 of the Qanoon Ryotwari which was in force at the relevant time and was applicable to the lands in dispute. The said section specifically provides that suit for redemption or for recovery of mortgage money on the basis of a registered deed is to be instituted within three years in the Court of the Tehsildar. Further, appeal against the said order is to be filed in the Court of the Suba (Collector) and the decision of the Suba shall be final. These provisions are made with regard to ryotwari villages in Gwalior State. Section 2 as quoted above, inter alia, provides that in villages where there is no intermediary like the Zamindar, Mustajar, Supurdidar between the State and the tenant and the rent is recovered by the Government directly from the tenant such administration is called ryotwari and such villages are called ryotwari villages. As per Section 65 in ryotwari villages, the tenants were of four classes, namely, (1) pukhta maurusi, (2) saqitul milkayat, (3) haqiat mutafarriq and sharah muayyan, and (4) ghair dakhilkar. Admittedly, in the present case, the mortgagor who mortgaged his rights was belonging to "pukhta maurusi" class of tenants. He transferred his rights by executing a mortgage deed a copy of which is produced in this appeal which inter alia recites that :

"I am in possession and occupation of this land as 'pukhta maurusi' ... and as regards payment of mortgage money, it is agreed that after the expiry of 11 years, I shall pay mortgage money Rs. 101 and get the mortgage property redeemed. Whatever the rights I have in the land mortgaged the same will be the rights of the said panchan mortgagees."

Admittedly, the aforesaid document is registered with the Tehsildar, Mandsaur on 27-7-1934. Section 278 quoted above provides that the status regarding rights and liabilities of the purchaser of the mortgagee of dakhilkar land shall be the same as that of the transferor. The mortgage deed as

quoted above also provides to the same effect that whatever rights the mortgagor was having, the same will be the rights of the mortgagee. At this stage, we would mention one submission made by the learned counsel for the respondents to the effect that on the basis of a mortgage deed, the mortgagee would not get the same rights as of a tenant mortgagor. The said submission is without any substance. Firstly, because of executing the mortgage deed, the mortgagor has transferred his rights under Sections 5 and 65 of the Ryotwari Act. "Pukhta maurusi" (tenant) was entitled to transfer or mortgage his rights and the tenant, Dwarkadas, who was "pukhta maurusi" mortgaged his tenancy rights with a specific mention that whatever rights he was having in the land were mortgaged and the same would be the rights of the mortgagees. Hence, by the said deed, what was mortgaged was the tenancy rights and the mortgagee stepped into his shoes and acquired the tenancy right as "pukhta maurusi" subject to the right of redemption. Further, under Section 278 of the Ryotwari Act, the mortgagees were having the same status qua the State. Under Section 275, suit for redemption of mortgage was required to be filed before the Tehsildar within 3 years from the date when the cause of action arose.

7. The High Court held that the period of 30 years as provided in Article 61 of the Indian Limitation Act, 1963 would be applicable as the suit was filed in the year 1968, and, therefore, it was within time. The High Court rejected the contention that Section 29 of the Indian Limitation Act would be applicable and the suit which was barred before the Indian Limitation Act came into force would not be revived by holding that nothing could be shown from the provisions of the Gwalior Acts that the suit in the civil court would have become barred before the coming into force of the Indian Limitation Act, 1963 and the Court was not concerned with the aspect of the bar of limitation before a Revenue Court as the suit was filed in the civil court. From the said finding, it is apparent that the High Court erred in not applying its mind to the relevant provisions of the Act particularly Section 275 nor to any other provision of the Qanoon Mal and its effect by considering whether the civil court was having jurisdiction in the matter or whether it was within exclusive jurisdiction of the Revenue Authority.

8. The learned District Judge has dealt with this aspect of the matter to some extent by holding that even though Section 275 is applicable but it does not bar the civil suit by holding that Section 377 of the Qanoon Mal Gwalior State which bars civil courts' jurisdiction, was not adopted by the Ryotwari Act. The learned Judge unfortunately has not quoted the entire section nor discussed the issue in detail.

