

ALLAHABAD HIGH COURT

Rajai Singh

Vs

Randhir Singh

(Mears, J.)

16.02.1925

JUDGMENT

Mears, C.J.

1. On the 20th of April 1897, Randhir Singh, being then an occupancy tenant of a holding, mortgaged it usufructuarily by two documents of that date receiving Bs. 200, or its equivalent in value, in respect of one mortgage and Its. 500 in respect of the other. The mortgage for Rs. 200 was not to be redeemable for 95 years, the mortgage for Rs. 500 was not to be redeemable for 96 years, and to that there was added a stipulation that, inasmuch as the usufructuary return was not sufficient to give the proper amount of interest on the outstanding money there should, at the expiration of the 96 years, be paid with the principal sum, interest at the rata of four annas per cent, per mensem. A similar provision is to be found in the second deed. The figures of liability for interest at the end of 95 and 96 years which have been given to us are not disputed and amount to Rs. 1,940 and Rs. 485. The position therefore on the 20th of April, 1897, was that the mortgagor bound himself not to seek redemption for periods of 95 and 96 years and further to be prepared at that time to provide Bums respectively of Rs. 1,940 and Rs. 485 and Rs. 500 and Rs. 200 as well. Randhir Singh brought a suit for redemption, and to that suit it was objected that the transaction was really a sale, and inasmuch as an occupancy tenant was forbidden by law to sell his holding, the parties had designedly cloaked the transaction in this mortgage form. Randhir Singh took the point that the documents were really mortgages and that he was entitled to redeem them disregarding the provisions as regards the 95 years and the 96 years. He seemed also to be of opinion that he could disregard the provision as regards the accumulation of interest, because we are told, that he tendered the sum of Rs. 200 and the sum of Rs. 500 before commencing the action. We have been shown, we believe, all the authorities bearing on this matter and broadly they may be taken as falling under two heads. It appears that there is a consensus of opinion amongst all the Courts in India that, if a period is fixed prior to the expiry of which redemption cannot be granted and that Stipulation is assented to redemption cannot be granted before that period has in fact expired, and the cases which have been cited to us were cases in which very long periods of years have been fixed. In one case a period of 150 years was fixed. Then there is

another view of the law exemplified by the case of *Sarbdawan Singh v. Bijai Singh*¹ In that case there was a considerable period fixed namely, 40 years. There was also an extraordinary provision, namely that, unless the mortgage money was tendered on a particular day, the mortgage would be irredeemable for a further period of 40 years. There was also an unjust and illegal stipulation that the mortgage should not be redeemed with borrowed money. These being the main facts, this Court consisting of Mr. Justice Chamier and Mr. Justice Rafiq had to decide what were the right principles to be applied in considering a case of this nature. Now, there is no doubt that, if the case under consideration *Rajai Singh v. Randhir Singh* were decided by English Law the plaintiff would have succeeded on the plain statement of the facts. That is evident from the way in which matters of this kind are treated in England as exemplified by the case of *Morgan v. Jeffreys*² In the XXVI Allahabad case we see indications of the influence of English authorities and the head-note says : "A Court of equity will not permit any device or contrivance designed or calculated to prevent or impede redemption, although it may be impossible to lay down any general rule as to what should not be regarded as an improper res-strait or fetter on the right of redemption." Now, the question that we have got to decide is this. We have got to look at the whole circumstances and to say whether this agreement was drafted with the intention that redemption of this property should be practically frustrated, that is to say, made so difficult and so hedged about that there was no human likelihood of its ever being redeemed : we do not propose to attempt, what no Court has hitherto ever attempted, to define what circumstances generally will be deemed to be a clog or fetter on the equity of redemption. Each of these cases has to be looked at individually. Now, what are the matters which make both of these documents striking ones? The first is the enormously long period within which Randhir Singh was unable to tender the money and regain possession of his property. It was a period which was certainly to extend throughout the life of Randhir Singh and probably throughout the life of his son. Then as regards the question of interest we believe that that stipulation was designedly drafted not because the mortgagee wanted any sum of interest paid into his hands, because if that had been his wish, he would have stipulated for annual payment of interest so calculated as each year to reimburse him for his outlay; but we believe, that it was drafted so that if anybody 95 or 96 years later came forward to redeem the property he would have met with a liability to produce a sum greater than the value of this property or any value it would ever be likely to reach.

2. It is to be noticed that there has been evidence that Rs. 700 was the full value of this property. If that be true, anybody in the year 1922 would have to come forward with a sum more than three times the value of the property as it was in the year 1897. Under these circumstances we hold that there were too fetters, the length of time during which the redemption could be had, and the singular stipulation with regard to the payment of interest and the deferred date of such payment, which make it in our view, inequitable that this transaction should be upheld in its literal terms. We consider it equitable and right that this suit should be decreed, and that Randhir Singh shall have the opportunity of redeeming the property. We are in this view in agreement with the Munsif, the lower appellate Court and the single Judge of this Court.

3. We therefore dismiss this appeal with costs and fees on the higher scale subject to the modification mentioned below.

4. Mr. Peary Lal Banerji has asked us to define what we consider to be the proper terms on which redemption should be had. We are of opinion that redemption should be had only on tendering the two sums of Rs. 200 and Rs. 500 with interest calculated at the agreed rate of four annas per cant, per mensem in one case and Rs. 3 per cent, per annum in the other. Such interest to be calculated down to the date of tender by Randhir Singh.

Cases Referred.

1(1914) 36 All. 551

2(1910) 1 Ch. 620