9. However, at the time of hearing of this matter, the learned counsel for the parties have given a translated version of Section 377 which is as under :

"377. (1) Subject to the provisions of Section 313, those suits which are provided in this Act as entertainable in a Revenue Court, shall not be maintained in a civil court unless otherwise expressly provided in this Act.

(2) Those matters which have once been decided by a competent court, shall not be entertained a second time between the same parties about the same subject-matter."

10. It is true that from the Ryotwari Act, no express provision barring civil courts' jurisdiction is pointed out. However, the Qanoon Ryotwari was a special statute dealing with the rights, of various classes of tenants and special procedure was prescribed for registration of a mortgage deed with the Tehsildar and its redemption and recovery of mortgage money. For such classes of tenants, method of execution of the document and for recovery of money property, exclusive jurisdiction was given

to the Tehsildar which was a speedy and inexpensive remedy. A specific shorter period of limitation is also provided therein. Prima facie - (subject to further consideration), it appears that the said Act is a self-contained code which expressly provided for rights and liabilities, prescribed procedure, remedy of appeal and finality of such decisions. Further, the Ryotwari Act specifically dealt only with the rights of tenants who were directly paying rent to the Government. There was no intermediary like the Zamindar, Mustajar, Supurdidar as provided in the Qanoon Mal Gwalior State (for short "the said Act"). Under Section 2(13) of the said Act, Zamindar meant a person who had heritable and transferable proprietary rights in a village or part of a village or a specified plot of land, and who was entitled to recover rent from tenants and was liable to pay revenue to the Government. Under Section 60, a Zamindar was entitled to sell, gift or mortgage his village or part of the village or land of the village in his possession, by a registered document. Section 94 provided for a suit for redemption of mortgage or for recovery of mortgage money on the basis of a registered deed which was required to be filed in a civil court. As against this, under the Ryotwari Act, the persons holding land were direct tenants and were directly paying rent to the State Government. In that context, Sections 275 and 278 are required to be considered. Further under the Ryotwari Act, the tenants as described under Sections 5 and 65 were entitled to transfer Or mortgage their tenancy rights. Under Section 278, the rights and liabilities of the purchaser or the mortgagee of the land qua the State were the same as of the transferor. For the redemption of mortgage of such tenancy rights, the procedure prescribed in Section 275 was required to be followed and the mortgage was required to be redeemed within the specified period of 3 years. The result would be that if the suit is not filed before the Tehsildar within the period of 3 years, the tenant who had mortgaged his tenancy rights would lose his right to redeem the tenancy rights which he had mortgaged. According to the condition in the mortgage deed, the right of redemption accrued to Dwarkadas on 26-7-1945, that is, after the expiry of 11 years as agreed. If 3 years' period of limitation as provided in Section 275 is taken into consideration, the suit before the Tehsildar was required to be filed on 26-7-1948. Admittedly, in the present case, the Qanoon Ryotwari was in force. It was repealed by the Madhya Bharat Land Revenue and Tenancy Act (66 of 1950) which came into force on 15-8-1950. Hence, before the repeal of the Act, the rights of the mortgagee under the Ryotwari Act were crystallised.

11. The learned counsel for the respondent, however, submitted as under :

- (1) The remedy as provided in Section 275 has been created in the interest of the agriculturist to have an inexpensive summary remedy but that did not mean that the laws relating to limitation or civil procedure are not applicable.
- (2) It was an optional remedy to the mortgagor.
- (3) It cannot be accepted that within the short period of 3 years, the mortgagor's precious rights to redeem got extinguished.
- (4) The Gwalior Limitation Act provided for limitation of 30 years for filing a civil suit.

12. Firstly, it is to be noted that before the courts below the respondents have never contended that the Gwalior Limitation Act was applicable. In the present case, for the first time, this contention is raised before this Court that too only in written submissions after arguments were over, and, therefore, it is difficult for us to appreciate and deal with the same. Secondly, as stated earlier, the Ryotwari Act was the special law enacted by the State for dealing with the rights of the tenants who were direct tenants of the State and were required to pay rent directly to the State. Their rights were

governed by the said Act. The Act permitted transfer or mortgage of their tenancy rights. In such a situation, a shorter period of 3 years was provided for redemption of the mortgage of the tenancy rights. In that set of circumstances, the contention that such interpretation will not protect the agriculturists and that it would destroy precious rights to redeem tenancy rights of the mortgagor would have no bearing.

13. Further, the Ryotwari Act was repealed by the Madhya Bharat Land Revenue and Tenancy Act (hereinafter referred to as "the Madhya Bharat Act") which came into force on 15-8-1950. The Preamble of the said Act provides that it was for consolidating and declaring the law relating to revenue administration in the United States of Gwalior, Indore and Malwa (Madhya Pradesh) and the land revenue, land tenure and other matters connected with land in the ryotwari tracts or villages of the said United States. Section 3 specifically repeals all other Acts, laws, rules relating to matters connected with ryotwari villages in force. The said Act further provides for the establishment of Revenue Courts having jurisdiction, powers and for the procedure including the procedure of filing the appeals and period of limitation. Revenue Court as defined means all or any of the authorities mentioned in sub-section (vii) of Section 4 which includes Suba, Additional Subas, Naib Subas. Chapter VI deals with tenancies and sub-tenancies. This Act also provided for special procedure with regard to the mortgage of tenancy rights by "pakka tenant" which includes "pukhta maurusi" as defined in Section 54(vii). Section 54 gives the definitions, inter alia, of rent, ryotwari village and pakka tenant. Pakka tenant is defined in Section 54(vii) as under :

"Pakka tenant means a tenant who has been or whose predecessor-in-interest had been lawfully recorded in respect of his holding as a 'ryot pattedar', 'mamuli maurusi', 'gair maurusi' and 'pukhta maurusi' when this Act comes into force or who may in future be duly recognised as such by a competent authority."

14. It also provides as to how a mortgage is to be executed by a pakka tenant and various consequences of a usufructuary mortgage. The section dealing with mortgage indicates that usufructuary mortgage by a pakka tenant can be for a specific period not exceeding six years and it would be valid if it has been duly registered in accordance with law and that it is deemed to be satisfied and redeemed after the expiry of the period of mortgage without payment of mortgage money. Further, the mortgagee in possession shall be deemed to be a trespasser and is liable to ejection in accordance with the provisions of the Act. However, it saves the validity of a mortgage properly and legally executed prior to the commencement of the Act. In case of simple mortgage it bars the jurisdiction of the civil court from granting any interest on loans advanced on the land not greater than what is provided in sub-section (7) of Section 72. Section 72 reads as under :

"72. Mortgage. - (1) A pakka tenant may mortgage his rights in the whole or any part of his holding by way of simple or usufructuary mortgage to a bona fide agriculturist for a period of not more than six years, provided that an area of at least 15 acres on pakka tenure is left with him in his possession free of any encumbrance or charge of any kind.

(2) Notwithstanding anything contained in any enactment for the time being in force, a mortgage deed effecting a mortgage for a period of more than 6 years shall not be registered.

(3) No mortgage shall be deemed to be valid until the mortgage deed effecting such a mortgage has been duly registered in accordance with the law of registration in force

for the time being.

(4) A usufructuary mortgage effected under this section shall be deemed to have been satisfied and redeemed after the expiry of the period for which the mortgage was effected without the payment of the mortgaged money.

(5) If the mortgagee does not hand over possession of the land mortgaged to him under this section after the expiry of the period of mortgage to the mortgagor or in case of his death to his legal heir, he shall be deemed to be a trespasser and shall be liable to ejection in accordance with the provisions of this Act.

(6) On the dispossession of a trespasser under sub-section (5), the pakka tenant, or if he is dead his legal heir shall, under orders of the Tehsildar be placed in possession of the land on payment of arrears, if any.

(7) The loan advanced by the mortgagee to the pakka tenant on the simple mortgage of the land under this section shall not bear interest of more than 6% per annum and the total amount of interest shall not exceed an amount more than half the sum of the principal.

(8) Notwithstanding anything contained in any other law for the time being in force, no civil court shall allow as interest on loans advanced on land under this section, a sum greater than what is provided for in sub-section (7).

(9) Nothing in this section shall affect the validity of a mortgage properly and legally executed prior to the commencement of this Act.

(10) The provisions of this section shall not apply to a mortgage or a charge in favour of a registered cooperative credit society executed under the law for the time being in force."

15. The object of the said provisions is to protect such tenants. Sections 79 and 80 provide the procedure of surrender of tenancy rights by a pakka tenant and also the consequences of not cultivating his holding of agricultural land by a pakka tenant. The Code also provides the procedure for eviction of unauthorised transferors by considering them as trespassers. Section 147 bars the civil court's jurisdiction to obtain a decision or order on any matter which the Government are, or a Revenue Officer is empowered to determine, decide or dispose of. Special period of limitation is also provided for the applications or suits which are required to be filed under the Code. Thereafter, the Madhya Bharat Land Revenue and Tenancy Act was repealed by the Madhya Pradesh Land Revenue Code which came into force from 2-10-1959 which also provides special procedure.

16. In this view of the matter, it would be difficult to hold that rights which were crystallised under the Ryotwari Act are in any way affected. Suit for redemption of mortgage executed in July 1934 is obviously time-barred on the basis of Section 275 of the Ryotwari Act. Still, however, the next question which would require consideration is whether the jurisdiction of the civil court is expressly or impliedly barred in view of the provisions of the Ryotwari Act or other relevant laws applicable. Where there is an express bar of jurisdiction of the civil court under the provisions of the Act then the question of finding out implied exclusion would not arise. However, in cases where there is no express provision excluding jurisdiction of the civil court, it would be necessary to enquire and determine whether it is impliedly barred. For this purpose, the scheme of the Act and the relevant

provisions are required to be examined to find out whether the statute provides right and remedy and whether the scheme of the Act is such that the procedure provided therein will be conclusive giving finality and thereby excluding the jurisdiction of the court in respect thereof. Attention of the High Court was not at all focussed on this question. As discussed above, under the Ryotwari Act, pukhta maurusi was entitled to mortgage his rights and the mortgagee stepped into his shoes and special procedure is prescribed for redemption of such mortgage within a period of three years. However, if filing of a civil suit is not expressly or impliedly barred, a civil suit would be maintainable. In such eventuality, the limitation for redemption of the mortgage would be different. It would depend upon the Limitation Act applicable in the said State at the relevant time prior to 1950 and thereafter. In this view of the matter, the relevant provisions of the Civil Procedure Code and the Limitation Act applicable in the said State where the agricultural lands are situated are required to be examined and considered for deciding whether the civil court's jurisdiction is expressly or impliedly barred. If not barred, whether the right of redemption was barred by the period of limitation prescribed under the Limitation Act applicable in that State.

17. The next question which requires consideration is whether the appellant has become bhumiswami under the provisions of the Madhya Bharat Land Revenue Code, 1959. That contention was rejected by the High Court by observing that the entire edifice of this contention would collapse on account of lack of factual foundation of the appellant being a tenant of the respondent at any point of time. It was held that the appellant was a mortgagee and the legal character of his possession was that of a mortgagee and hence, he cannot acquire the rights of a bhumiswami. As stated above, we have arrived at the conclusion that by the deed executed in favour of the appellant, he stepped into the shoes of mortgagor and has acquired the tenancy right as pukhta maurusi subject to the right of redemption. In this view of the matter, this question also would require further consideration by taking into consideration various provisions of the Madhya Bharat Land Revenue and Tenancy Act, 1950 as well as the Madhya Pradesh Land Revenue Code, 1959.

18. The High Court has not considered the aforesaid two questions in their proper perspective which requires consideration of local laws in force at the relevant time in the State where the lands in dispute are situated. Hence, for deciding the aforesaid two questions, the matter is required to be remitted to the High Court. The Court would decide the same on merits and dispose of the appeals after giving an opportunity of hearing to the parties and after verifying the local laws applicable and prevailing at the relevant time.

19. Questions involved in Civil Appeal No. 1088 of 1992 are also similar. Hence, the same is also required to be remitted to the High Court for deciding the said questions.

20. In the result, the judgment and decree passed by the High Court dismissing the appeals is set aside. The appeals are, accordingly, allowed and remitted to the High Court of Madhya Pradesh for deciding the same. There shall be no order as to costs.